

E2SHB 1276 - S AMD 391

By Senators Padden, Keiser

WITHDRAWN 4/15/2015

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that impaired
4 driving continues to be a significant cause of motor vehicle crashes
5 and that additional measures need to be taken to identify people who
6 are driving under the influence, provide appropriate sanctions, and
7 ensure compliance with court-ordered restrictions. The legislature
8 intends to increase the availability of forensic phlebotomists so
9 that offenders can be appropriately and efficiently identified. The
10 legislature further intends to require consecutive sentencing in
11 certain cases to increase punishment and supervision of offenders.
12 The legislature intends to clarify ignition interlock processes and
13 requirements to ensure that those offenders ordered to have ignition
14 interlock devices do not drive vehicles without the required devices.

15 **Conditions of release—Requirements—Ignition interlock device—24/7**
16 **sobriety program monitoring**

17 **Sec. 2.** RCW 10.21.055 and 2013 2nd sp.s. c 35 s 1 are each
18 amended to read as follows:

19 (1)(a) When any person charged with (~~or arrested for~~) a
20 violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in
21 which the person has a prior offense as defined in RCW 46.61.5055 and
22 the current offense involves alcohol, is released from custody
23 (~~before~~) at arraignment or trial on bail or personal recognizance,
24 the court authorizing the release shall require, as a condition of
25 release(~~(τ)~~) that person (~~(to (a))~~):

26 (i) Have a functioning ignition interlock device installed on all
27 motor vehicles operated by the person, with proof of installation
28 filed with the court by the person or the certified interlock
29 provider within five business days of the date of release from

1 custody or as soon thereafter as determined by the court based on
2 availability within the jurisdiction; (~~or (b)~~)

3 (ii) Comply with 24/7 sobriety program monitoring, as defined in
4 RCW 36.28A.330; (~~or both~~)

5 (iii) Have an ignition interlock device pursuant to (a)(i) of
6 this subsection and comply with 24/7 sobriety program monitoring
7 pursuant to (a)(ii) of this subsection; or

8 (iv) Have an ignition interlock pursuant to (a)(i) of this
9 subsection, file a sworn statement with the court upon release at
10 arraignment that states the person agrees not to operate any motor
11 vehicle while the ignition interlock restriction is imposed by the
12 court, and submit to alcohol monitoring as outlined in RCW
13 46.61.5055(5)(b).

14 (b) The court shall immediately notify the department of
15 licensing when an ignition interlock restriction is imposed: (i) As a
16 condition of release pursuant to (a) of this subsection; or (ii) in
17 instances where a person is charged with or convicted of a violation
18 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, and the offense
19 involves alcohol. If the court imposes an ignition interlock
20 restriction, the department of licensing shall attach or imprint a
21 notation on the driving record of any person restricted under this
22 section stating that the person may operate only a motor vehicle
23 equipped with a functioning ignition interlock device.

24 (c) Pursuant to (a)(iv) of this subsection, the person ordered to
25 install the ignition interlock pursuant to (a) of this subsection
26 satisfies the requirement to install an ignition interlock by filing
27 a sworn statement with the court at arraignment, that states that the
28 person agrees not to operate any motor vehicle while the ignition
29 interlock restriction is imposed by the court; provided, that the
30 ignition interlock requirement will still be reported to the
31 department pursuant to subsection (1)(b) of this section and it will
32 remain unlawful for the person to operate any motor vehicle unless it
33 is equipped with a fully functioning ignition interlock device.

34 (2)(a) Upon acquittal or dismissal of all pending or current
35 charges relating to a violation of RCW 46.61.502, 46.61.504,
36 46.61.520, or 46.61.522, or equivalent local ordinance, the court
37 shall authorize removal of the ignition interlock device and lift any
38 requirement to comply with electronic alcohol/drug monitoring imposed
39 under subsection (1) of this section. Nothing in this section limits
40 the authority of the court or department under RCW 46.20.720.

1 (b) If the court authorizes removal of an ignition interlock
2 device imposed under (a) of this subsection the court shall
3 immediately notify the department of licensing regarding the lifting
4 of the ignition interlock restriction and the department of licensing
5 shall release any attachment, imprint, or notation on such person's
6 driving record relating to the ignition interlock requirement imposed
7 under this section.

8 (3) When an ignition interlock restriction imposed as a condition
9 of release is canceled, the court shall provide a defendant with a
10 written order confirming release of the restriction. The written
11 order shall serve as proof of release of the restriction until which
12 time the department of licensing updates the driving record.

13 **Ignition interlock driver's license—Application—Eligibility—**
14 **Cancellation—Costs—Rules**

15 **Sec. 3.** RCW 46.20.385 and 2013 2nd sp.s. c 35 s 20 are each
16 amended to read as follows:

17 (1)(a) ~~((Beginning January 1, 2009,))~~ Any person licensed under
18 this chapter or who has a valid driver's license from another state,
19 who is convicted of: (i) A violation of RCW 46.61.502 or 46.61.504 or
20 an equivalent local or out-of-state statute or ordinance, or (ii) a
21 violation of RCW 46.61.520(1)(a) or an equivalent local or out-of-
22 state statute or ordinance, or (iii) a conviction for a violation of
23 RCW 46.61.520(1) (b) or (c) if the conviction is the result of a
24 charge that was originally filed as a violation of RCW
25 46.61.520(1)(a), or (iv) RCW 46.61.522(1)(b) or an equivalent local
26 or out-of-state statute or ordinance, or (v) RCW 46.61.522(1) (a) or
27 (c) if the conviction is the result of a charge that was originally
28 filed as a violation of RCW 46.61.522(1)(b) committed while under the
29 influence of intoxicating liquor or any drug, or (vi) who has had or
30 will have his or her license suspended, revoked, or denied under RCW
31 46.20.3101, or who is otherwise permitted under subsection (8) of
32 this section, may submit to the department an application for an
33 ignition interlock driver's license. The department, upon receipt of
34 the prescribed fee and upon determining that the petitioner is
35 eligible to receive the license, may issue an ignition interlock
36 driver's license.

37 (b) A person may apply for an ignition interlock driver's license
38 anytime, including immediately after receiving the notices under RCW

1 46.20.308 or after his or her license is suspended, revoked, or
2 denied. (~~(A person receiving an ignition interlock driver's license~~
3 ~~waives his or her right to a hearing or appeal under RCW 46.20.308.)~~)

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

7 (i) The department shall require the person to maintain the
8 device on all vehicles operated by the person and shall restrict the
9 person to operating only vehicles equipped with the device, for the
10 remainder of the period of suspension, revocation, or denial. Subject
11 to the provisions of RCW 46.20.720(3)(b)(ii), the installation of an
12 ignition interlock device is not necessary on vehicles owned, leased,
13 or rented by a person's employer and on those vehicles whose care
14 and/or maintenance is the temporary responsibility of the employer,
15 and driven at the direction of a person's employer as a requirement
16 of employment during working hours. The person must provide the
17 department with a declaration pursuant to RCW 9A.72.085 from his or
18 her employer stating that the person's employment requires the person
19 to operate a vehicle owned by the employer or other persons during
20 working hours.

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

29 (iii) The time period during which the person is licensed under
30 this section shall apply on a day-for-day basis toward satisfying the
31 period of time the ignition interlock device restriction is required
32 under RCW 46.20.720 (~~and~~), 46.61.5055, 10.05.140, 46.61.500(3), and
33 46.61.5249(4). Beginning with incidents occurring on or after
34 September 1, 2011, when calculating the period of time for the
35 restriction under RCW 46.20.720 (2) or (3), the department must also
36 give the person a day-for-day credit for the time period, beginning
37 from the date of the incident, during which the person kept an
38 ignition interlock device installed on all vehicles the person
39 operates. For the purposes of this subsection (1)(c)(iii), the term

1 "all vehicles" does not include vehicles that would be subject to the
2 employer exception under RCW 46.20.720(3).

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

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

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

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

35 (6)(a) Unless costs are waived by the ignition interlock company
36 or the person is indigent under RCW 10.101.010, the applicant shall
37 pay the cost of installing, removing, and leasing the ignition
38 interlock device and shall pay an additional fee of twenty dollars
39 per month. Payments shall be made directly to the ignition interlock

1 company. The company shall remit the additional twenty dollar fee to
2 the department.

