
SUBSTITUTE SENATE BILL 5912

State of Washington 63rd Legislature 2013 1st Special Session

By Senate Law & Justice (originally sponsored by Senators Padden, Kline, and Conway; by request of Governor Inslee)

READ FIRST TIME 05/15/13.

1 AN ACT Relating to driving under the influence of intoxicating
2 liquor or drugs; amending RCW 2.28.175, 3.66.067, 3.66.068, 3.50.320,
3 3.50.330, 35.20.255, 9.94A.525, 43.43.395, 46.25.090, 46.25.110,
4 46.25.120, 46.61.502, 46.61.504, 9.94A.501, 46.61.5249, 46.20.270,
5 46.61.5058, 46.20.720, 46.20.385, 10.05.140, 10.31.100, 9.94A.535, and
6 4.24.545; reenacting and amending RCW 46.61.5055, 46.61.5055, and
7 46.20.308; adding a new section to chapter 10.21 RCW; adding new
8 sections to chapter 36.28A RCW; adding a new section to chapter 43.43
9 RCW; creating new sections; prescribing penalties; providing an
10 effective date; and providing expiration dates.

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

12 NEW SECTION. **Sec. 1.** A new section is added to chapter 10.21 RCW
13 to read as follows:

14 (1) Unless waived by the court, when any person charged with or
15 arrested for a violation of RCW 46.61.502, 46.61.504, 46.61.520, or
16 46.61.522, in which the person has a prior offense as defined in RCW
17 46.61.5055 and the current offense involves alcohol, is released from
18 custody before arraignment or trial on bail or personal recognizance,
19 the court authorizing the release shall require, as a condition of

1 release, that person to (a) have a functioning ignition interlock
2 device installed on all motor vehicles operated by the person, with
3 proof of installation filed with the court by the person or the
4 certified interlock provider within ten days of the date of release
5 from custody; or (b) comply with 24/7 electronic alcohol/drug
6 monitoring, as defined in section 29 of this act; or both.

7 (2) Upon acquittal or dismissal of all pending or current charges
8 relating to a violation of RCW 46.61.502, 46.61.504, 46.61.520, or
9 46.61.522, or equivalent local ordinance, or if charges are not filed
10 against the person within six months of arrest, the court shall
11 authorize removal of the ignition interlock device and lift any
12 requirement to comply with electronic alcohol/drug monitoring imposed
13 under subsection (1) of this section. Nothing in this section limits
14 the authority of the court or department under RCW 46.20.720.

15 **Sec. 2.** RCW 2.28.175 and 2012 c 183 s 1 are each amended to read
16 as follows:

17 (1) Counties and municipalities may establish and operate DUI
18 courts. Municipalities may enter into cooperative agreements with
19 counties that have DUI courts to provide DUI court services.

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

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

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

32 (ii) Match, on a dollar-for-dollar basis, state moneys allocated
33 for DUI court programs with local cash or in-kind resources. Moneys
34 allocated by the state must be used to supplement, not supplant, other
35 federal, state, and local funds for DUI court operations and associated
36 services. However, until June 30, 2014, no match is required for state

1 moneys expended for the administrative and overhead costs associated
2 with the operation of a DUI court established as of January 1, 2011.

3 (b) Any jurisdiction that establishes a DUI court pursuant to this
4 section shall establish minimum requirements for the participation of
5 offenders in the program. The DUI court may adopt local requirements
6 that are more stringent than the minimum. The minimum requirements
7 are:

- 8 (i) The offender would benefit from alcohol treatment;
- 9 (ii) The offender has not previously been convicted of a serious
10 violent offense or sex offense as defined in RCW 9.94A.030, vehicular
11 homicide under RCW 46.61.520, vehicular assault under RCW 46.61.522, or
12 an equivalent out-of-state offense; and
- 13 (iii) Without regard to whether proof of any of these elements is
14 required to convict, the offender is not currently charged with or
15 convicted of an offense:
 - 16 (A) That is a sex offense;
 - 17 (B) That is a serious violent offense;
 - 18 (C) That is vehicular homicide or vehicular assault;
 - 19 (D) During which the defendant used a firearm; or
 - 20 (E) During which the defendant caused substantial or great bodily
21 harm or death to another person.

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 3.66.068 and 2010 c 274 s 405 are each amended to read
2 as follows:

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

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

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

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

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

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

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

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

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

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

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

31 After a conviction, the court may impose sentence by suspending all
32 or a portion of the defendant's sentence or by deferring the sentence
33 of the defendant and may place the defendant on probation for a period
34 of no longer than two years and prescribe the conditions thereof. A
35 defendant who has been sentenced, or whose sentence has been deferred,
36 and who then fails to appear for any hearing to address the defendant's
37 compliance with the terms of probation when ordered to do so by the

1 court, shall have the term of probation tolled until such time as the
2 defendant makes his or her presence known to the court on the record.
3 During the time of the deferral, the court may, for good cause shown,
4 permit a defendant to withdraw the plea of guilty, permit the defendant
5 to enter a plea of not guilty, and dismiss the charges. A court shall
6 not defer sentence for an offense sentenced under RCW 46.61.5055.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (2)(a) If a defendant whose sentence has been deferred requests
27 permission to travel or transfer to another state, the director of
28 probation services or a designee thereof shall determine whether such
29 request is subject to RCW 9.94A.745, the interstate compact for adult
30 offender supervision. If such request is subject to the compact, the
31 director or designee shall:

32 (i) Notify the department of corrections of the defendant's
33 request;

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

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

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

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

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

7 (c) If the probationer is returned to the state at the request of
8 the receiving state under rules of the interstate compact for adult
9 offender supervision, the department of corrections is responsible for
10 the cost of returning the probationer.

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

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

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

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

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

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

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

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

36 (c) Except as provided in (e) of this subsection, class C prior
37 felony convictions other than sex offenses shall not be included in the

1 offender score if, since the last date of release from confinement
2 (including full-time residential treatment) pursuant to a felony
3 conviction, if any, or entry of judgment and sentence, the offender had
4 spent five consecutive years in the community without committing any
5 crime that subsequently results in a conviction.

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

12 (e) If the present conviction is felony driving while under the
13 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
14 felony physical control of a vehicle while under the influence of
15 intoxicating liquor or any drug (RCW 46.61.504(6)), ~~((prior convictions
16 of felony driving while under the influence of intoxicating liquor or
17 any drug, felony physical control of a vehicle while under the
18 influence of intoxicating liquor or any drug, and serious traffic
19 offenses shall be included in the offender score if: (i) The prior
20 convictions were committed within five years since the last date of
21 release from confinement (including full-time residential treatment) or
22 entry of judgment and sentence; or (ii) the prior convictions would be
23 considered "prior offenses within ten years" as defined in RCW
24 46.61.5055))~~ all predicate and prior crimes for the offense as defined
25 by RCW 46.61.5055(14) shall be included in the offender score, and
26 prior convictions for felony driving while under the influence of
27 intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical
28 control of a vehicle while under the influence of intoxicating liquor
29 or any drug (RCW 46.61.504(6)) shall always be included in the offender
30 score. All other convictions of the defendant shall be scored
31 according to this section.

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

1 (g) This subsection applies to both adult and juvenile prior
2 convictions.

3 (3) Out-of-state convictions for offenses shall be classified
4 according to the comparable offense definitions and sentences provided
5 by Washington law. Federal convictions for offenses shall be
6 classified according to the comparable offense definitions and
7 sentences provided by Washington law. If there is no clearly
8 comparable offense under Washington law or the offense is one that is
9 usually considered subject to exclusive federal jurisdiction, the
10 offense shall be scored as a class C felony equivalent if it was a
11 felony under the relevant federal statute.

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

15 (5)(a) In the case of multiple prior convictions, for the purpose
16 of computing the offender score, count all convictions separately,
17 except:

18 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
19 encompass the same criminal conduct, shall be counted as one offense,
20 the offense that yields the highest offender score. The current
21 sentencing court shall determine with respect to other prior adult
22 offenses for which sentences were served concurrently or prior juvenile
23 offenses for which sentences were served consecutively, whether those
24 offenses shall be counted as one offense or as separate offenses using
25 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
26 if the court finds that they shall be counted as one offense, then the
27 offense that yields the highest offender score shall be used. The
28 current sentencing court may presume that such other prior offenses
29 were not the same criminal conduct from sentences imposed on separate
30 dates, or in separate counties or jurisdictions, or in separate
31 complaints, indictments, or informations;

32 (ii) In the case of multiple prior convictions for offenses
33 committed before July 1, 1986, for the purpose of computing the
34 offender score, count all adult convictions served concurrently as one
35 offense, and count all juvenile convictions entered on the same date as
36 one offense. Use the conviction for the offense that yields the
37 highest offender score.

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

7 (6) If the present conviction is one of the anticipatory offenses
8 of criminal attempt, solicitation, or conspiracy, count each prior
9 conviction as if the present conviction were for a completed offense.
10 When these convictions are used as criminal history, score them the
11 same as a completed crime.

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

17 (8) If the present conviction is for a violent offense and not
18 covered in subsection (9), (10), (11), (12), or (13) of this section,
19 count two points for each prior adult and juvenile violent felony
20 conviction, one point for each prior adult nonviolent felony
21 conviction, and 1/2 point for each prior juvenile nonviolent felony
22 conviction.

23 (9) If the present conviction is for a serious violent offense,
24 count three points for prior adult and juvenile convictions for crimes
25 in this category, two points for each prior adult and juvenile violent
26 conviction (not already counted), one point for each prior adult
27 nonviolent felony conviction, and 1/2 point for each prior juvenile
28 nonviolent felony conviction.

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

34 (11) If the present conviction is for a felony traffic offense
35 count two points for each adult or juvenile prior conviction for
36 Vehicular Homicide or Vehicular Assault; for each felony offense count
37 one point for each adult and 1/2 point for each juvenile prior
38 conviction; for each serious traffic offense, other than those used for

1 an enhancement pursuant to RCW 46.61.520(2), count one point for each
2 adult and 1/2 point for each juvenile prior conviction; count one point
3 for each adult and 1/2 point for each juvenile prior conviction for
4 operation of a vessel while under the influence of intoxicating liquor
5 or any drug.

6 (12) If the present conviction is for homicide by watercraft or
7 assault by watercraft count two points for each adult or juvenile prior
8 conviction for homicide by watercraft or assault by watercraft; for
9 each felony offense count one point for each adult and 1/2 point for
10 each juvenile prior conviction; count one point for each adult and 1/2
11 point for each juvenile prior conviction for driving under the
12 influence of intoxicating liquor or any drug, actual physical control
13 of a motor vehicle while under the influence of intoxicating liquor or
14 any drug, or operation of a vessel while under the influence of
15 intoxicating liquor or any drug.