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

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

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

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

27 **Notation on driving record—Verification of interlock—Penalty**

28 **Sec. 4.** RCW 46.20.740 and 2010 c 269 s 8 are each amended to
29 read as follows:

30 (1) The department shall attach or imprint a notation on the
31 driving record of any person restricted under RCW 46.20.720,
32 46.61.5055, or 10.05.140 stating that the person may operate only a
33 motor vehicle equipped with a functioning ignition interlock device.
34 The department shall determine the person's eligibility for licensing
35 based upon written verification by a company doing business in the
36 state that it has installed the required device on a vehicle owned or
37 operated by the person seeking reinstatement. If, based upon
38 notification from the interlock provider or otherwise, the department

1 determines that an ignition interlock required under this section is
2 no longer installed or functioning as required, the department shall
3 suspend the person's license or privilege to drive. Whenever the
4 license or driving privilege of any person is suspended or revoked as
5 a result of noncompliance with an ignition interlock requirement, the
6 suspension shall remain in effect until the person provides notice
7 issued by a company doing business in the state that a vehicle owned
8 or operated by the person is equipped with a functioning ignition
9 interlock device.

10 (2) It is a gross misdemeanor for a person with such a notation
11 on his or her driving record to operate a motor vehicle that is not
12 so equipped, unless the notation resulted from a restriction imposed
13 as a condition of release and the restriction has been released by
14 the court prior to driving.

15 (3) Any sentence imposed for a violation of subsection (2) of
16 this section shall be served consecutively with any sentence imposed
17 under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055.

18 **Implied consent—Test refusal—Procedures**

19 **Sec. 5.** RCW 46.20.308 and 2013 2nd sp.s. c 35 s 36 are each
20 amended to read as follows:

21 (1) Any person who operates a motor vehicle within this state is
22 deemed to have given consent, subject to the provisions of RCW
23 46.61.506, to a test or tests of his or her breath for the purpose of
24 determining the alcohol concentration(~~(, THC concentration, or~~
25 ~~presence of any drug)) in his or her breath if arrested for any
26 offense where, at the time of the arrest, the arresting officer has
27 reasonable grounds to believe the person had been driving or was in
28 actual physical control of a motor vehicle while under the influence
29 of intoxicating liquor or any drug or was in violation of RCW
30 46.61.503. (~~Neither consent nor this section precludes a police~~
31 ~~officer from obtaining a search warrant for a person's breath or~~
32 ~~blood.))~~~~

33 (2) The test or tests of breath shall be administered at the
34 direction of a law enforcement officer having reasonable grounds to
35 believe the person to have been driving or in actual physical control
36 of a motor vehicle within this state while under the influence of
37 intoxicating liquor or any drug or the person to have been driving or
38 in actual physical control of a motor vehicle while having alcohol or

1 THC in a concentration in violation of RCW 46.61.503 in his or her
2 system and being under the age of twenty-one. Prior to administering
3 a breath test pursuant to this section, the officer shall inform the
4 person of his or her right under this section to refuse the breath
5 test, and of his or her right to have additional tests administered
6 by any qualified person of his or her choosing as provided in RCW
7 46.61.506. The officer shall warn the driver, in substantially the
8 following language, that:

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

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

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

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

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

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

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

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

1 ~~breath or blood test may be administered without the consent of the~~
2 ~~individual so arrested pursuant to a search warrant, a valid waiver~~
3 ~~of the warrant requirement, or when exigent circumstances exist.~~

4 (4)) If, following his or her arrest and receipt of warnings
5 under subsection (2) of this section, the person arrested ((refuses))
6 exercises the right, granted herein, by refusing upon the request of
7 a law enforcement officer to submit to a test or tests of his or her
8 breath, no test shall be given except as otherwise authorized by ((a
9 ~~search warrant~~)) law.

10 (4) Nothing in subsection (1), (2), or (3) of this section
11 precludes a law enforcement officer from obtaining a person's blood
12 to test for alcohol, marijuana, or any drug, pursuant to a search
13 warrant, a valid waiver of the warrant requirement, when exigent
14 circumstances exist, or under any other authority of law. Any blood
15 drawn for the purpose of determining the person's alcohol or
16 marijuana levels, or any drug, is drawn pursuant to this section when
17 the officer has reasonable grounds to believe that the person is in
18 physical control or driving a vehicle under the influence or in
19 violation of RCW 46.61.503.

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

33 (a) Serve notice in writing on the person on behalf of the
34 department of its intention to suspend, revoke, or deny the person's
35 license, permit, or privilege to drive as required by subsection (6)
36 of this section;

37 (b) Serve notice in writing on the person on behalf of the
38 department of his or her right to a hearing, specifying the steps he
39 or she must take to obtain a hearing as provided by subsection (7) of

1 this section (~~and that the person waives the right to a hearing if~~
2 ~~he or she receives an ignition interlock driver's license~~);

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

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

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

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

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

35 (6) The department of licensing, upon the receipt of a sworn
36 report or report under a declaration authorized by RCW 9A.72.085
37 under subsection (5)(d) of this section, shall suspend, revoke, or
38 deny the person's license, permit, or privilege to drive or any
39 nonresident operating privilege, as provided in RCW 46.20.3101, such
40 suspension, revocation, or denial to be effective beginning sixty

1 days from the date of arrest or from the date notice has been given
2 in the event notice is given by the department following a blood
3 test, or when sustained at a hearing pursuant to subsection (7) of
4 this section, whichever occurs first.

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

1 administered, whether the applicable requirements of this section
2 were satisfied before the administration of the test or tests,
3 whether the person submitted to the test or tests, or whether a test
4 was administered (~~without express consent~~) pursuant to a search
5 warrant, a valid waiver of the warrant requirement, when exigent
6 circumstances exist, or under any other authority of law as permitted
7 under this section, and whether the test or tests indicated that the
8 alcohol concentration of the person's breath or blood was 0.08 or
9 more, or the THC concentration of the person's blood was 5.00 or
10 more, if the person was age twenty-one or over at the time of the
11 arrest, or that the alcohol concentration of the person's breath or
12 blood was 0.02 or more, or the THC concentration of the person's
13 blood was above 0.00, if the person was under the age of twenty-one
14 at the time of the arrest. Where a person is found to be in actual
15 physical control of a motor vehicle while under the influence of
16 intoxicating liquor or any drug or was under the age of twenty-one at
17 the time of the arrest and was in physical control of a motor vehicle
18 while having alcohol in his or her system in a concentration of 0.02
19 or THC concentration above 0.00, the person may petition the hearing
20 officer to apply the affirmative defense found in RCW 46.61.504(3)
21 and 46.61.503(2). The driver has the burden to prove the affirmative
22 defense by a preponderance of the evidence. The sworn report or
23 report under a declaration authorized by RCW 9A.72.085 submitted by a
24 law enforcement officer is prima facie evidence that the officer had
25 reasonable grounds to believe the person had been driving or was in
26 actual physical control of a motor vehicle within this state while
27 under the influence of intoxicating liquor or drugs, or both, or the
28 person had been driving or was in actual physical control of a motor
29 vehicle within this state while having alcohol in his or her system
30 in a concentration of 0.02 or more, or THC in his or her system in a
31 concentration above 0.00, and was under the age of twenty-one and
32 that the officer complied with the requirements of this section.

33 A hearing officer shall conduct the hearing, may issue subpoenas
34 for the attendance of witnesses and the production of documents, and
35 shall administer oaths to witnesses. The hearing officer shall not
36 issue a subpoena for the attendance of a witness at the request of
37 the person unless the request is accompanied by the fee required by
38 RCW 5.56.010 for a witness in district court. The sworn report or
39 report under a declaration authorized by RCW 9A.72.085 of the law
40 enforcement officer and any other evidence accompanying the report

1 shall be admissible without further evidentiary foundation and the
2 certifications authorized by the criminal rules for courts of limited
3 jurisdiction shall be admissible without further evidentiary
4 foundation. The person may be represented by counsel, may question
5 witnesses, may present evidence, and may testify. The department
6 shall order that the suspension, revocation, or denial either be
7 rescinded or sustained.

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

1 suspension, revocation, or denial it may impose conditions on such
2 stay.

3 (9)(a) If a person whose driver's license, permit, or privilege
4 to drive has been or will be suspended, revoked, or denied under
5 subsection (6) of this section, other than as a result of a breath
6 test refusal, and who has not committed an offense for which he or
7 she was granted a deferred prosecution under chapter 10.05 RCW,
8 petitions a court for a deferred prosecution on criminal charges
9 arising out of the arrest for which action has been or will be taken
10 under subsection (6) of this section, or notifies the department of
11 licensing of the intent to seek such a deferred prosecution, then the
12 license suspension or revocation shall be stayed pending entry of the
13 deferred prosecution. The stay shall not be longer than one hundred
14 fifty days after the date charges are filed, or two years after the
15 date of the arrest, whichever time period is shorter. If the court
16 stays the suspension, revocation, or denial, it may impose conditions
17 on such stay. If the person is otherwise eligible for licensing, the
18 department shall issue a temporary license, or extend any valid
19 temporary license under subsection (5) of this section, for the
20 period of the stay. If a deferred prosecution treatment plan is not
21 recommended in the report made under RCW 10.05.050, or if treatment
22 is rejected by the court, or if the person declines to accept an
23 offered treatment plan, or if the person violates any condition
24 imposed by the court, then the court shall immediately direct the
25 department to cancel the stay and any temporary ((marked)) license or
26 extension of a temporary license issued under this subsection.

27 (b) A suspension, revocation, or denial imposed under this
28 section, other than as a result of a breath test refusal, shall be
29 stayed if the person is accepted for deferred prosecution as provided
30 in chapter 10.05 RCW for the incident upon which the suspension,
31 revocation, or denial is based. If the deferred prosecution is
32 terminated, the stay shall be lifted and the suspension, revocation,
33 or denial reinstated. If the deferred prosecution is completed, the
34 stay shall be lifted and the suspension, revocation, or denial
35 canceled.

36 (c) The provisions of (b) of this subsection relating to a stay
37 of a suspension, revocation, or denial and the cancellation of any
38 suspension, revocation, or denial do not apply to the suspension,
39 revocation, denial, or disqualification of a person's commercial
40 driver's license or privilege to operate a commercial motor vehicle.

1 (10) When it has been finally determined under the procedures of
2 this section that a nonresident's privilege to operate a motor
3 vehicle in this state has been suspended, revoked, or denied, the
4 department shall give information in writing of the action taken to
5 the motor vehicle administrator of the state of the person's
6 residence and of any state in which he or she has a license.

7 **Circumventing ignition interlock—Penalty**

8 **Sec. 6.** RCW 46.20.750 and 2005 c 200 s 2 are each amended to
9 read as follows:

10 (1) A person who is restricted to the use of a vehicle equipped
11 with an ignition interlock device (~~(and who tampers with the device~~
12 ~~or directs, authorizes, or requests another to tamper with the~~
13 ~~device, in order to circumvent the device by modifying, detaching,~~
14 ~~disconnecting, or otherwise disabling it,)) is guilty of a gross
15 misdemeanor if the restricted driver:~~

16 (a) Tampers with the device by modifying, detaching,
17 disconnecting, or otherwise disabling it to allow the restricted
18 driver to operate the vehicle;

19 (b) Uses or requests another person to use a filter or other
20 device to circumvent the ignition interlock or to start or operate
21 the vehicle to allow the restricted driver to operate the vehicle;

22 (c) Has, directs, authorizes, or requests another person to
23 tamper with the device by modifying, detaching, disconnecting, or
24 otherwise disabling it to allow the restricted driver to operate the
25 vehicle; or

26 (d) Has, allows, directs, authorizes, or requests another person
27 to blow or otherwise exhale into the device in order to circumvent
28 the device to allow the restricted driver to operate the vehicle.

29 (2) A person who knowingly assists another person who is
30 restricted to the use of a vehicle equipped with an ignition
31 interlock device to circumvent the device or to start and operate
32 that vehicle (~~(in violation of a court order))~~) is guilty of a gross
33 misdemeanor. The provisions of this subsection do not apply if the
34 starting of a motor vehicle, or the request to start a motor vehicle,
35 equipped with an ignition interlock device is done for the purpose of
36 safety or mechanical repair of the device or the vehicle and the
37 person subject to the court order does not operate the vehicle.

1 (3) Any sentence imposed for a violation of subsection (1) of
2 this section shall be served consecutively with any sentence imposed
3 under RCW 46.20.740, 46.61.502, 46.61.504, 46.61.5055,
4 46.61.520(1)(a), or 46.61.522(1)(b).

5 **Commercial vehicles—Test for alcohol or drugs—Disqualification for**
6 **refusal of test or positive test—Procedures**

7 **Sec. 7.** RCW 46.25.120 and 2013 2nd sp.s. c 35 s 12 are each
8 amended to read as follows:

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

14 (2) A test or tests may be administered at the direction of a law
15 enforcement officer, who after stopping or detaining the commercial
16 motor vehicle driver, has (~~(probable cause)~~) reasonable grounds to
17 believe that driver was driving a commercial motor vehicle while
18 having alcohol in his or her system or while under the influence of
19 any drug.

20 (3) The law enforcement officer requesting the test under
21 subsection (1) of this section shall warn the person requested to
22 submit to the test that a refusal to submit will result in that
23 person being disqualified from operating a commercial motor vehicle
24 under RCW 46.25.090.

25 (4) A law enforcement officer who at the time of stopping or
26 detaining a commercial motor vehicle driver has reasonable grounds to
27 believe that driver was driving a commercial motor vehicle while
28 having alcohol, marijuana, or any drug in his or her system or while
29 under the influence of alcohol, marijuana, or any drug may obtain a
30 blood test pursuant to a search warrant, a valid waiver of the
31 warrant requirement, when exigent circumstances exist, or under any
32 other authority of law.

33 (5) If the person refuses testing, or (~~(submits to)~~) a test is
34 administered that discloses an alcohol concentration of 0.04 or more
35 or any measurable amount of THC concentration, the law enforcement
36 officer shall submit a sworn report to the department certifying that
37 the test was requested pursuant to subsection (1) of this section or
38 a blood test was administered pursuant to subsection (4) of this

1 section and that the person refused to submit to testing, or
2 (~~submitted to~~) a test was administered that disclosed an alcohol
3 concentration of 0.04 or more or any measurable amount of THC
4 concentration.

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

34 (~~(+6)~~) (7) If a motor carrier or employer who is required to
35 have a testing program under 49 C.F.R. 382 knows that a commercial
36 driver in his or her employ has refused to submit to testing under
37 this section and has not been disqualified from driving a commercial
38 motor vehicle, the employer may notify law enforcement or his or her
39 medical review officer or breath alcohol technician that the driver
40 has refused to submit to the required testing.

1 (~~(7)~~) (8) The hearing provisions of this section do not apply
2 to those persons disqualified from driving a commercial motor vehicle
3 under RCW 46.25.090(7).

4 **Open container law for marijuana**

5 NEW SECTION. **Sec. 8.** A new section is added to chapter 46.61
6 RCW to read as follows:

7 (1)(a) It is a traffic infraction:

8 (i) For the registered owner of a motor vehicle, or the driver if
9 the registered owner is not then present, or passengers in the
10 vehicle, to keep marijuana in a motor vehicle when the vehicle is
11 upon a highway, unless it is (A) in the trunk of the vehicle, (B) in
12 some other area of the vehicle not normally occupied or directly
13 accessible by the driver or passengers if the vehicle does not have a
14 trunk, or (C) in a package, container, or receptacle that has not
15 been opened or the seal broken or contents partially removed. A
16 utility compartment or glove compartment is deemed to be within the
17 area occupied by the driver and passengers;

18 (ii) To consume marijuana in any manner including, but not
19 limited to, smoking or ingesting in a motor vehicle when the vehicle
20 is upon the public highway; or

21 (iii) To place marijuana in a container specifically labeled by
22 the manufacturer of the container as containing a nonmarijuana
23 substance and to then violate (a)(i) of this subsection.

24 (b) There is a rebuttable presumption that it is a traffic
25 infraction if the original container of marijuana is incorrectly
26 labeled and there is a subsequent violation of (a)(i) of this
27 subsection.