16 (13) If the present conviction is for manufacture of
17 methamphetamine count three points for each adult prior manufacture of
18 methamphetamine conviction and two points for each juvenile manufacture
19 of methamphetamine offense. If the present conviction is for a drug
20 offense and the offender has a criminal history that includes a sex
21 offense or serious violent offense, count three points for each adult
22 prior felony drug offense conviction and two points for each juvenile
23 drug offense. All other adult and juvenile felonies are scored as in
24 subsection (8) of this section if the current drug offense is violent,
25 or as in subsection (7) of this section if the current drug offense is
26 nonviolent.

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

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

34 (16) If the present conviction is for Burglary 2 or residential
35 burglary, count priors as in subsection (7) of this section; however,
36 count two points for each adult and juvenile prior Burglary 1
37 conviction, two points for each adult prior Burglary 2 or residential

1 burglary conviction, and one point for each juvenile prior Burglary 2
2 or residential burglary conviction.

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

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

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

18 (20) If the present conviction is for Theft of a Motor Vehicle,
19 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
20 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
21 priors as in subsections (7) through (18) of this section; however
22 count one point for prior convictions of Vehicle Prowling 2, and three
23 points for each adult and juvenile prior Theft 1 (of a motor vehicle),
24 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a
25 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),
26 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a
27 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without
28 Permission 2 conviction.

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

33 (a) Count two points for each adult prior conviction where domestic
34 violence as defined in RCW 9.94A.030 was plead and proven after August
35 1, 2011, for the following offenses: A violation of a no-contact order
36 that is a felony offense, a violation of a protection order that is a
37 felony offense, a felony domestic violence harassment offense, a felony
38 domestic violence stalking offense, a domestic violence Burglary 1

1 offense, a domestic violence Kidnapping 1 offense, a domestic violence
2 Kidnapping 2 offense, a domestic violence unlawful imprisonment
3 offense, a domestic violence Robbery 1 offense, a domestic violence
4 Robbery 2 offense, a domestic violence Assault 1 offense, a domestic
5 violence Assault 2 offense, a domestic violence Assault 3 offense, a
6 domestic violence Arson 1 offense, or a domestic violence Arson 2
7 offense;

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

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

16 (22) The fact that a prior conviction was not included in an
17 offender's offender score or criminal history at a previous sentencing
18 shall have no bearing on whether it is included in the criminal history
19 or offender score for the current offense. Prior convictions that were
20 not counted in the offender score or included in criminal history under
21 repealed or previous versions of the sentencing reform act shall be
22 included in criminal history and shall count in the offender score if
23 the current version of the sentencing reform act requires including or
24 counting those convictions. Prior convictions that were not included
25 in criminal history or in the offender score shall be included upon any
26 resentencing to ensure imposition of an accurate sentence.

27 **Sec. 9.** RCW 43.43.395 and 2012 c 183 s 16 are each amended to read
28 as follows:

29 (1) The state patrol shall by rule provide standards for the
30 certification, installation, repair, maintenance, monitoring,
31 inspection, and removal of ignition interlock devices, as defined under
32 RCW 46.04.215, and equipment as outlined under this section, and may
33 inspect the records and equipment of manufacturers and vendors during
34 regular business hours for compliance with statutes and rules and may
35 suspend or revoke certification for any noncompliance. (~~The state
36 patrol may only inspect ignition interlock devices in the vehicles of~~

1 ~~customers for proper installation and functioning when installation is~~
2 ~~being done at the vendors' place of business.))~~

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

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

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

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

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

34 (i) Meet or exceed the minimum test standards according to rules
35 adopted by the state patrol. Only a notarized statement from a
36 laboratory that is certified by the international organization of
37 standardization and is capable of performing the tests specified will

1 be accepted as proof of meeting or exceeding the standards. The
2 notarized statement must include the name and signature of the person
3 in charge of the tests under the (~~following statement:~~

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

13
14 (ii) Be maintained in accordance with the rules and standards
15 adopted by the state patrol.

16 **Sec. 10.** RCW 46.25.090 and 2011 c 227 s 4 are each amended to read
17 as follows:

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

23 (a) Driving a motor vehicle under the influence of alcohol or any
24 drug;

25 (b) Driving a commercial motor vehicle while the alcohol
26 concentration in the person's system is 0.04 or more or any measurable
27 amount of THC concentration, or driving a noncommercial motor vehicle
28 while the alcohol concentration in the person's system is 0.08 or more,
29 or is 0.02 or more if the person is under age twenty-one, or with a THC
30 concentration of 5.00 nanograms per milliliter of whole blood or more,
31 or a THC concentration above 0.00 if the person is under the age of
32 twenty-one, as determined by any testing methods approved by law in
33 this state or any other state or jurisdiction;

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

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

37 (e) Refusing to submit to a test or tests to determine the driver's

1 alcohol concentration or the presence of any drug while driving a motor
2 vehicle;

3 (f) Driving a commercial motor vehicle when, as a result of prior
4 violations committed while operating a commercial motor vehicle, the
5 driver's commercial driver's license is revoked, suspended, or
6 canceled, or the driver is disqualified from operating a commercial
7 motor vehicle;

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

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

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

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

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

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

31 (i) Not less than sixty days if:

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

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

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

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

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

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

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

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

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

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

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

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

34 (7) A person is disqualified from driving a commercial motor
35 vehicle if a report has been received by the department under RCW
36 46.25.125 that the person has received a verified positive drug test or
37 positive alcohol confirmation test as part of the testing program
38 conducted under 49 C.F.R. 40. A disqualification under this subsection

1 remains in effect until the person undergoes a drug and alcohol
2 assessment by a substance abuse professional meeting the requirements
3 of 49 C.F.R. 40, and the person presents evidence of satisfactory
4 participation in or successful completion of a drug or alcohol
5 treatment and/or education program as recommended by the substance
6 abuse professional, and until the person has met the requirements of
7 RCW 46.25.100. The substance abuse professional shall forward a
8 diagnostic evaluation and treatment recommendation to the department of
9 licensing for use in determining the person's eligibility for driving
10 a commercial motor vehicle. Persons who are disqualified under this
11 subsection more than twice in a five-year period are disqualified for
12 life.

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

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

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

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

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

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

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

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

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

36 (ii) Not less than one hundred twenty days if the driver is
37 convicted of or is found to have committed a second railroad-highway

1 grade crossing violation in separate incidents within a three-year
2 period;

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

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

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

18 **Sec. 11.** RCW 46.25.110 and 1989 c 178 s 13 are each amended to
19 read as follows:

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

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

29 **Sec. 12.** RCW 46.25.120 and 2006 c 327 s 5 are each amended to read
30 as follows:

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

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

6 (3) The law enforcement officer requesting the test under
7 subsection (1) of this section shall warn the person requested to
8 submit to the test that a refusal to submit will result in that person
9 being disqualified from operating a commercial motor vehicle under RCW
10 46.25.090.

11 (4) If the person refuses testing, or submits to a test that
12 discloses an alcohol concentration of 0.04 or more or any measurable
13 amount of THC concentration, the law enforcement officer shall submit
14 a sworn report to the department certifying that the test was requested
15 pursuant to subsection (1) of this section and that the person refused
16 to submit to testing, or submitted to a test that disclosed an alcohol
17 concentration of 0.04 or more or any measurable amount of THC
18 concentration.

19 (5) Upon receipt of the sworn report of a law enforcement officer
20 under subsection (4) of this section, the department shall disqualify
21 the driver from driving a commercial motor vehicle under RCW 46.25.090,
22 subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The
23 hearing shall be conducted in the county of the arrest. For the
24 purposes of this section, the hearing shall cover the issues of whether
25 a law enforcement officer had reasonable grounds to believe the person
26 had been driving or was in actual physical control of a commercial
27 motor vehicle within this state while having alcohol in the person's
28 system or while under the influence of any drug, whether the person
29 refused to submit to the test or tests upon request of the officer
30 after having been informed that the refusal would result in the
31 disqualification of the person from driving a commercial motor vehicle,
32 and, if the test was administered, whether the results indicated an
33 alcohol concentration of 0.04 percent or more or any measurable amount
34 of THC concentration. The department shall order that the
35 disqualification of the person either be rescinded or sustained. Any
36 decision by the department disqualifying a person from driving a
37 commercial motor vehicle is stayed and does not take effect while a
38 formal hearing is pending under this section or during the pendency of

1 a subsequent appeal to superior court so long as there is no conviction
2 for a moving violation or no finding that the person has committed a
3 traffic infraction that is a moving violation during the pendency of
4 the hearing and appeal. If the disqualification of the person is
5 sustained after the hearing, the person who is disqualified may file a
6 petition in the superior court of the county of arrest to review the
7 final order of disqualification by the department in the manner
8 provided in RCW 46.20.334.

9 (6) If a motor carrier or employer who is required to have a
10 testing program under 49 C.F.R. 382 knows that a commercial driver in
11 his or her employ has refused to submit to testing under this section
12 and has not been disqualified from driving a commercial motor vehicle,
13 the employer may notify law enforcement or his or her medical review
14 officer or breath alcohol technician that the driver has refused to
15 submit to the required testing.

16 (7) The hearing provisions of this section do not apply to those
17 persons disqualified from driving a commercial motor vehicle under RCW
18 46.25.090(7).

19 **Sec. 13.** RCW 46.61.5055 and 2012 c 183 s 12, 2012 c 42 s 2, and
20 2012 c 28 s 1 are each reenacted and amended to read as follows:

21 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
22 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
23 and who has no prior offense (~~((within seven years))~~) shall be punished
24 as follows:

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

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

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

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

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

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

36 (ii) By a fine of not less than five hundred dollars nor more than
37 five thousand dollars. Five hundred dollars of the fine may not be

1 suspended (~~or deferred~~) unless the court finds the offender to be
2 indigent.