28 (2) As used in this section, "marijuana" or "marihuana" means all
29 parts of the plant *Cannabis*, whether growing or not; the seeds
30 thereof; the resin extracted from any part of the plant; and every
31 compound, manufacture, salt, derivative, mixture, or preparation of
32 the plant, its seeds, or resin. The term does not include the mature
33 stalks of the plant, fiber produced from the stalks, oil or cake made
34 from the seeds of the plant, any other compound, manufacture, salt,
35 derivative, mixture, or preparation of the mature stalks, except the
36 resin extracted therefrom, fiber, oil, or cake, or the sterilized
37 seed of the plant which is incapable of germination.

1 **Alcohol and drug violators—Penalty schedule**

2 **Sec. 9.** RCW 46.61.5055 and 2014 c 100 s 1 are each amended to
3 read as follows:

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

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

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

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

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

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

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

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

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

31 (i) By imprisonment for not less than thirty days nor more than
32 three hundred sixty-four days and sixty days of electronic home
33 monitoring. In lieu of the mandatory minimum term of sixty days
34 electronic home monitoring, the court may order at least an
35 additional four days in jail or, if available in that county or city,
36 a six-month period of 24/7 sobriety program monitoring pursuant to
37 RCW 36.28A.300 through 36.28A.390, and the court shall order an
38 expanded alcohol assessment and treatment, if deemed appropriate by
39 the assessment. The offender shall pay for the cost of the electronic
40 monitoring. The county or municipality where the penalty is being

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

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

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

21 (i) By imprisonment for not less than forty-five days nor more
22 than three hundred sixty-four days and ninety days of electronic home
23 monitoring. In lieu of the mandatory minimum term of ninety days
24 electronic home monitoring, the court may order at least an
25 additional six days in jail or, if available in that county or city,
26 a six-month period of 24/7 sobriety program monitoring pursuant to
27 RCW 36.28A.300 through 36.28A.390, and the court shall order an
28 expanded alcohol assessment and treatment, if deemed appropriate by
29 the assessment. The offender shall pay for the cost of the electronic
30 monitoring. The county or municipality where the penalty is being
31 imposed shall determine the cost. The court may also require the
32 offender's electronic home monitoring device include an alcohol
33 detection breathalyzer or other separate alcohol monitoring device,
34 and may restrict the amount of alcohol the offender may consume
35 during the time the offender is on electronic home monitoring. Forty-
36 five days of imprisonment and ninety days of electronic home
37 monitoring may not be suspended unless the court finds that the
38 imposition of this mandatory minimum sentence would impose a
39 substantial risk to the offender's physical or mental well-being.
40 Whenever the mandatory minimum sentence is suspended, the court shall

1 state in writing the reason for granting the suspension and the facts
2 upon which the suspension 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 unless the court finds the offender to be
6 indigent.

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

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

17 (i) By imprisonment for not less than ninety days nor more than
18 three hundred sixty-four days, if available in that county or city, a
19 six-month period of 24/7 sobriety program monitoring pursuant to RCW
20 36.28A.300 through 36.28A.390, and one hundred twenty days of
21 electronic home monitoring. In lieu of the mandatory minimum term of
22 one hundred twenty days of electronic home monitoring, the court may
23 order at least an additional eight days in jail. The court shall
24 order an expanded alcohol assessment and treatment, if deemed
25 appropriate by the assessment. The offender shall pay for the cost of
26 the electronic monitoring. The county or municipality where the
27 penalty is being imposed shall determine the cost. The court may also
28 require the offender's electronic home monitoring device include an
29 alcohol detection breathalyzer or other separate alcohol monitoring
30 device, and may restrict the amount of alcohol the offender may
31 consume during the time the offender is on electronic home
32 monitoring. Ninety days of imprisonment and one hundred twenty days
33 of electronic home monitoring may not be suspended unless the court
34 finds that the imposition of this mandatory minimum sentence would
35 impose a substantial risk to the offender's physical or mental well-
36 being. Whenever the mandatory minimum sentence is suspended, the
37 court shall state in writing the reason for granting the suspension
38 and the facts upon which the suspension is based; and

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

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

9 (i) By imprisonment for not less than one hundred twenty days nor
10 more than three hundred sixty-four days, if available in that county
11 or city, a six-month period of 24/7 sobriety program monitoring
12 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty
13 days of electronic home monitoring. In lieu of the mandatory minimum
14 term of one hundred fifty days of electronic home monitoring, the
15 court may order at least an additional ten days in jail. The offender
16 shall pay for the cost of the electronic monitoring. The court shall
17 order an expanded alcohol assessment and treatment, if deemed
18 appropriate by the assessment. The county or municipality where the
19 penalty is being imposed shall determine the cost. The court may also
20 require the offender's electronic home monitoring device include an
21 alcohol detection breathalyzer or other separate alcohol monitoring
22 device, and may restrict the amount of alcohol the offender may
23 consume during the time the offender is on electronic home
24 monitoring. One hundred twenty days of imprisonment and one hundred
25 fifty days of electronic home monitoring may not be suspended unless
26 the court finds that the imposition of this mandatory minimum
27 sentence would impose a substantial risk to the offender's physical
28 or mental well-being. Whenever the mandatory minimum sentence is
29 suspended, the court shall state in writing the reason for granting
30 the suspension and the facts upon which the suspension is based; and

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

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

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

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

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

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

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 RCW 46.61.502(6) or 46.61.504(6).

8 (5) **Monitoring.**

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

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

25 (c) **Ignition interlock device substituted for 24/7 sobriety**
26 **program monitoring.** In any county or city where a 24/7 sobriety
27 program is available and verified by the Washington association of
28 sheriffs and police chiefs, the court shall:

29 (i) Order the person to install and use a functioning ignition
30 interlock or other device in lieu of such period of 24/7 sobriety
31 program monitoring;

32 (ii) Order the person to a period of 24/7 sobriety program
33 monitoring pursuant to subsections (1) through (3) of this section;
34 or

35 (iii) Order the person to install and use a functioning ignition
36 interlock or other device in addition to a period of 24/7 sobriety
37 program monitoring pursuant to subsections (1) through (3) of this
38 section.

39 (6) **Penalty for having a minor passenger in vehicle.** If a person
40 who is convicted of a violation of RCW 46.61.502 or 46.61.504

1 committed the offense while a passenger under the age of sixteen was
2 in the vehicle, the court shall:

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

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

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

17 (d) In any case in which the person has two or three prior
18 offenses within seven years, and except as provided in RCW
19 46.61.502(6) or 46.61.504(6), order an additional ten days of
20 imprisonment and a fine of not less than three thousand dollars and
21 not more than ten thousand dollars. One thousand dollars of the fine
22 may not be suspended unless the court finds the offender to be
23 indigent.

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

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

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

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

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

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

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

5 (a) **Penalty for alcohol concentration less than 0.15.** If the
6 person's alcohol concentration was less than 0.15, or if for reasons
7 other than the person's refusal to take a test offered under RCW
8 46.20.308 there is no test result indicating the person's alcohol
9 concentration:

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

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

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

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

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

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

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

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

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

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

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

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

38 Upon its own motion or upon motion by a person, a court may find,
39 on the record, that notice to the department under RCW 46.20.270 has
40 been delayed for three years or more as a result of a clerical or

1 court error. If so, the court may order that the person's license,
2 permit, or nonresident privilege shall not be revoked, suspended, or
3 denied for that offense. The court shall send notice of the finding
4 and order to the department and to the person. Upon receipt of the
5 notice from the court, the department shall not revoke, suspend, or
6 deny the license, permit, or nonresident privilege of the person for
7 that offense.

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

11 **(10) Probation of driving privilege.** After expiration of any
12 period of suspension, revocation, or denial of the offender's
13 license, permit, or privilege to drive required by this section, the
14 department shall place the offender's driving privilege in
15 probationary status pursuant to RCW 46.20.355.

16 **(11) Conditions of probation.** (a) In addition to any
17 nonsuspendable and nondeferrable jail sentence required by this
18 section, whenever the court imposes up to three hundred sixty-four
19 days in jail, the court shall also suspend but shall not defer a
20 period of confinement for a period not exceeding five years. The
21 court shall impose conditions of probation that include: (i) Not
22 driving a motor vehicle within this state without a valid license to
23 drive (~~and~~); (ii) not driving a motor vehicle within this state
24 without proof of liability insurance or other financial
25 responsibility for the future pursuant to RCW 46.30.020; (~~(+ii+)~~)
26 (iii) not driving or being in physical control of a motor vehicle
27 within this state while having an alcohol concentration of 0.08 or
28 more or a THC concentration of 5.00 nanograms per milliliter of whole
29 blood or higher, within two hours after driving; (~~and-(iii+)~~) (iv)
30 not refusing to submit to a test of his or her breath or blood to
31 determine alcohol or drug concentration upon request of a law
32 enforcement officer who has reasonable grounds to believe the person
33 was driving or was in actual physical control of a motor vehicle
34 within this state while under the influence of intoxicating liquor or
35 drug; and (v) not driving a motor vehicle in this state without a
36 functioning ignition interlock device as required by the department
37 under RCW 46.20.720(3). The court may impose conditions of probation
38 that include nonrepetition, installation of an ignition interlock
39 device on the probationer's motor vehicle, alcohol or drug treatment,
40 supervised probation, or other conditions that may be appropriate.

1 The sentence may be imposed in whole or in part upon violation of a
2 condition of probation during the suspension period.

3 (b) For each violation of mandatory conditions of probation under
4 (a)(i), (ii), (~~(iii)~~) (iii), (iv), or (v) of this subsection, the
5 court shall order the convicted person to be confined for thirty
6 days, which shall not be suspended or deferred.

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

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

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

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

26 (c) The court determines that there is reason to believe that the
27 offender would violate the conditions of the electronic home
28 monitoring penalty.

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

36 Whenever the combination of jail time and electronic home
37 monitoring or alternative sentence would exceed three hundred sixty-
38 four days, the offender shall serve the jail portion of the sentence
39 first, and the electronic home monitoring or alternative portion of

1 the sentence shall be reduced so that the combination does not exceed
2 three hundred sixty-four days.

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

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

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

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

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

15 (iii) A conviction for a violation of RCW 46.25.110 or an
16 equivalent local ordinance;

17 (iv) A conviction for a violation of RCW 79A.60.040(2) or an
18 equivalent local ordinance;

19 (v) A conviction for a violation of RCW 79A.60.040(1) or an
20 equivalent local ordinance committed in a reckless manner if the
21 conviction is the result of a charge that was originally filed as a
22 violation of RCW 79A.60.040(2) or an equivalent local ordinance;

23 (vi) A conviction for a violation of RCW 47.68.220 or an
24 equivalent local ordinance committed while under the influence of
25 intoxicating liquor or any drug;

26 ~~((vi))~~ (vii) A conviction for a violation of RCW 47.68.220 or
27 an equivalent local ordinance committed in a careless or reckless
28 manner if the conviction is the result of a charge that was
29 originally filed as a violation of RCW 47.68.220 or an equivalent
30 local ordinance while under the influence of intoxicating liquor or
31 any drug;

32 (viii) A conviction for a violation of RCW 46.09.470(2) or an
33 equivalent local ordinance;

34 ~~((vii))~~ (ix) A conviction for a violation of RCW 46.10.490(2)
35 or an equivalent local ordinance;

36 ~~((viii))~~ (x) A conviction for a violation of RCW 46.61.520
37 committed while under the influence of intoxicating liquor or any
38 drug, or a conviction for a violation of RCW 46.61.520 committed in a
39 reckless manner or with the disregard for the safety of others if the
40 conviction is the result of a charge that was originally filed as a

1 violation of RCW 46.61.520 committed while under the influence of
2 intoxicating liquor or any drug;

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

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

15 ~~((xi))~~ (xiii) An out-of-state conviction for a violation that
16 would have been a violation of (a)(i), (ii), ~~((viii))~~ (x), ~~((ix))~~
17 (xi), or ~~((x))~~ (xii) of this subsection if committed in this state;

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

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

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

33 ~~((xv))~~ (xvii) A deferred sentence imposed in a prosecution for
34 a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
35 equivalent local ordinance, if the charge under which the deferred
36 sentence was imposed was originally filed as a violation of RCW
37 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
38 violation of RCW 46.61.520 or 46.61.522;

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

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

3 (b) "Treatment" means alcohol or drug treatment approved by the
4 department of social and health services;

5 (c) "Within seven years" means that the arrest for a prior
6 offense occurred within seven years before or after the arrest for
7 the current offense; and

8 (d) "Within ten years" means that the arrest for a prior offense
9 occurred within ten years before or after the arrest for the current
10 offense.

11 **Sec. 10.** RCW 46.01.260 and 2010 c 161 s 208 are each amended to
12 read as follows:

13 (1) Except as provided in subsection (2) of this section, the
14 director may destroy applications for vehicle registrations, copies
15 of vehicle registrations issued, applications for drivers' licenses,
16 copies of issued drivers' licenses, certificates of title and
17 registration or other documents, and records or supporting papers on
18 file in the department that have been microfilmed or photographed or
19 are more than five years old. The director may destroy applications
20 for vehicle registrations that are renewal applications when the
21 computer record of the applications has been updated.

22 (2)(a) The director shall not destroy records of convictions or
23 adjudications of RCW 46.61.502, 46.61.503, 46.61.504, 46.61.520, and
24 46.61.522, or records of deferred prosecutions granted under RCW
25 10.05.120 and shall maintain such records permanently on file.

26 (b) The director shall not, within fifteen years from the date of
27 conviction or adjudication, destroy records if the offense was
28 originally charged as one of the offenses designated in (a) of this
29 subsection, convictions or adjudications of the following offenses:
30 RCW 46.61.500 or 46.61.5249 or any other violation that was
31 originally charged as one of the offenses designated in (a) of this
32 subsection.

33 (c) For purposes of RCW 46.52.101 and 46.52.130, offenses subject
34 to this subsection shall be considered "alcohol-related" offenses.

35 **Ignition interlock devices—Standards—Compliance**

36 **Sec. 11.** RCW 43.43.395 and 2013 2nd sp.s. c 35 s 9 are each
37 amended to read as follows:

1 (1) The state patrol shall by rule provide standards for the
2 certification, installation, repair, maintenance, monitoring,
3 inspection, and removal of ignition interlock devices, as defined
4 under RCW 46.04.215, and equipment as outlined under this section,
5 and may inspect the records and equipment of manufacturers and
6 vendors during regular business hours for compliance with statutes
7 and rules and may suspend or revoke certification for any
8 noncompliance.

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

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

26 (3)(a) An ignition interlock device must employ:

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

35 ~~(b) When reasonably available in the area, as determined by the
36 state patrol, an ignition interlock device must employ))~~;

37 (ii) Technology capable of taking a photo identification of the
38 user giving the breath sample and recording on the photo the time the
39 breath sample was given; and

1 (iii) Technology capable of providing the global positioning
2 coordinates at the time of each test sequence. Such coordinates must
3 be displayed within the data log that is downloaded by the
4 manufacturer and must be made available to the state patrol to be
5 used for circumvention and tampering investigations.

6 ((+e)) (b) To be certified, an ignition interlock device must:

7 (i) Meet or exceed the minimum test standards according to rules
8 adopted by the state patrol. Only a notarized statement from a
9 laboratory that is accredited and certified ((by)) under the current
10 edition of ISO (the international organization of standardization)
11 17025 standard for testing and calibration laboratories and is
12 capable of performing the tests specified will be accepted as proof
13 of meeting or exceeding the standards. The notarized statement must
14 include the name and signature of the person in charge of the tests
15 under the certification statement. The state patrol must adopt by
16 rule the required language of the certification statement that must,
17 at a minimum, outline that the testing meets or exceeds all
18 specifications listed in the federal register adopted in rule by the
19 state patrol; and

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

22 **Abstract of driving record—Access—Fee—Violations**

23 **Sec. 12.** RCW 46.52.130 and 2012 c 74 s 6 and 2012 c 73 s 1 are
24 each reenacted and amended to read as follows:

25 Upon a proper request, the department may furnish an abstract of
26 a person's driving record as permitted under this section.