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

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

11 (i) By imprisonment for not less than (~~thirty~~) forty days nor
12 more than three hundred sixty-four days and sixty days of electronic
13 home monitoring. In lieu of the mandatory minimum term of sixty days
14 electronic home monitoring, the court may order at least an additional
15 four days in jail or, if available in that county or city, a period of
16 24/7 sobriety program monitoring pursuant to sections 26 through 35 of
17 this act, and the court shall order an alcohol assessment and
18 treatment, if deemed appropriate by the assessment. The offender shall
19 pay for the cost of the electronic monitoring. The county or
20 municipality where the penalty is being imposed shall determine the
21 cost. The court may also require the offender's electronic home
22 monitoring device include an alcohol detection breathalyzer or other
23 separate alcohol monitoring device, and may restrict the amount of
24 alcohol the offender may consume during the time the offender is on
25 electronic home monitoring. Thirty days of imprisonment and sixty days
26 of electronic home monitoring may not be suspended (~~or deferred~~)
27 unless the court finds that the imposition of this mandatory minimum
28 sentence would impose a substantial risk to the offender's physical or
29 mental well-being. Whenever the mandatory minimum sentence is
30 suspended (~~or deferred~~), the court shall state in writing the reason
31 for granting the suspension (~~or deferral~~) and the facts upon which
32 the suspension (~~or deferral~~) is based; and

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

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

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

4 (i) By imprisonment for not less than (~~forty-five~~) fifty-five
5 days nor more than three hundred sixty-four days and ninety days of
6 electronic home monitoring. In lieu of the mandatory minimum term of
7 ninety days electronic home monitoring, the court may order at least an
8 additional six days in jail or, if available in that county or city, a
9 period of 24/7 sobriety program monitoring pursuant to sections 26
10 through 35 of this act, and the court shall order an alcohol assessment
11 and treatment, if deemed appropriate by the assessment. The offender
12 shall pay for the cost of the electronic monitoring. The county or
13 municipality where the penalty is being imposed shall determine the
14 cost. The court may also require the offender's electronic home
15 monitoring device include an alcohol detection breathalyzer or other
16 separate alcohol monitoring device, and may restrict the amount of
17 alcohol the offender may consume during the time the offender is on
18 electronic home monitoring. (~~Forty-five~~) Fifty-five days of
19 imprisonment and ninety days of electronic home monitoring may not be
20 suspended (~~or deferred~~) unless the court finds that the imposition of
21 this mandatory minimum sentence would impose a substantial risk to the
22 offender's physical or mental well-being. Whenever the mandatory
23 minimum sentence is suspended (~~or deferred~~), the court shall state in
24 writing the reason for granting the suspension (~~or deferral~~) and the
25 facts upon which the suspension (~~or deferral~~) is based; and

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

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

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

1 (i) By imprisonment for not less than (~~ninety~~) one hundred days
2 nor more than three hundred sixty-four days and one hundred twenty days
3 of electronic home monitoring. In lieu of the mandatory minimum term
4 of one hundred twenty days of electronic home monitoring, the court may
5 order at least an additional eight days in jail or, if available in
6 that county or city, a period of 24/7 sobriety program monitoring
7 pursuant to sections 26 through 35 of this act, and the court shall
8 order an alcohol assessment and treatment, if deemed appropriate by the
9 assessment. The offender shall pay for the cost of the electronic
10 monitoring. The county or municipality where the penalty is being
11 imposed shall determine the cost. The court may also require the
12 offender's electronic home monitoring device include an alcohol
13 detection breathalyzer or other separate alcohol monitoring device, and
14 may restrict the amount of alcohol the offender may consume during the
15 time the offender is on electronic home monitoring. (~~Ninety~~) One
16 hundred days of imprisonment and one hundred twenty days of electronic
17 home monitoring may not be suspended (~~or deferred~~) unless the court
18 finds that the imposition of this mandatory minimum sentence would
19 impose a substantial risk to the offender's physical or mental well-
20 being. Whenever the mandatory minimum sentence is suspended (~~or~~
21 ~~deferred~~), the court shall state in writing the reason for granting
22 the suspension (~~or deferral~~) and the facts upon which the suspension
23 (~~or deferral~~) is based; and

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

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

32 (i) By imprisonment for not less than one hundred (~~twenty~~) thirty
33 days nor more than three hundred sixty-four days (~~and one hundred~~
34 ~~fifty days of electronic home monitoring~~). (~~In lieu of the mandatory~~
35 ~~minimum term of one hundred fifty days of electronic home monitoring,~~
36 ~~the court may order at least an additional ten days in jail. The~~
37 ~~offender shall pay for the cost of the electronic monitoring~~) If
38 available in that county or city, the court may order a period of 24/7

1 sobriety program monitoring pursuant to sections 26 through 35 of this
2 act in addition to any mandatory minimum term of imprisonment, and the
3 court shall order an alcohol assessment and treatment, if deemed
4 appropriate by the assessment. The county or municipality where the
5 penalty is being imposed shall determine the cost. The court may also
6 require the offender's electronic home monitoring device include an
7 alcohol detection breathalyzer or other separate alcohol monitoring
8 device, and may restrict the amount of alcohol the offender may consume
9 during the time the offender is on electronic home monitoring. One
10 hundred (~~twenty~~) thirty days of imprisonment and one hundred fifty
11 days of electronic home monitoring may not be suspended (~~or deferred~~)
12 unless the court finds that the imposition of this mandatory minimum
13 sentence would impose a substantial risk to the offender's physical or
14 mental well-being. Whenever the mandatory minimum sentence is
15 suspended (~~or deferred~~), the court shall state in writing the reason
16 for granting the suspension (~~or deferral~~) and the facts upon which
17 the suspension (~~or deferral~~) is based; and

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

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

24 (a) The person has four or more prior offenses (~~within ten~~
25 ~~years~~)); or

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

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

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

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

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

34 (5)(a) The court shall require any person convicted of a violation
35 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to
36 comply with the rules and requirements of the department regarding the
37 installation and use of a functioning ignition interlock device
38 installed on all motor vehicles operated by the person.

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

10 (6) If a person who is convicted of a violation of RCW 46.61.502 or
11 46.61.504 committed the offense while a passenger under the age of
12 sixteen was in the vehicle, the court shall:

13 (a) Order the use of an ignition interlock or other device for an
14 additional six months;

15 (b) In any case in which the person has no prior offenses within
16 seven years, and except as provided in RCW 46.61.502(6) or
17 46.61.504(6), order ~~((a penalty by))~~ an additional twenty-four hours of
18 imprisonment and a fine of not less than one thousand dollars and not
19 more than five thousand dollars. One thousand dollars of the fine may
20 not be suspended ~~((or deferred))~~ unless the court finds the offender to
21 be indigent;

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

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

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

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

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

6 (c) Whether the driver was driving in the opposite direction of the
7 normal flow of traffic on a multiple lane highway, as defined by RCW
8 46.04.350, with a posted speed limit of forty-five miles per hour or
9 greater; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (i) Not driving a motor vehicle within this state without a valid
31 license to drive and proof of liability insurance or other financial
32 responsibility for the future pursuant to RCW 46.30.020; (ii) not
33 driving or being in physical control of a motor vehicle within this
34 state while having an alcohol concentration of 0.08 or more or a THC
35 concentration of 5.00 nanograms per milliliter of whole blood or
36 higher, within two hours after driving; and (iii) not refusing to
37 submit to a test of his or her breath or blood to determine alcohol or
38 drug concentration upon request of a law enforcement officer who has

1 reasonable grounds to believe the person was driving or was in actual
2 physical control of a motor vehicle within this state while under the
3 influence of intoxicating liquor or drug. The court may impose
4 conditions of probation that include nonrepetition, installation of an
5 ignition interlock device on the probationer's motor vehicle, alcohol
6 or drug treatment, supervised probation, or other conditions that may
7 be appropriate. The sentence may be imposed in whole or in part upon
8 violation of a condition of probation during the suspension period.

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

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

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

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

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

32 (c) The court determines that there is reason to believe that the
33 offender would violate the conditions of the electronic home monitoring
34 penalty.

35 Whenever the mandatory minimum term of electronic home monitoring
36 is waived, the court shall state in writing the reason for granting the
37 waiver and the facts upon which the waiver is based, and shall impose
38 an alternative sentence with similar punitive consequences. The

1 alternative sentence may include, but is not limited to, use of an
2 ignition interlock device, the 24/7 sobriety program monitoring,
3 additional jail time, work crew, or work camp.

4 Whenever the combination of jail time and electronic home
5 monitoring or alternative sentence would exceed three hundred sixty-
6 four days, the offender shall serve the jail portion of the sentence
7 first, and the electronic home monitoring or alternative portion of the
8 sentence shall be reduced so that the combination does not exceed three
9 hundred sixty-four days.

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

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

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

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

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

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

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

32 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
33 9A.36.050 or an equivalent local ordinance, if the conviction is the
34 result of a charge that was originally filed as a violation of RCW
35 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
36 46.61.520 or 46.61.522;

37 (vi) An out-of-state conviction for a violation that would have

1 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this
2 subsection if committed in this state;

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

6 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
7 prosecution for a violation of RCW 46.61.5249, or an equivalent local
8 ordinance, if the charge under which the deferred prosecution was
9 granted was originally filed as a violation of RCW 46.61.502 or
10 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
11 46.61.522; (~~(e)~~)

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

18 (x) A deferred sentence imposed in a prosecution for a violation of
19 RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local
20 ordinance, if the charge under which the deferred sentence was imposed
21 was originally filed as a violation of RCW 46.61.502 or 46.61.504, or
22 an equivalent local ordinance, or a violation of RCW 46.61.520 or
23 46.61.522;

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

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

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

34 **Sec. 14.** RCW 46.61.5055 and 2012 c 183 s 12, 2012 c 42 s 2, and
35 2012 c 28 s 1 are each reenacted and amended to read as follows:

36 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a

1 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
2 and who has no prior offense (~~within seven years~~) shall be punished
3 as follows:

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

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

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

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

34 (i) By imprisonment for not less than two days nor more than three
35 hundred sixty-four days. (~~Two consecutive days~~) Forty-eight
36 consecutive hours of the imprisonment may not be suspended (~~or~~
37 ~~deferred~~) unless the court finds that the imposition of this mandatory
38 minimum sentence would impose a substantial risk to the offender's

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

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

18 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
19 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
20 and who has one prior offense (~~(within seven years)~~) shall be punished
21 as follows:

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

26 (i) By imprisonment for not less than (~~(thirty)~~) forty days nor
27 more than three hundred sixty-four days and sixty days of electronic
28 home monitoring. In lieu of the mandatory minimum term of sixty days
29 electronic home monitoring, the court may order at least an additional
30 four days in jail or, if available in that county or city, a period of
31 24/7 sobriety program monitoring pursuant to sections 26 through 35 of
32 this act, and the court shall order an alcohol assessment and
33 treatment, if deemed appropriate by the assessment. The offender shall
34 pay for the cost of the electronic monitoring. The county or
35 municipality where the penalty is being imposed shall determine the
36 cost. The court may also require the offender's electronic home
37 monitoring device include an alcohol detection breathalyzer or other
38 separate alcohol monitoring device, and may restrict the amount of

1 alcohol the offender may consume during the time the offender is on
2 electronic home monitoring. Thirty days of imprisonment and sixty days
3 of electronic home monitoring 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
8 for granting the suspension (~~(or deferral)~~) and the facts upon which
9 the suspension (~~(or deferral)~~) is based; and

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

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

18 (i) By imprisonment for not less than (~~(forty-five)~~) fifty-five
19 days nor more than three hundred sixty-four days and ninety days of
20 electronic home monitoring. In lieu of the mandatory minimum term of
21 ninety days electronic home monitoring, the court may order at least an
22 additional six days in jail or, if available in that county or city, a
23 period of 24/7 sobriety program monitoring pursuant to sections 26
24 through 35 of this act, and the court shall order an alcohol assessment
25 and treatment, if deemed appropriate by the assessment. The offender
26 shall pay for the cost of the electronic monitoring. The county or
27 municipality where the penalty is being imposed shall determine the
28 cost. The court may also require the offender's electronic home
29 monitoring device include an alcohol detection breathalyzer or other
30 separate alcohol monitoring device, and may restrict the amount of
31 alcohol the offender may consume during the time the offender is on
32 electronic home monitoring. (~~(Forty-five)~~) Fifty-five days of
33 imprisonment and ninety days of electronic home monitoring may not be
34 suspended (~~(or deferred)~~) unless the court finds that the imposition of
35 this mandatory minimum sentence would impose a substantial risk to the
36 offender's physical or mental well-being. Whenever the mandatory
37 minimum sentence is suspended (~~(or deferred)~~), the court shall state in

1 writing the reason for granting the suspension (~~(or deferral)~~) and the
2 facts upon which the suspension (~~(or deferral)~~) is based; and

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

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

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

15 (i) By imprisonment for not less than (~~(ninety)~~) one hundred days
16 nor more than three hundred sixty-four days and one hundred twenty days
17 of electronic home monitoring. In lieu of the mandatory minimum term
18 of one hundred twenty days of electronic home monitoring, the court may
19 order at least an additional eight days in jail or, if available in
20 that county or city, a period of 24/7 sobriety program monitoring
21 pursuant to sections 26 through 35 of this act, and the court shall
22 order an alcohol assessment and treatment, if deemed appropriate by the
23 assessment. The offender shall pay for the cost of the electronic
24 monitoring. The county or municipality where the penalty is being
25 imposed shall determine the cost. The court may also require the
26 offender's electronic home monitoring device include an alcohol
27 detection breathalyzer or other separate alcohol monitoring device, and
28 may restrict the amount of alcohol the offender may consume during the
29 time the offender is on electronic home monitoring. (~~(Ninety)~~) One
30 hundred days of imprisonment and one hundred twenty days of electronic
31 home monitoring may not be suspended (~~(or deferred)~~) unless the court
32 finds that the imposition of this mandatory minimum sentence would
33 impose a substantial risk to the offender's physical or mental well-
34 being. Whenever the mandatory minimum sentence is suspended (~~(or~~
35 ~~deferred)~~), the court shall state in writing the reason for granting
36 the suspension (~~(or deferral)~~) and the facts upon which the suspension
37 (~~(or deferral)~~) is based; and

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

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

9 (i) By imprisonment for not less than one hundred (~~(twenty)~~) thirty
10 days nor more than three hundred sixty-four days (~~(and one hundred~~
11 ~~fifty days of electronic home monitoring)~~). (~~In lieu of the mandatory~~
12 ~~minimum term of one hundred fifty days of electronic home monitoring,~~
13 ~~the court may order at least an additional ten days in jail. The~~
14 ~~offender shall pay for the cost of the electronic monitoring)~~ If
15 available in that county or city, the court may order a period of 24/7
16 sobriety program monitoring pursuant to sections 26 through 35 of this
17 act in addition to any mandatory minimum term of imprisonment, and the
18 court shall order an alcohol assessment and treatment, if deemed
19 appropriate by the assessment. 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. One
25 hundred (~~(twenty)~~) thirty days of imprisonment and one hundred fifty
26 days of electronic home monitoring may not be suspended (~~(or deferred)~~)
27 unless the court finds that the imposition of this mandatory minimum
28 sentence would impose a substantial risk to the offender's physical or
29 mental well-being. Whenever the mandatory minimum sentence is
30 suspended (~~(or deferred)~~), the court shall state in writing the reason
31 for granting the suspension (~~(or deferral)~~) and the facts upon which
32 the suspension (~~(or deferral)~~) is based; and

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

37 (4) A person who is convicted of a violation of RCW 46.61.502 or
38 46.61.504 shall be punished under chapter 9.94A RCW if:

1 (a) The person has (~~four~~) three or more prior offenses (~~within~~
2 ~~ten years~~); or

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

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

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

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

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

11 (5)(a) The court shall require any person convicted of a violation
12 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to
13 comply with the rules and requirements of the department regarding the
14 installation and use of a functioning ignition interlock device
15 installed on all motor vehicles operated by the person.

16 (b) If the court orders that a person refrain from consuming any
17 alcohol, the court may order the person to submit to alcohol monitoring
18 through an alcohol detection breathalyzer device, transdermal sensor
19 device, or other technology designed to detect alcohol in a person's
20 system. The person shall pay for the cost of the monitoring, unless
21 the court specifies that the cost of monitoring will be paid with funds
22 that are available from an alternative source identified by the court.
23 The county or municipality where the penalty is being imposed shall
24 determine the cost.

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

28 (a) Order the use of an ignition interlock or other device for an
29 additional six months;

30 (b) In any case in which the person has no prior offenses within
31 seven years, and except as provided in RCW 46.61.502(6) or
32 46.61.504(6), order (~~a penalty by~~) an additional twenty-four hours of
33 imprisonment and a fine of not less than one thousand dollars and not
34 more than five thousand dollars. One thousand dollars of the fine may
35 not be suspended (~~or deferred~~) unless the court finds the offender to
36 be indigent;

37 (c) In any case in which the person has one prior offense within
38 seven years, and except as provided in RCW 46.61.502(6) or

1 46.61.504(6), order ((~~a penalty by~~)) an additional five days of
2 imprisonment and a fine of not less than two thousand dollars and not
3 more than five thousand dollars. One thousand dollars of the fine may
4 not be suspended ((~~or deferred~~)) unless the court finds the offender to
5 be indigent;

6 (d) In any case in which the person has two or three prior offenses
7 within seven years, and except as provided in RCW 46.61.502(6) or
8 46.61.504(6), order ((~~a penalty by~~)) an additional ten days of
9 imprisonment and a fine of not less than three thousand dollars and not
10 more than ten thousand dollars. One thousand dollars of the fine may
11 not be suspended ((~~or deferred~~)) unless the court finds the offender to
12 be indigent.

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

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

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

21 (c) Whether the driver was driving in the opposite direction of the
22 normal flow of traffic on a multiple lane highway, as defined by RCW
23 46.04.350, with a posted speed limit of forty-five miles per hour or
24 greater; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (10) After expiration of any period of suspension, revocation, or

1 denial of the offender's license, permit, or privilege to drive
2 required by this section, the department shall place the offender's
3 driving privilege in probationary status pursuant to RCW 46.20.355.

4 (11)(a) In addition to any nonsuspendable and nondeferrable jail
5 sentence required by this section, whenever the court imposes up to
6 three hundred sixty-four days in jail, the court shall also suspend but
7 shall not defer a period of confinement for a period not exceeding five
8 years. The court shall impose conditions of probation that include:

9 (i) Not driving a motor vehicle within this state without a valid
10 license to drive and proof of liability insurance or other financial
11 responsibility for the future pursuant to RCW 46.30.020; (ii) not
12 driving or being in physical control of a motor vehicle within this
13 state while having an alcohol concentration of 0.08 or more or a THC
14 concentration of 5.00 nanograms per milliliter of whole blood or
15 higher, within two hours after driving; and (iii) not refusing to
16 submit to a test of his or her breath or blood to determine alcohol or
17 drug concentration upon request of a law enforcement officer who has
18 reasonable grounds to believe the person was driving or was in actual
19 physical control of a motor vehicle within this state while under the
20 influence of intoxicating liquor or drug. The court may impose
21 conditions of probation that include nonrepetition, installation of an
22 ignition interlock device on the probationer's motor vehicle, alcohol
23 or drug treatment, supervised probation, or other conditions that may
24 be appropriate. The sentence may be imposed in whole or in part upon
25 violation of a condition of probation during the suspension period.

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

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

1 extension of a suspension, revocation, or denial imposed under this
2 subsection.

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

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

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

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

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

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

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

32 (14) For purposes of this section and RCW 46.61.502 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; or

36 (x) A deferred sentence imposed in a prosecution for a violation of
37 RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local
38 ordinance, if the charge under which the deferred sentence was imposed

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

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

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

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

14 **Sec. 15.** RCW 46.61.502 and 2013 c 3 s 33 (Initiative Measure No.
15 502) are each amended to read as follows:

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

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

22 (b) The person has, within two hours after driving, a THC
23 concentration of 5.00 or higher as shown by analysis of the person's
24 blood made under RCW 46.61.506; or

25 (c) While the person is under the influence of or affected by
26 intoxicating liquor, marijuana, or any drug; or

27 (d) While the person is under the combined influence of or affected
28 by intoxicating liquor, marijuana, and any drug.

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

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

1 the defendant's alcohol concentration to be 0.08 or more within two
2 hours after driving. The court shall not admit evidence of this
3 defense unless the defendant notifies the prosecution prior to the
4 omnibus or pretrial hearing in the case of the defendant's intent to
5 assert the affirmative defense.

6 (b) It is an affirmative defense to a violation of subsection
7 (1)(b) of this section, which the defendant must prove by a
8 preponderance of the evidence, that the defendant consumed a sufficient
9 quantity of marijuana after the time of driving and before the
10 administration of an analysis of the person's blood to cause the
11 defendant's THC concentration to be 5.00 or more within two hours after
12 driving. The court shall not admit evidence of this defense unless the
13 defendant notifies the prosecution prior to the omnibus or pretrial
14 hearing in the case of the defendant's intent to assert the affirmative
15 defense.

16 (4)(a) Analyses of blood or breath samples obtained more than two
17 hours after the alleged driving may be used as evidence that within two
18 hours of the alleged driving, a person had an alcohol concentration of
19 0.08 or more in violation of subsection (1)(a) of this section, and in
20 any case in which the analysis shows an alcohol concentration above
21 0.00 may be used as evidence that a person was under the influence of
22 or affected by intoxicating liquor or any drug in violation of
23 subsection (1)(c) or (d) of this section.