27 (1) **Contents of abstract of driving record.** An abstract of a
28 person's driving record, whenever possible, must include:

29 (a) An enumeration of motor vehicle accidents in which the person
30 was driving, including:

31 (i) The total number of vehicles involved;

32 (ii) Whether the vehicles were legally parked or moving;

33 (iii) Whether the vehicles were occupied at the time of the
34 accident; and

35 (iv) Whether the accident resulted in a fatality;

36 (b) Any reported convictions, forfeitures of bail, or findings
37 that an infraction was committed based upon a violation of any motor
38 vehicle law;

1 (c) The status of the person's driving privilege in this state;
2 and

3 (d) Any reports of failure to appear in response to a traffic
4 citation or failure to respond to a notice of infraction served upon
5 the named individual by an arresting officer.

6 (2) **Release of abstract of driving record.** An abstract of a
7 person's driving record may be furnished to the following persons or
8 entities:

9 (a) **Named individuals.** (i) An abstract of the full driving record
10 maintained by the department may be furnished to the individual named
11 in the abstract.

12 (ii) Nothing in this section prevents a court from providing a
13 copy of the driver's abstract to the individual named in the abstract
14 or that named individual's attorney, provided that the named
15 individual has a pending or open infraction or criminal case in that
16 court. A pending case includes criminal cases that have not reached a
17 disposition by plea, stipulation, trial, or amended charge. An open
18 infraction or criminal case includes cases on probation, payment
19 agreement or subject to, or in collections. Courts may charge a
20 reasonable fee for the production and copying of the abstract for the
21 individual.

22 (b) **Employers or prospective employers.** (i)(A) An abstract of the
23 full driving record maintained by the department may be furnished to
24 an employer or prospective employer or an agent acting on behalf of
25 an employer or prospective employer of the named individual for
26 purposes related to driving by the individual as a condition of
27 employment or otherwise at the direction of the employer.

28 (B) Release of an abstract of the driving record of an employee
29 or prospective employee requires a statement signed by: (I) The
30 employee or prospective employee that authorizes the release of the
31 record; and (II) the employer attesting that the information is
32 necessary for employment purposes related to driving by the
33 individual as a condition of employment or otherwise at the direction
34 of the employer. If the employer or prospective employer authorizes
35 an agent to obtain this information on their behalf, this must be
36 noted in the statement.

37 (C) Upon request of the person named in the abstract provided
38 under this subsection, and upon that same person furnishing copies of
39 court records ruling that the person was not at fault in a motor
40 vehicle accident, the department must indicate on any abstract

1 provided under this subsection that the person was not at fault in
2 the motor vehicle accident.

3 (ii) In addition to the methods described in (b)(i) of this
4 subsection, the director may enter into a contractual agreement with
5 an employer or its agent for the purpose of reviewing the driving
6 records of existing employees for changes to the record during
7 specified periods of time. The department shall establish a fee for
8 this service, which must be deposited in the highway safety fund. The
9 fee for this service must be set at a level that will not result in a
10 net revenue loss to the state. Any information provided under this
11 subsection must be treated in the same manner and is subject to the
12 same restrictions as driving record abstracts.

13 (c) **Volunteer organizations.** (i) An abstract of the full driving
14 record maintained by the department may be furnished to a volunteer
15 organization or an agent for a volunteer organization for which the
16 named individual has submitted an application for a position that
17 would require driving by the individual at the direction of the
18 volunteer organization.

19 (ii) Release of an abstract of the driving record of a
20 prospective volunteer requires a statement signed by: (A) The
21 prospective volunteer that authorizes the release of the record; and
22 (B) the volunteer organization attesting that the information is
23 necessary for purposes related to driving by the individual at the
24 direction of the volunteer organization. If the volunteer
25 organization authorizes an agent to obtain this information on their
26 behalf, this must be noted in the statement.

27 (d) **Transit authorities.** An abstract of the full driving record
28 maintained by the department may be furnished to an employee or agent
29 of a transit authority checking prospective volunteer vanpool drivers
30 for insurance and risk management needs.

31 (e) **Insurance carriers.** (i) An abstract of the driving record
32 maintained by the department covering the period of not more than the
33 last three years may be furnished to an insurance company or its
34 agent:

35 (A) That has motor vehicle or life insurance in effect covering
36 the named individual;

37 (B) To which the named individual has applied; or

38 (C) That has insurance in effect covering the employer or a
39 prospective employer of the named individual.

40 (ii) The abstract provided to the insurance company must:

1 (A) Not contain any information related to actions committed by
2 law enforcement officers or firefighters, as both terms are defined
3 in RCW 41.26.030, or by Washington state patrol officers, while
4 driving official vehicles in the performance of their occupational
5 duty. This does not apply to any situation where the vehicle was used
6 in the commission of a misdemeanor or felony;

7 (B) Include convictions under RCW 46.61.5249 and 46.61.525,
8 except that the abstract must report the convictions only as
9 negligent driving without reference to whether they are for first or
10 second degree negligent driving; and

11 (C) Exclude any deferred prosecution under RCW 10.05.060, except
12 that if a person is removed from a deferred prosecution under RCW
13 10.05.090, the abstract must show the deferred prosecution as well as
14 the removal.

15 (iii) Any policy of insurance may not be canceled, nonrenewed,
16 denied, or have the rate increased on the basis of information
17 regarding an accident included in the abstract of a driving record,
18 unless the policyholder was determined to be at fault.

19 (iv) Any insurance company or its agent, for underwriting
20 purposes relating to the operation of commercial motor vehicles, may
21 not use any information contained in the abstract relative to any
22 person's operation of motor vehicles while not engaged in such
23 employment. Any insurance company or its agent, for underwriting
24 purposes relating to the operation of noncommercial motor vehicles,
25 may not use any information contained in the abstract relative to any
26 person's operation of commercial motor vehicles.

27 (v) The director may enter into a contractual agreement with an
28 insurance company or its agent for the limited purpose of reviewing
29 the driving records of existing policyholders for changes to the
30 record during specified periods of time. The department shall
31 establish a fee for this service, which must be deposited in the
32 highway safety fund. The fee for this service must be set at a level
33 that will not result in a net revenue loss to the state. Any
34 information provided under this subsection must be treated in the
35 same manner and is subject to the same restrictions as driving record
36 abstracts.

37 (f) **Alcohol/drug assessment or treatment agencies.** An abstract of
38 the driving record maintained by the department covering the period
39 of not more than the last five years may be furnished to an alcohol/
40 drug assessment or treatment agency approved by the department of

1 social and health services to which the named individual has applied
2 or been assigned for evaluation or treatment, for purposes of
3 assisting employees in making a determination as to what level of
4 treatment, if any, is appropriate, except that the abstract must:

5 (i) Also include records of alcohol-related offenses, as defined
6 in RCW 46.01.260(2), covering a period of not more than the last ten
7 years; and

8 (ii) Indicate whether an alcohol-related offense was originally
9 charged as a violation of either RCW 46.61.502 or 46.61.504.

10 (g) **Attorneys—City attorneys ((and)), county prosecuting**
11 **attorneys, and named individual's attorney of record.** An abstract of
12 the full driving record maintained by the department, including
13 whether a recorded violation is an alcohol-related offense, as
14 defined in RCW 46.01.260(2), that was originally charged as a
15 violation of either RCW 46.61.502 or 46.61.504, may be furnished to
16 city attorneys ((~~or~~)), county prosecuting attorneys, or the named
17 individual's attorney of record. City attorneys ((and)), county
18 prosecuting attorneys, or the named individual's attorney of record
19 may provide the driving record to alcohol/drug assessment or
20 treatment agencies approved by the department of social and health
21 services to which the named individual has applied or been assigned
22 for evaluation or treatment.

23 (h) **State colleges, universities, or agencies, or units of local**
24 **government.** An abstract of the full driving record maintained by the
25 department may be furnished to (i) state colleges, universities, or
26 agencies for employment and risk management purposes or (ii) units of
27 local government authorized to self-insure under RCW 48.62.031 for
28 employment and risk management purposes.

29 (i) **Superintendent of public instruction.** An abstract of the full
30 driving record maintained by the department may be furnished to the
31 superintendent of public instruction for review of public school bus
32 driver records. The superintendent or superintendent's designee may
33 discuss information on the driving record with an authorized
34 representative of the employing school district for employment and
35 risk management purposes.

36 (3) **Release to third parties prohibited.** Any person or entity
37 receiving an abstract of a person's driving record under subsection
38 (2)(b) through (i) of this section shall use the abstract exclusively
39 for his, her, or its own purposes or as otherwise expressly permitted

1 under this section, and shall not divulge any information contained
2 in the abstract to a third party.

3 (4) **Fee.** The director shall collect a thirteen dollar fee for
4 each abstract of a person's driving record furnished by the
5 department. Fifty percent of the fee must be deposited in the highway
6 safety fund, and fifty percent of the fee must be deposited according
7 to RCW 46.68.038.

8 (5) **Violation.** (a) Any negligent violation of this section is a
9 gross misdemeanor.

10 (b) Any intentional violation of this section is a class C
11 felony.

12 **Sec. 13.** RCW 9.94A.589 and 2002 c 175 s 7 are each amended to
13 read as follows:

14 (1)(a) Except as provided in (b) (~~(c)~~), (c), or (d) of this
15 subsection, whenever a person is to be sentenced for two or more
16 current offenses, the sentence range for each current offense shall
17 be determined by using all other current and prior convictions as if
18 they were prior convictions for the purpose of the offender score:
19 PROVIDED, That if the court enters a finding that some or all of the
20 current offenses encompass the same criminal conduct then those
21 current offenses shall be counted as one crime. Sentences imposed
22 under this subsection shall be served concurrently. Consecutive
23 sentences may only be imposed under the exceptional sentence
24 provisions of RCW 9.94A.535. "Same criminal conduct," as used in this
25 subsection, means two or more crimes that require the same criminal
26 intent, are committed at the same time and place, and involve the
27 same victim. This definition applies in cases involving vehicular
28 assault or vehicular homicide even if the victims occupied the same
29 vehicle.

30 (b) Whenever a person is convicted of two or more serious violent
31 offenses arising from separate and distinct criminal conduct, the
32 standard sentence range for the offense with the highest seriousness
33 level under RCW 9.94A.515 shall be determined using the offender's
34 prior convictions and other current convictions that are not serious
35 violent offenses in the offender score and the standard sentence
36 range for other serious violent offenses shall be determined by using
37 an offender score of zero. The standard sentence range for any
38 offenses that are not serious violent offenses shall be determined
39 according to (a) of this subsection. All sentences imposed under

1 ((~~(b)~~—of)) this subsection (1)(b) shall be served consecutively to
2 each other and concurrently with sentences imposed under (a) of this
3 subsection.

4 (c) If an offender is convicted under RCW 9.41.040 for unlawful
5 possession of a firearm in the first or second degree and for the
6 felony crimes of theft of a firearm or possession of a stolen
7 firearm, or both, the standard sentence range for each of these
8 current offenses shall be determined by using all other current and
9 prior convictions, except other current convictions for the felony
10 crimes listed in this subsection (1)(c), as if they were prior
11 convictions. The offender shall serve consecutive sentences for each
12 conviction of the felony crimes listed in this subsection (1)(c), and
13 for each firearm unlawfully possessed.

14 (d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6),
15 or 46.61.5055(4) shall be served consecutively to any sentences
16 imposed under RCW 46.20.740 and 46.20.750.

17 (2)(a) Except as provided in (b) of this subsection, whenever a
18 person while under sentence for conviction of a felony commits
19 another felony and is sentenced to another term of confinement, the
20 latter term shall not begin until expiration of all prior terms.

21 (b) Whenever a second or later felony conviction results in
22 community supervision with conditions not currently in effect, under
23 the prior sentence or sentences of community supervision the court
24 may require that the conditions of community supervision contained in
25 the second or later sentence begin during the immediate term of
26 community supervision and continue throughout the duration of the
27 consecutive term of community supervision.

28 (3) Subject to subsections (1) and (2) of this section, whenever
29 a person is sentenced for a felony that was committed while the
30 person was not under sentence for conviction of a felony, the
31 sentence shall run concurrently with any felony sentence which has
32 been imposed by any court in this or another state or by a federal
33 court subsequent to the commission of the crime being sentenced
34 unless the court pronouncing the current sentence expressly orders
35 that they be served consecutively.

36 (4) Whenever any person granted probation under RCW 9.95.210 or
37 9.92.060, or both, has the probationary sentence revoked and a prison
38 sentence imposed, that sentence shall run consecutively to any
39 sentence imposed pursuant to this chapter, unless the court

1 pronouncing the subsequent sentence expressly orders that they be
2 served concurrently.

3 (5) In the case of consecutive sentences, all periods of total
4 confinement shall be served before any partial confinement, community
5 restitution, community supervision, or any other requirement or
6 conditions of any of the sentences. Except for exceptional sentences
7 as authorized under RCW 9.94A.535, if two or more sentences that run
8 consecutively include periods of community supervision, the aggregate
9 of the community supervision period shall not exceed twenty-four
10 months.

11 **Sec. 14.** RCW 46.61.503 and 2013 c 3 s 34 are each amended to
12 read as follows:

13 (1) Notwithstanding any other provision of this title, a person
14 is guilty of driving or being in physical control of a motor vehicle
15 after consuming alcohol or marijuana if the person operates or is in
16 physical control of a motor vehicle within this state and the person:

17 (a) Is under the age of twenty-one; and

18 (b) Has, within two hours after operating or being in physical
19 control of the motor vehicle, either:

20 (i) An alcohol concentration of at least 0.02 but less than the
21 concentration specified in RCW 46.61.502, as shown by analysis of the
22 person's breath or blood made under RCW 46.61.506; or

23 (ii) A THC concentration above 0.00 but less than the
24 concentration specified in RCW 46.61.502, as shown by analysis of the
25 person's blood made under RCW 46.61.506.

26 (2) It is an affirmative defense to a violation of subsection (1)
27 of this section, which the defendant must prove by a preponderance of
28 the evidence, that the defendant consumed a sufficient quantity of
29 alcohol or marijuana after the time of driving or being in physical
30 control and before the administration of an analysis of the person's
31 breath or blood to cause the defendant's alcohol or THC concentration
32 to be in violation of subsection (1) of this section within two hours
33 after driving or being in physical control. The court shall not admit
34 evidence of this defense unless the defendant notifies the
35 prosecution prior to the earlier of: (a) Seven days prior to trial;
36 or (b) the omnibus or pretrial hearing in the case of the defendant's
37 intent to assert the affirmative defense.

38 (3) No person may be convicted under this section for being in
39 physical control of a motor vehicle and it is an affirmative defense

1 to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny
2 the privilege to drive, if, prior to being pursued by a law
3 enforcement officer, the person has moved the vehicle safely off the
4 roadway.

5 (4) Analyses of blood or breath samples obtained more than two
6 hours after the alleged driving or being in physical control may be
7 used as evidence that within two hours of the alleged driving or
8 being in physical control, a person had an alcohol or THC
9 concentration in violation of subsection (1) of this section.

10 ((+4)) (5) A violation of this section is a misdemeanor.

11 **Sec. 15.** RCW 46.20.755 and 2010 c 269 s 5 are each amended to
12 read as follows:

13 If a person is required, as part of the person's judgment and
14 sentence or as a condition of release, to install an ignition
15 interlock device on all motor vehicles operated by the person and the
16 person is under the jurisdiction of the municipality or county
17 probation or supervision department, the probation or supervision
18 department must verify the installation of the ignition interlock
19 device or devices. The municipality or county probation or
20 supervision department satisfies the requirement to verify the
21 installation or installations if the municipality or county probation
22 or supervision department receives written verification by one or
23 more companies doing business in the state that it has installed the
24 required device on a vehicle owned or operated by the person. The
25 municipality or county shall have no further obligation to supervise
26 the use of the ignition interlock device or devices by the person and
27 shall not be civilly liable for any injuries or damages caused by the
28 person for failing to use an ignition interlock device or for driving
29 under the influence of intoxicating liquor or any drug or being in
30 actual physical control of a motor vehicle under the influence of
31 intoxicating liquor or any drug.