24 (b) Analyses of blood samples obtained more than two hours after
25 the alleged driving may be used as evidence that within two hours of
26 the alleged driving, a person had a THC concentration of 5.00 or more
27 in violation of subsection (1)(b) of this section, and in any case in
28 which the analysis shows a THC concentration above 0.00 may be used as
29 evidence that a person was under the influence of or affected by
30 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

- 1 (i) Vehicular homicide while under the influence of intoxicating
2 liquor or any drug, RCW 46.61.520(1)(a);
3 (ii) Vehicular assault while under the influence of intoxicating
4 liquor or any drug, RCW 46.61.522(1)(b);
5 (iii) An out-of-state offense comparable to the offense specified
6 in (b)(i) or (ii) of this subsection; or
7 (iv) A violation of this subsection (6) or RCW 46.61.504(6).

8 **Sec. 16.** RCW 46.61.504 and 2013 c 3 s 35 (Initiative Measure No.
9 502) are each amended to read as follows:

10 (1) A person is guilty of being in actual physical control of a
11 motor vehicle while under the influence of intoxicating liquor or any
12 drug if the person has actual physical control of a vehicle within this
13 state:

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

18 (b) The person has, within two hours after being in actual physical
19 control of a vehicle, a THC concentration of 5.00 or higher as shown by
20 analysis of the person's blood made under RCW 46.61.506; or

21 (c) While the person is under the influence of or affected by
22 intoxicating liquor or any drug; or

23 (d) While the person is under the combined influence of or affected
24 by intoxicating liquor and any drug.

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

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

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

4 (b) It is an affirmative defense to a violation of subsection
5 (1)(b) of this section, which the defendant must prove by a
6 preponderance of the evidence, that the defendant consumed a sufficient
7 quantity of marijuana after the time of being in actual physical
8 control of the vehicle and before the administration of an analysis of
9 the person's blood to cause the defendant's THC concentration to be
10 5.00 or more within two hours after being in control of the vehicle.
11 The court shall not admit evidence of this defense unless the defendant
12 notifies the prosecution prior to the omnibus or pretrial hearing in
13 the case of the defendant's intent to assert the affirmative defense.

14 (4)(a) Analyses of blood or breath samples obtained more than two
15 hours after the alleged being in actual physical control of a vehicle
16 may be used as evidence that within two hours of the alleged being in
17 such control, a person had an alcohol concentration of 0.08 or more in
18 violation of subsection (1)(a) of this section, and in any case in
19 which the analysis shows an alcohol concentration above 0.00 may be
20 used as evidence that a person was under the influence of or affected
21 by intoxicating liquor or any drug in violation of subsection (1)(c) or
22 (d) of this section.

23 (b) Analyses of blood samples obtained more than two hours after
24 the alleged being in actual physical control of a vehicle may be used
25 as evidence that within two hours of the alleged being in control of
26 the vehicle, a person had a THC concentration of 5.00 or more in
27 violation of subsection (1)(b) of this section, and in any case in
28 which the analysis shows a THC concentration above 0.00 may be used as
29 evidence that a person was under the influence of or affected by
30 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

- 1 (i) Vehicular homicide while under the influence of intoxicating
2 liquor or any drug, RCW 46.61.520(1)(a);
3 (ii) Vehicular assault while under the influence of intoxicating
4 liquor or any drug, RCW 46.61.522(1)(b);
5 (iii) An out-of-state offense comparable to the offense specified
6 in (b)(i) or (ii) of this subsection; or
7 (iv) A violation of this subsection (6) or RCW 46.61.502(6).

8 NEW SECTION. **Sec. 17.** Funds from the ignition interlock device
9 revolving account may, subject to appropriation, be used for effective
10 strategies to reduce motor vehicle-related deaths and serious injuries,
11 such as those found in the Washington state strategic highway safety
12 plan: Target Zero.

13 **Sec. 18.** RCW 9.94A.501 and 2011 1st sp.s. c 40 s 2 are each
14 amended to read as follows:

15 (1) The department shall supervise the following offenders who are
16 sentenced to probation in superior court, pursuant to RCW 9.92.060,
17 9.95.204, or 9.95.210:

18 (a) Offenders convicted of:

19 (i) Sexual misconduct with a minor second degree;

20 (ii) Custodial sexual misconduct second degree;

21 (iii) Communication with a minor for immoral purposes; and

22 (iv) Violation of RCW 9A.44.132(2) (failure to register); and

23 (b) Offenders who have:

24 (i) A current conviction for a repetitive domestic violence offense
25 where domestic violence has been plead and proven after August 1, 2011;
26 and

27 (ii) A prior conviction for a repetitive domestic violence offense
28 or domestic violence felony offense where domestic violence has been
29 plead and proven after August 1, 2011.

30 (2) Misdemeanor and gross misdemeanor offenders supervised by the
31 department pursuant to this section shall be placed on community
32 custody.

33 (3) The department shall supervise every felony offender sentenced
34 to community custody pursuant to RCW 9.94A.701 or 9.94A.702 whose risk
35 assessment classifies the offender as one who is at a high risk to
36 reoffend.

1 (4) Notwithstanding any other provision of this section, the
2 department shall supervise an offender sentenced to community custody
3 regardless of risk classification if the offender:

4 (a) Has a current conviction for a sex offense or a serious violent
5 offense and was sentenced to a term of community custody pursuant to
6 RCW 9.94A.701, 9.94A.702, or 9.94A.507;

7 (b) Has been identified by the department as a dangerous mentally
8 ill offender pursuant to RCW 72.09.370;

9 (c) Has an indeterminate sentence and is subject to parole pursuant
10 to RCW 9.95.017;

11 (d) Has a current conviction for violating RCW 9A.44.132(1)
12 (failure to register) and was sentenced to a term of community custody
13 pursuant to RCW 9.94A.701;

14 (e) Has a current conviction for a domestic violence felony offense
15 where domestic violence has been plead and proven after August 1, 2011,
16 and a prior conviction for a repetitive domestic violence offense or
17 domestic violence felony offense where domestic violence has been plead
18 and proven after August 1, 2011;

19 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660, or
20 9.94A.670; (~~(or)~~)

21 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

22 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular
23 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6) (felony
24 DUI), or RCW 46.61.504(6) (felony physical control).

25 (5) The department is not authorized to, and may not, supervise any
26 offender sentenced to a term of community custody or any probationer
27 unless the offender or probationer is one for whom supervision is
28 required under this section or RCW 9.94A.5011.

29 (6) The department shall conduct a risk assessment for every felony
30 offender sentenced to a term of community custody who may be subject to
31 supervision under this section or RCW 9.94A.5011.

32 **Sec. 19.** RCW 46.61.5249 and 2012 c 183 s 13 are each amended to
33 read as follows:

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

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

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

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

11 (2) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **Sec. 20.** RCW 46.20.270 and 2010 c 249 s 11 are each amended to
21 read as follows:

22 (1) ~~((Whenever any person is convicted of any offense for which
23 this title makes mandatory the withholding of the driving privilege of
24 such person by the department, the court in which such conviction is
25 had shall forthwith mark the person's Washington state driver's license
26 or permit to drive, if any, in a manner authorized by the department.
27 A valid driver's license or permit to drive marked under this
28 subsection shall remain in effect until the person's driving privilege
29 is withheld by the department pursuant to notice given under RCW
30 46.20.245, unless the license or permit expires or otherwise becomes
31 invalid prior to the effective date of this action. Perfection of
32 notice of appeal shall stay the execution of sentence including the
33 withholding of the driving privilege.~~

34 ~~(2))~~ Every court having jurisdiction over offenses committed under
35 this chapter, or any other act of this state or municipal ordinance
36 adopted by a local authority regulating the operation of motor vehicles
37 on highways, or any federal authority having jurisdiction over offenses

1 substantially the same as those set forth in this title which occur on
2 federal installations within this state, shall immediately forward to
3 the department a forfeiture of bail or collateral deposited to secure
4 the defendant's appearance in court, a payment of a fine, penalty, or
5 court cost, a plea of guilty or nolo contendere or a finding of guilt,
6 or a finding that any person has committed a traffic infraction an
7 abstract of the court record in the form prescribed by rule of the
8 supreme court, showing the conviction of any person or the finding that
9 any person has committed a traffic infraction in said court for a
10 violation of any said laws other than regulations governing standing,
11 stopping, parking, and pedestrian offenses.

12 ((+3)) (2) Every state agency or municipality having jurisdiction
13 over offenses committed under this chapter, or under any other act of
14 this state or municipal ordinance adopted by a state or local authority
15 regulating the operation of motor vehicles on highways, may forward to
16 the department within ten days of failure to respond, failure to pay a
17 penalty, failure to appear at a hearing to contest the determination
18 that a violation of any statute, ordinance, or regulation relating to
19 standing, stopping, parking, or civil penalties issued under RCW
20 46.63.160 has been committed, or failure to appear at a hearing to
21 explain mitigating circumstances, an abstract of the citation record in
22 the form prescribed by rule of the department, showing the finding by
23 such municipality that two or more violations of laws governing
24 standing, stopping, and parking or one or more civil penalties issued
25 under RCW 46.63.160 have been committed and indicating the nature of
26 the defendant's failure to act. Such violations or infractions may not
27 have occurred while the vehicle is stolen from the registered owner or
28 is leased or rented under a bona fide commercial vehicle lease or
29 rental agreement between a lessor engaged in the business of leasing
30 vehicles and a lessee who is not the vehicle's registered owner. The
31 department may enter into agreements of reciprocity with the duly
32 authorized representatives of the states for reporting to each other
33 violations of laws governing standing, stopping, and parking.

34 ((+4)) (3) For the purposes of this title and except as defined in
35 RCW 46.25.010, "conviction" means a final conviction in a state or
36 municipal court or by any federal authority having jurisdiction over
37 offenses substantially the same as those set forth in this title which
38 occur on federal installations in this state, an unvacated forfeiture

1 of bail or collateral deposited to secure a defendant's appearance in
2 court, the payment of a fine or court cost, a plea of guilty or nolo
3 contendere, or a finding of guilt on a traffic law violation charge,
4 regardless of whether the imposition of sentence or sanctions are
5 deferred or the penalty is suspended, but not including entry into a
6 deferred prosecution agreement under chapter 10.05 RCW.

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

9 (5) For the purposes of this title, "finding that a traffic
10 infraction has been committed" means a failure to respond to a notice
11 of infraction or a determination made by a court pursuant to this
12 chapter. Payment of a monetary penalty made pursuant to RCW
13 46.63.070(2) is deemed equivalent to such a finding.

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

16 (1) Upon the arrest of a person or upon the filing of a complaint,
17 citation, or information in a court of competent jurisdiction, based
18 upon probable cause to believe that a person has violated RCW
19 46.20.740, 46.61.502, or 46.61.504 or any similar municipal ordinance,
20 if such person has a prior offense within seven years as defined in RCW
21 46.61.5055, and where the person has been provided written notice that
22 any transfer, sale, or encumbrance of such person's interest in the
23 vehicle over which that person was actually driving or had physical
24 control when the violation occurred, is unlawful pending either
25 acquittal, dismissal, sixty days after conviction, or other termination
26 of the charge, such person shall be prohibited from encumbering,
27 selling, or transferring his or her interest in such vehicle, except as
28 otherwise provided in (a), (b), and (c) of this subsection, until
29 either acquittal, dismissal, sixty days after conviction, or other
30 termination of the charge. The prohibition against transfer of title
31 shall not be stayed pending the determination of an appeal from the
32 conviction.

33 (a) A vehicle encumbered by a bona fide security interest may be
34 transferred to the secured party or to a person designated by the
35 secured party;

36 (b) A leased or rented vehicle may be transferred to the lessor,

1 rental agency, or to a person designated by the lessor or rental
2 agency; and

3 (c) A vehicle may be transferred to a third party or a vehicle
4 dealer who is a bona fide purchaser or may be subject to a bona fide
5 security interest in the vehicle unless it is established that (i) in
6 the case of a purchase by a third party or vehicle dealer, such party
7 or dealer had actual notice that the vehicle was subject to the
8 prohibition prior to the purchase, or (ii) in the case of a security
9 interest, the holder of the security interest had actual notice that
10 the vehicle was subject to the prohibition prior to the encumbrance of
11 title.

12 (2) On conviction for a violation of either RCW 46.20.740,
13 46.61.502, or 46.61.504 or any similar municipal ordinance where the
14 person convicted has a prior offense within seven years as defined in
15 RCW 46.61.5055, the motor vehicle the person was driving or over which
16 the person had actual physical control at the time of the offense, if
17 the person has a financial interest in the vehicle, (~~is subject to~~
18 ~~seizure and forfeiture pursuant to this section~~) the court shall
19 consider at sentencing whether the vehicle shall be seized and
20 forfeited pursuant to this section if a seizure or forfeiture has not
21 yet occurred.

22 (3) A vehicle subject to forfeiture under this chapter may be
23 seized by a law enforcement officer of this state upon process issued
24 by a court of competent jurisdiction. Seizure of a vehicle may be made
25 without process if the vehicle subject to seizure has been the subject
26 of a prior judgment in favor of the state in a forfeiture proceeding
27 based upon this section.

28 (4) Seizure under subsection (3) of this section automatically
29 commences proceedings for forfeiture. The law enforcement agency under
30 whose authority the seizure was made shall cause notice of the seizure
31 and intended forfeiture of the seized vehicle to be served within
32 fifteen days after the seizure on the owner of the vehicle seized, on
33 the person in charge of the vehicle, and on any person having a known
34 right or interest in the vehicle, including a community property
35 interest. The notice of seizure may be served by any method authorized
36 by law or court rule, including but not limited to service by certified
37 mail with return receipt requested. Service by mail is complete upon
38 mailing within the fifteen-day period after the seizure. Notice of

1 seizure in the case of property subject to a security interest that has
2 been perfected on a certificate of title shall be made by service upon
3 the secured party or the secured party's assignee at the address shown
4 on the financing statement or the certificate of title.

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

9 (6) If a person notifies the seizing law enforcement agency in
10 writing of the person's claim of ownership or right to possession of
11 the seized vehicle within forty-five days of the seizure, the law
12 enforcement agency shall give the person or persons a reasonable
13 opportunity to be heard as to the claim or right. The hearing shall be
14 before the chief law enforcement officer of the seizing agency or the
15 chief law enforcement officer's designee, except where the seizing
16 agency is a state agency as defined in RCW 34.12.020, the hearing shall
17 be before the chief law enforcement officer of the seizing agency or an
18 administrative law judge appointed under chapter 34.12 RCW, except that
19 any person asserting a claim or right may remove the matter to a court
20 of competent jurisdiction. Removal may only be accomplished according
21 to the rules of civil procedure. The person seeking removal of the
22 matter must serve process against the state, county, political
23 subdivision, or municipality that operates the seizing agency, and any
24 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
25 within forty-five days after the person seeking removal has notified
26 the seizing law enforcement agency of the person's claim of ownership
27 or right to possession. The court to which the matter is to be removed
28 shall be the district court when the aggregate value of the vehicle is
29 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
30 before the seizing agency and any appeal therefrom shall be under Title
31 34 RCW. In a court hearing between two or more claimants to the
32 vehicle involved, the prevailing party shall be entitled to a judgment
33 for costs and reasonable attorneys' fees. The burden of producing
34 evidence shall be upon the person claiming to be the legal owner or the
35 person claiming to have the lawful right to possession of the vehicle.
36 The seizing law enforcement agency shall promptly return the vehicle to
37 the claimant upon a determination by the administrative law judge or

1 court that the claimant is the present legal owner under this title
2 ((46-RCW)) or is lawfully entitled to possession of the vehicle.

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

10 (8) When a vehicle is forfeited, the seizing agency shall keep a
11 record indicating the identity of the prior owner, if known, a
12 description of the vehicle, the disposition of the vehicle, the value
13 of the vehicle at the time of seizure, and the amount of proceeds
14 realized from disposition of the vehicle.

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

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

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

24 (12) By January 31st of each year, each seizing agency shall remit
25 to the state treasurer an amount equal to ten percent of the net
26 proceeds of vehicles forfeited during the preceding calendar year.
27 Money remitted shall be deposited in the state general fund.

28 (13) The net proceeds of a forfeited vehicle is the value of the
29 forfeitable interest in the vehicle after deducting the cost of
30 satisfying a bona fide security interest to which the vehicle is
31 subject at the time of seizure; and in the case of a sold vehicle,
32 after deducting the cost of sale, including reasonable fees or
33 commissions paid to independent selling agents.

34 (14) The value of a sold forfeited vehicle is the sale price. The
35 value of a retained forfeited vehicle is the fair market value of the
36 vehicle at the time of seizure, determined when possible by reference
37 to an applicable commonly used index, such as the index used by the
38 department of licensing. A seizing agency may, but need not, use an

1 independent qualified appraiser to determine the value of retained
2 vehicles. If an appraiser is used, the value of the vehicle appraised
3 is net of the cost of the appraisal.

4 **Sec. 22.** RCW 46.20.720 and 2012 c 183 s 9 are each amended to read
5 as follows:

6 (1) The court may order that after a period of suspension,
7 revocation, or denial of driving privileges, and for up to as long as
8 the court has jurisdiction, any person convicted of any offense
9 involving the use, consumption, or possession of alcohol while
10 operating a motor vehicle may drive only a motor vehicle equipped with
11 a functioning ignition interlock. The court shall establish a specific
12 calibration setting at which the interlock will prevent the vehicle
13 from being started. The court shall also establish the period of time
14 for which interlock use will be required.

15 (2) Under RCW 46.61.5055 and subject to the exceptions listed in
16 that statute, the court shall order any person convicted of a violation
17 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to
18 comply with the rules and requirements of the department regarding the
19 installation and use of a functioning ignition interlock device
20 installed on all motor vehicles operated by the person. The court
21 shall order any person participating in a deferred prosecution program
22 under RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 or an
23 equivalent local ordinance to have a functioning ignition interlock
24 device installed on all motor vehicles operated by the person.

25 (3)(a) The department shall require that, after any applicable
26 period of suspension, revocation, or denial of driving privileges, a
27 person may drive only a motor vehicle equipped with a functioning
28 ignition interlock device if the person is convicted of a violation of
29 RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state
30 statute or ordinance. The department shall require that a person may
31 drive only a motor vehicle equipped with a functioning ignition
32 interlock device if the person is convicted of a violation of RCW
33 46.61.5249 or 46.61.500 and is required under RCW 46.61.5249(4) or
34 46.61.500(3) (a) or (b) to install an ignition interlock device on all
35 vehicles operated by the person.

36 ~~((The department may waive the requirement for the use of such a~~

1 ~~device if it concludes that such devices are not reasonably available~~
2 ~~in the local area.))~~

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

13 (ii) The employer exemption does not apply:

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

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

21 (C) For the first three hundred sixty-five days after an ignition
22 interlock device has been installed as the result of a second or
23 subsequent conviction of a violation of RCW 46.61.502 or 46.61.504 or
24 an equivalent local or out-of-state statute or ordinance.

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

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

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

34 ~~((c))~~ (iii) For a person who has previously been restricted under
35 ~~((b))~~ (c)(ii) of this subsection, a period of ten years.

36 (4) A restriction imposed under subsection (3) of this section
37 shall remain in effect until the department receives a declaration from
38 the person's ignition interlock device vendor, in a form provided or

1 approved by the department, certifying that there have been none of the
2 following incidents in the four consecutive months prior to the date of
3 release:

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

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

11 (c) Failure to pass any random retest with a breath alcohol
12 concentration of 0.025 or lower unless a subsequent test performed
13 within ten minutes registers a breath alcohol concentration lower than
14 0.025, and the digital image confirms the same person provided both
15 samples; or

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

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

23 (6) In addition to any other costs associated with the use of an
24 ignition interlock device imposed on the person restricted under this
25 section, the person shall pay an additional fee of twenty dollars per
26 month. Payments must be made directly to the ignition interlock
27 company. The company shall remit the additional twenty dollar fee to
28 the department to be deposited into the ignition interlock device
29 revolving account.

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

32 (1)(a) Beginning January 1, 2009, any person licensed under this
33 chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504
34 or an equivalent local or out-of-state statute or ordinance, or a
35 violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), or who has had or
36 will have his or her license suspended, revoked, or denied under RCW
37 46.20.3101, or who is otherwise permitted under subsection (8) of this

1 section, may submit to the department an application for an ignition
2 interlock driver's license. The department, upon receipt of the
3 prescribed fee and upon determining that the petitioner is eligible to
4 receive the license, may issue an ignition interlock driver's license.

5 (b) A person may apply for an ignition interlock driver's license
6 anytime, including immediately after receiving the notices under RCW
7 46.20.308 or after his or her license is suspended, revoked, or denied.
8 A person receiving an ignition interlock driver's license waives his or
9 her right to a hearing or appeal under RCW 46.20.308.

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

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

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

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

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

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

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

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

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

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

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

11 (b) The department shall deposit the proceeds of the twenty dollar
12 fee into the ignition interlock device revolving account. Expenditures
13 from the account may be used only to administer and operate the
14 ignition interlock device revolving account program. The department
15 shall adopt rules to provide monetary assistance according to greatest
16 need and when funds are available.

17 (7) The department shall adopt rules to implement ignition
18 interlock licensing. The department shall consult with the
19 administrative office of the courts, the state patrol, the Washington
20 association of sheriffs and police chiefs, ignition interlock
21 companies, and any other organization or entity the department deems
22 appropriate.

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

28 (b) A person who does not have any driver's license under this
29 chapter, but who would otherwise be eligible under this section to
30 apply for an ignition interlock license, may submit to the department
31 an application for an ignition interlock license. The department may
32 require the person to take any driver's licensing examination under
33 this chapter (~~(46.20-RCW)~~) and may require the person to also apply and
34 qualify for a temporary restricted driver's license under RCW
35 46.20.391.

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

1 As a condition of granting a deferred prosecution petition, the
2 court shall order that the petitioner shall not operate a motor vehicle
3 upon the public highways without a valid operator's license and proof
4 of liability insurance. The amount of liability insurance shall be
5 established by the court at not less than that established by RCW
6 46.29.490. As a condition of granting a deferred prosecution petition
7 on any alcohol-dependency based case, the court shall also order the
8 installation of an ignition interlock under RCW 46.20.720. The
9 required periods of use of the interlock shall be not less than the
10 periods provided for in RCW 46.20.720(3) (~~((a), (b), and (c))~~). As a
11 condition of granting a deferred prosecution petition, the court may
12 order the petitioner to make restitution and to pay costs as defined in
13 RCW 10.01.160. To help ensure continued sobriety and reduce the
14 likelihood of reoffense, the court may order reasonable conditions
15 during the period of the deferred prosecution including, but not
16 limited to, attendance at self-help recovery support groups for
17 alcoholism or drugs, complete abstinence from alcohol and all
18 nonprescribed mind-altering drugs, periodic urinalysis or breath
19 analysis, and maintaining law-abiding behavior. The court may
20 terminate the deferred prosecution program upon violation of the
21 deferred prosecution order.

22 **Sec. 25.** RCW 10.31.100 and 2010 c 274 s 201 are each amended to
23 read as follows:

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

30 (1) Any police officer having probable cause to believe that a
31 person has committed or is committing a misdemeanor or gross
32 misdemeanor, involving physical harm or threats of harm to any person
33 or property or the unlawful taking of property or involving the use or
34 possession of cannabis, or involving the acquisition, possession, or
35 consumption of alcohol by a person under the age of twenty-one years
36 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070
37 or 9A.52.080, shall have the authority to arrest the person.

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

4 (a) An order has been issued of which the person has knowledge
5 under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26,
6 26.50, or 74.34 RCW restraining the person and the person has violated
7 the terms of the order restraining the person from acts or threats of
8 violence, or restraining the person from going onto the grounds of or
9 entering a residence, workplace, school, or day care, or prohibiting
10 the person from knowingly coming within, or knowingly remaining within,
11 a specified distance of a location or, in the case of an order issued
12 under RCW 26.44.063, imposing any other restrictions or conditions upon
13 the person; or

14 (b) A foreign protection order, as defined in RCW 26.52.010, has
15 been issued of which the person under restraint has knowledge and the
16 person under restraint has violated a provision of the foreign
17 protection order prohibiting the person under restraint from contacting
18 or communicating with another person, or excluding the person under
19 restraint from a residence, workplace, school, or day care, or
20 prohibiting the person from knowingly coming within, or knowingly
21 remaining within, a specified distance of a location, or a violation of
22 any provision for which the foreign protection order specifically
23 indicates that a violation will be a crime; or

24 (c) The person is sixteen years or older and within the preceding
25 four hours has assaulted a family or household member as defined in RCW
26 10.99.020 and the officer believes: (i) A felonious assault has
27 occurred; (ii) an assault has occurred which has resulted in bodily
28 injury to the victim, whether the injury is observable by the
29 responding officer or not; or (iii) that any physical action has
30 occurred which was intended to cause another person reasonably to fear
31 imminent serious bodily injury or death. Bodily injury means physical
32 pain, illness, or an impairment of physical condition. When the
33 officer has probable cause to believe that family or household members
34 have assaulted each other, the officer is not required to arrest both
35 persons. The officer shall arrest the person whom the officer believes
36 to be the primary physical aggressor. In making this determination,
37 the officer shall make every reasonable effort to consider: (i) The
38 intent to protect victims of domestic violence under RCW 10.99.010;

1 (ii) the comparative extent of injuries inflicted or serious threats
2 creating fear of physical injury; and (iii) the history of domestic
3 violence of each person involved, including whether the conduct was
4 part of an ongoing pattern of abuse; or

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

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

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

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

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

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

20 (e) RCW 46.20.342, relating to driving a motor vehicle while
21 operator's license is suspended or revoked;

22 (f) RCW 46.61.5249, relating to operating a motor vehicle in a
23 negligent manner.

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

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

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

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

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

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

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

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

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

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

25 NEW SECTION. **Sec. 26.** There is created a 24/7 sobriety program to
26 be administered by the Washington association of sheriffs and police
27 chiefs. The program shall coordinate efforts among various local
28 government entities for the purpose of implementing alternatives to
29 incarceration for offenders convicted under RCW 46.61.502 or 46.61.504
30 with one or more prior convictions under RCW 46.61.502 or 46.61.504.

31 NEW SECTION. **Sec. 27.** The Washington association of sheriffs and
32 police chiefs shall conduct a 24/7 sobriety program pilot project.

33 (1) Pilot project sites shall be established in no more than three
34 counties and two cities. Local jurisdictions outside of the pilot
35 project sites are encouraged to establish a 24/7 sobriety program as
36 soon as practicable.

1 (2) The Washington association of sheriffs and police chiefs must,
2 to the greatest extent possible, select pilot project sites from
3 diverse geographic areas. The cities selected for participation in the
4 project must not be from within a county selected for the program.

5 (3) The Washington association of sheriffs and police chiefs shall
6 develop criteria for participation in the 24/7 sobriety program pilot
7 project including, but not limited to:

8 (a) Geographic diversity;

9 (b) Sufficient volume of eligible participants to provide useable
10 data for the pilot;

11 (c) County or city commitment to administration of the program; and

12 (d) Capability of the county or city law enforcement agency to
13 effectively accommodate and administer the program.

14 (4) The Washington association of sheriffs and police chiefs shall
15 provide a study of the 24/7 sobriety program project measuring changes
16 in recidivism and related county or city savings or costs.

17 (5) The Washington association of sheriffs and police chiefs shall
18 report preliminary findings and final results of the study to the
19 governor and the legislature on an annual basis. It is the intent of
20 the legislature that the 24/7 sobriety program shall achieve the goal
21 of implementation statewide by January 1, 2019.

22 NEW SECTION. **Sec. 28.** There is hereby established in the state
23 treasury the 24/7 sobriety account. The account shall be maintained
24 and administered by the Washington association of sheriffs and police
25 chiefs to defray costs of operating the 24/7 sobriety program and
26 funding support services. The Washington association of sheriffs and
27 police chiefs may accept for deposit in the account money from
28 donations, gifts, grants, participation fees, and user fees or
29 payments. Expenditures from the account shall be budgeted through the
30 normal budget process.

31 NEW SECTION. **Sec. 29.** The definitions in this section apply
32 throughout sections 26 through 35 of this act unless the context
33 clearly requires otherwise.

34 (1) "24/7 electronic alcohol/drug monitoring" means the monitoring
35 by the use of any electronic instrument that is capable of determining
36 and monitoring the presence of alcohol or drugs in a person's body and

1 includes any associated equipment a participant needs in order for the
2 device to properly perform. Monitoring may also include mandatory
3 urine analysis tests as ordered by the court.

4 (2) "Participant" means a person who has one or more prior
5 convictions for a violation of RCW 46.61.502 or 46.61.504 and who has
6 been ordered by a court to participate in the 24/7 sobriety program.

7 (3) "Participating agency" means a sheriff's office or a designated
8 entity named by a sheriff that has agreed to participate in the 24/7
9 sobriety program by enrolling participants, administering one or more
10 of the tests, and submitting reports to the Washington association of
11 sheriffs and police chiefs.

12 (4) "Participation agreement" means a written document executed by
13 a participant agreeing to participate in the 24/7 sobriety program in
14 a form approved by the Washington association of sheriffs and police
15 chiefs that contains the following information:

16 (a) The type, frequency, and time period of testing;

17 (b) The location of testing;

18 (c) The fees and payment procedures required for testing; and

19 (d) The responsibilities and obligations of the participant under
20 the 24/7 sobriety program.

21 (5) "24/7 sobriety program" means a twenty-four hour and seven day
22 a week sobriety program in which a participant submits to the testing
23 of the participant's blood, breath, urine, or other bodily substances
24 in order to determine the presence of alcohol, marijuana, or any
25 controlled substance in the participant's body.

26 NEW SECTION. **Sec. 30.** Each county or city, through its sheriff or
27 chief, may participate in the 24/7 sobriety program. If a sheriff or
28 chief is unwilling or unable to participate in the 24/7 sobriety
29 program, the sheriff or chief may designate an entity willing to
30 provide the service.

31 NEW SECTION. **Sec. 31.** The court may condition any bond or
32 pretrial release upon participation in the 24/7 sobriety program and
33 payment of associated costs and expenses, if available.

34 NEW SECTION. **Sec. 32.** The Washington association of sheriffs and

1 police chiefs may adopt policies and procedures for the administration
2 of the 24/7 sobriety program to:

- 3 (1) Provide for procedures and apparatus for testing;
- 4 (2) Establish fees and costs for participation in the program to be
5 paid by the participants;
- 6 (3) Require the submission of reports and information by law
7 enforcement agencies within this state.

8 NEW SECTION. **Sec. 33.** (1) Funds in the 24/7 sobriety account
9 shall be distributed as follows:

10 (a) Any daily user fee, installation fee, deactivation fee,
11 enrollment fee, or monitoring fee collected under the 24/7 sobriety
12 program shall be collected by the sheriff or chief, or an entity
13 designated by the sheriff or chief, and deposited with the county or
14 city treasurer of the proper county or city, the proceeds of which
15 shall be applied and used only to defray the recurring costs of the
16 24/7 sobriety program including maintaining equipment, funding support
17 services, and ensuring compliance; and

18 (b) Any participation fee collected in the administration of
19 testing under the 24/7 sobriety program to cover program administration
20 costs incurred by the Washington association of sheriffs and police
21 chiefs shall be collected by the sheriff or chief, or an entity
22 designated by the sheriff or chief, and deposited in the 24/7 sobriety
23 account.

24 (2) All applicable fees shall be paid by the participant
25 contemporaneously or in advance of the time when the fee becomes due.

26 NEW SECTION. **Sec. 34.** The court shall not waive or reduce fees or
27 associated costs charged for participation in the 24/7 sobriety
28 program.

29 NEW SECTION. **Sec. 35.** (1) The court shall order fifteen days of
30 participation in the 24/7 sobriety program for every one day of
31 imprisonment suspended under RCW 46.61.5055.

32 (2) A participant who violates the terms of participation in the
33 24/7 sobriety program or does not pay the required fees or associated
34 costs shall:

- 35 (a) Receive a written warning notice for a first violation;

1 (b) Serve a term of five days imprisonment for a second violation;
2 (c) Serve a term of ten days imprisonment for a third violation;
3 and
4 (d) For a fourth violation, the participant shall serve the entire
5 remaining sentence imposed by the court.

6 (3) A sheriff or chief, or the designee of a sheriff or chief, who
7 has probable cause to believe that a participant has violated the terms
8 of participation in the 24/7 sobriety program or has not paid the
9 required fees or associated costs shall immediately take the
10 participant into custody and cause him or her to be held until an
11 appearance before a judge on the next judicial day.

12 **Sec. 36.** RCW 4.24.545 and 2006 c 130 s 3 are each amended to read
13 as follows:

14 Local governments, their subdivisions and employees, the department
15 of corrections and its employees, and the Washington association of
16 sheriffs and police chiefs and its employees are immune from civil
17 liability for damages arising from incidents involving offenders who
18 are placed on electronic monitoring or who are participating in the
19 24/7 sobriety program, unless it is shown that an employee acted with
20 gross negligence or bad faith.

21 NEW SECTION. **Sec. 37.** (1) Any funding provided during the 2013-
22 2015 biennium for the ignition interlock program at the Washington
23 state patrol that is in addition to any funding identified in chapter
24 . . . (Engrossed Substitute Senate Bill No. 5024), Laws of 2013
25 (omnibus transportation appropriations act) may only be used to provide
26 field officers to work directly with manufacturers, service centers,
27 technicians, and participants in the program. This may include up to
28 one full-time equivalent noncommissioned staff to provide
29 administrative support for the program. Any funding provided as
30 identified in this section must be used to supplement and not supplant
31 other funds being used to fund the ignition interlock program.

32 (2) This section expires July 1, 2015.

33 NEW SECTION. **Sec. 38.** A new section is added to chapter 43.43 RCW
34 to read as follows:

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

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

8 **Sec. 39.** RCW 46.20.308 and 2013 c 3 s 31 (Initiative Measure No.
9 502), 2012 c 183 s 7, and 2012 c 80 s 12 are each reenacted and amended
10 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 **Sec. 40.** RCW 9.94A.535 and 2011 c 87 s 1 are each amended to read
33 as follows:

34 The court may impose a sentence outside the standard sentence range
35 for an offense if it finds, considering the purpose of this chapter,
36 that there are substantial and compelling reasons justifying an

1 exceptional sentence. Facts supporting aggravated sentences, other
2 than the fact of a prior conviction, shall be determined pursuant to
3 the provisions of RCW 9.94A.537.

4 Whenever a sentence outside the standard sentence range is imposed,
5 the court shall set forth the reasons for its decision in written
6 findings of fact and conclusions of law. A sentence outside the
7 standard sentence range shall be a determinate sentence.

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

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

16 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

31 (e) The defendant's capacity to appreciate the wrongfulness of his
32 or her conduct, or to conform his or her conduct to the requirements of
33 the law, was significantly impaired. Voluntary use of drugs or alcohol
34 is excluded.

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

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

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

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

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

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

17 (a) The defendant and the state both stipulate that justice is best
18 served by the imposition of an exceptional sentence outside the
19 standard range, and the court finds the exceptional sentence to be
20 consistent with and in furtherance of the interests of justice and the
21 purposes of the sentencing reform act.

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

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

29 (d) The failure to consider the defendant's prior criminal history
30 which was omitted from the offender score calculation pursuant to RCW
31 9.94A.525 results in a presumptive sentence that is clearly too
32 lenient.

33 (3) Aggravating Circumstances - Considered by a Jury - Imposed by
34 the Court

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

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

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

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

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

10 (i) The current offense involved multiple victims or multiple
11 incidents per victim;

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

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

16 (iv) The defendant used his or her position of trust, confidence,
17 or fiduciary responsibility to facilitate the commission of the current
18 offense.

19 (e) The current offense was a major violation of the Uniform
20 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
21 trafficking in controlled substances, which was more onerous than the
22 typical offense of its statutory definition: The presence of ANY of
23 the following may identify a current offense as a major VUCSA:

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

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

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

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

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

37 (vi) The offender used his or her position or status to facilitate

1 the commission of the current offense, including positions of trust,
2 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
3 other medical professional).

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

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

9 (h) The current offense involved domestic violence, as defined in
10 RCW 10.99.020, and one or more of the following was present:

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

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

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

18 (i) The offense resulted in the pregnancy of a child victim of
19 rape.

20 (j) The defendant knew that the victim of the current offense was
21 a youth who was not residing with a legal custodian and the defendant
22 established or promoted the relationship for the primary purpose of
23 victimization.

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

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

30 (m) The offense involved a high degree of sophistication or
31 planning.

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

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

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

1 (q) The defendant demonstrated or displayed an egregious lack of
2 remorse.

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

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

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

10 (u) The current offense is a burglary and the victim of the
11 burglary was present in the building or residence when the crime was
12 committed.

13 (v) The offense was committed against a law enforcement officer who
14 was performing his or her official duties at the time of the offense,
15 the offender knew that the victim was a law enforcement officer, and
16 the victim's status as a law enforcement officer is not an element of
17 the offense.

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

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

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

26 (z)(i)(A) The current offense is theft in the first degree, theft
27 in the second degree, possession of stolen property in the first
28 degree, or possession of stolen property in the second degree; (B) the
29 stolen property involved is metal property; and (C) the property damage
30 to the victim caused in the course of the theft of metal property is
31 more than three times the value of the stolen metal property, or the
32 theft of the metal property creates a public hazard.

33 (ii) For purposes of this subsection, "metal property" means
34 commercial metal property, private metal property, or nonferrous metal
35 property, as defined in RCW 19.290.010.

36 (aa) The defendant committed the offense with the intent to
37 directly or indirectly cause any benefit, aggrandizement, gain, profit,

1 or other advantage to or for a criminal street gang as defined in RCW
2 9.94A.030, its reputation, influence, or membership.

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

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

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

13 NEW SECTION. Sec. 41. (1) The Washington impaired driving work
14 group is established to study effective strategies to reducing vehicle
15 related deaths and serious injuries that are a result of impaired
16 driving incidents in Washington.

17 (2) Members of the work group shall consist of the following
18 members:

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

21 (b) One member from each of the two largest caucuses of the house
22 of representatives, appointed by the speaker of the house of
23 representatives;

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

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

28 (e) The director of the department of licensing, or the director's
29 designee;

30 (f) The secretary of the department of corrections, or the
31 secretary's designee;

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

34 (h) One member representing the Washington traffic safety
35 commission;

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

1 (j) One member representing the superior court judges' association;
2 (k) One member representing the district and municipal court
3 judges' association;
4 (l) One member representing the Washington state association of
5 counties;
6 (m) One member representing the Washington association of
7 prosecuting attorneys;
8 (n) One member representing the Washington defender's association
9 or the Washington association of criminal defense lawyers;
10 (o) One member representing the Washington state association of
11 drug court professionals;
12 (p) One member representing the ignition interlock industry;
13 (q) One member representing the Washington retail association;
14 (r) One member representing the Washington state association of
15 cities;
16 (s) One representative of the state association of counties;
17 (t) One representative representing driving under the influence
18 victim impact panels; and
19 (u) Representatives, appointed by the governor, that shall include,
20 but are not limited to:
21 (i) City law enforcement;
22 (ii) County law enforcement;
23 (iii) Court administrators; and
24 (iv) Driving under the influence victims or family members of a
25 victim.
26 (3) The chief of the Washington state patrol or the chief's
27 designee shall convene the initial meeting of the work group.
28 (4) Members of the work group shall select the chair of the work
29 group.
30 (5) At a minimum, the work group shall research, review, and make
31 recommendations on the following:
32 (a) Providing effective strategies for reducing motor vehicle-
33 related deaths and serious injuries due to impaired driving;
34 (b) Considering the minimum number of previous impaired driving
35 convictions that must be counted before constituting and being
36 punishable as a felony offense;
37 (c) Increasing mandatory minimum penalties and fines for repeat
38 offenders;

1 (d) Promoting and monitoring the use of mandatory ignition
2 interlocks;

3 (e) The advantages and disadvantages of creating sobriety
4 checkpoints;

5 (f) Requiring mandatory arrests for a first offense for an impaired
6 driving offense;

7 (g) Increasing treatment and rehabilitation for repeat offenders;

8 (h) Reviewing the penalties for refusing to take a breath or blood
9 test for the purpose of determining the alcohol concentration or
10 presence of any drugs;

11 (i) Increasing funding for prevention, intervention, suppression,
12 and prosecution of impaired driving offenses;

13 (j) Prohibiting the sale of alcohol to offenders convicted of
14 repeat impaired driving offenses;

15 (k) Improving prosecution and encouraging prosecutors to
16 aggressively enforce impaired driving laws;

17 (l) Increasing the number of driving under the influence courts and
18 court-related services;

19 (m) Creating state and local impaired driving enforcement task
20 forces to increase the visibility of enforcement;

21 (n) Promoting education and prevention strategies; and

22 (o) Encouraging private sector collaboration.

23 (6) The work group shall compile its findings and recommendations
24 into a final report and provide its report to the legislature and
25 governor by December 1, 2013.

26 (7) The work group shall function within existing resources and no
27 specific budget may be provided to complete the study. The
28 participants of the study group are encouraged to donate their time to
29 offset any costs.

30 (8) This section expires January 1, 2014.

31 NEW SECTION. **Sec. 42.** Sections 14 through 16, 30, 31, and 33
32 through 35 of this act take effect January 1, 2014.

33 NEW SECTION. **Sec. 43.** Section 13 of this act expires January 1,
34 2014.

1 NEW SECTION. **Sec. 44.** Sections 26 through 35 of this act are each
2 added to chapter 36.28A RCW.

3 NEW SECTION. **Sec. 45.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

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