32 **Sec. 16.** RCW 36.28A.320 and 2014 c 221 s 913 are each amended to
33 read as follows:

34 There is hereby established in the state treasury the 24/7
35 sobriety account. The account shall be maintained and administered by
36 the criminal justice training commission to reimburse the state for
37 costs associated with establishing and operating the 24/7 sobriety
38 program and the Washington association of sheriffs and police chiefs

1 for ongoing 24/7 sobriety program administration costs. (~~{The}~~) An
2 appropriation is not required for expenditures and the account is not
3 subject to allotment procedures under chapter 43.88 RCW. Funds in the
4 account may not lapse and must carry forward from biennium to
5 biennium. Interest earned by the account must be retained in the
6 account. The criminal justice training commission may accept for
7 deposit in the account money from donations, gifts, grants,
8 participation fees, and user fees or payments. (~~Expenditures from~~
9 the account shall be budgeted through the normal budget process.)

10 **Sec. 17.** RCW 36.28A.330 and 2013 2nd sp.s. c 35 s 26 are each
11 amended to read as follows:

12 The definitions in this section apply throughout RCW 36.28A.300
13 through 36.28A.390 unless the context clearly requires otherwise.

14 (1) "24/7 (~~electronic alcohol/drug monitoring~~) sobriety
15 program" means (~~the monitoring by the use of any electronic~~
16 ~~instrument that is capable of determining and monitoring the presence~~
17 ~~of alcohol or drugs in a person's body and includes any associated~~
18 ~~equipment a participant needs in order for the device to properly~~
19 ~~perform. Monitoring may also include mandatory urine analysis tests~~
20 ~~as ordered by the court)) a program in which a participant submits to
21 testing of the participant's blood, breath, urine, or other bodily
22 substance to determine the presence of alcohol or any drug as defined
23 in RCW 46.61.540. Testing must take place at a location or locations
24 designated by the participating agency, or, with the concurrence of
25 the Washington association of sheriffs and police chiefs, by an
26 alternate method.~~

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

30 (3) "Participating agency" means (~~a sheriff's office or a~~
31 ~~designated entity named by a sheriff that has agreed to participate~~
32 ~~in the 24/7 sobriety program by enrolling participants, administering~~
33 ~~one or more of the tests, and submitting reports to the Washington~~
34 ~~association of sheriffs and police chiefs)) any entity located in the
35 state of Washington that has a written agreement with the Washington
36 association of sheriffs and police chiefs to participate in the 24/7
37 sobriety program, and includes, but is not limited to, a sheriff, a
38 police chief, any other local, regional, or state corrections or
39 probation entity, and any other entity designated by a sheriff,~~

1 police chief, or any other local, regional, or state corrections or
2 probation entity to perform testing in the 24/7 sobriety program.

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

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

8 (b) The location of testing;

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

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

12 ~~((5) "24/7 sobriety program" means a twenty-four hour and seven
13 day a week sobriety program in which a participant submits to the
14 testing of the participant's blood, breath, urine, or other bodily
15 substances in order to determine the presence of alcohol, marijuana,
16 or any controlled substance in the participant's body.))~~

17 **Sec. 18.** RCW 36.28A.370 and 2013 2nd sp.s. c 35 s 30 are each
18 amended to read as follows:

19 ~~(1) ((Funds in the 24/7 sobriety account shall be distributed as
20 follows:~~

21 ~~(a)) Any daily user fee, installation fee, deactivation fee,
22 enrollment fee, or monitoring fee ((collected under the 24/7 sobriety
23 program shall)) must be collected by the ((sheriff or chief, or an
24 entity designated by the sheriff or chief, and deposited with the
25 county or city treasurer of the proper county or city, the proceeds
26 of which shall be applied)) participating agency and used ((only)) to
27 defray the ((recurring)) participating agency's costs of the 24/7
28 sobriety program ((including maintaining equipment, funding support
29 services, and ensuring compliance; and)).~~

30 ~~((b)) (2) Any participation fee must be collected ((in the
31 administration of testing under)) by the participating agency and
32 deposited in the state 24/7 sobriety ((program)) account to cover
33 24/7 sobriety program administration costs incurred by the Washington
34 association of sheriffs and police chiefs ((shall be collected by the
35 sheriff or chief, or an entity designated by the sheriff or chief,
36 and deposited in the 24/7 sobriety account)).~~

37 ~~((2)) (3) All applicable fees shall be paid by the participant
38 contemporaneously or in advance of the time when the fee becomes due;~~

1 however, cities and counties may subsidize or pay any applicable
2 fees.

3 (4) A city or county may accept donations, gifts, grants, and
4 other assistance to defray the participating agency's costs of the
5 24/7 sobriety program.

6 **Sec. 19.** RCW 36.28A.390 and 2013 2nd sp.s. c 35 s 32 are each
7 amended to read as follows:

8 (1) A general authority Washington peace officer, as defined in
9 RCW 10.93.020, who has probable cause to believe that a participant
10 has violated the terms of participation in the 24/7 sobriety program
11 may immediately take the participant into custody and cause him or
12 her to be held until an appearance before a judge on the next
13 judicial day.

14 (2) A participant who violates the terms of participation in the
15 24/7 sobriety program or does not pay the required fees or associated
16 costs pretrial or posttrial shall, at a minimum:

17 (a) Receive a written warning notice for a first violation;

18 (b) Serve ((a-term)) the lesser of two days imprisonment or if
19 posttrial, the entire remaining sentence imposed by the court for a
20 second violation;

21 (c) Serve ((a-term-of-up-to)) the lesser of five days
22 imprisonment or if posttrial, the entire remaining sentence imposed
23 by the court for a third violation;

24 (d) Serve ((a-term-of-up-to)) the lesser of ten days imprisonment
25 or if posttrial, the entire remaining sentence imposed by the court

26 for a fourth violation; and
27 (e) For a fifth or subsequent violation pretrial, the participant
28 shall abide by the order of the court. For posttrial participants,
29 the participant shall serve the entire remaining sentence imposed by
30 the court.

31 ~~((2) A sheriff or chief, or the designee of a sheriff or chief,~~
32 ~~who has probable cause to believe that a participant has violated the~~
33 ~~terms of participation in the 24/7 sobriety program or has not paid~~
34 ~~the required fees or associated costs shall immediately take the~~
35 ~~participant into custody and cause him or her to be held until an~~
36 ~~appearance before a judge on the next judicial day.)) (3) The court~~

37 may remove a participant from the 24/7 sobriety program at any time
38 for noncompliance with the terms of participation.

1 **Sec. 20.** RCW 10.21.015 and 2014 c 24 s 1 are each amended to
2 read as follows:

3 (1) Under this chapter, "pretrial release program" is any
4 program, either run directly by a county or city, or by a private or
5 public entity through contract with a county or city, into whose
6 custody an offender is released prior to trial and which agrees to
7 supervise the offender. As used in this section, "supervision"
8 includes, but is not limited to, work release, day monitoring, ((~~or~~))
9 electronic monitoring, or participation in a 24/7 sobriety program.

10 (2) A pretrial release program may not agree to supervise, or
11 accept into its custody, an offender who is currently awaiting trial
12 for a violent offense or sex offense, as defined in RCW 9.94A.030,
13 who has been convicted of one or more violent offenses or sex
14 offenses in the ten years before the date of the current offense,
15 unless the offender's release before trial was secured with a payment
16 of bail.

17 NEW SECTION. **Sec. 21.** A new section is added to chapter 18.130
18 RCW to read as follows:

19 It is not professional misconduct for a physician, registered
20 nurse, licensed practical nurse, nursing assistant as defined in
21 chapter 18.88A RCW, physician assistant as defined in chapter 18.71A
22 RCW, first responder as defined in chapter 18.73 RCW, emergency
23 medical technician as defined in chapter 18.73 RCW, health care
24 assistant as defined in chapter 18.135 RCW, or any technician trained
25 in withdrawing blood, to collect a blood sample without a person's
26 consent when the physician, registered nurse, licensed practical
27 nurse, nursing assistant as defined in chapter 18.88A RCW, physician
28 assistant as defined in chapter 18.71A RCW, first responder as
29 defined in chapter 18.73 RCW, emergency medical technician as defined
30 in chapter 18.73 RCW, health care assistant as defined in chapter
31 18.135 RCW, or any technician trained in withdrawing blood was
32 directed by a law enforcement officer to do so for the purpose of a
33 blood test under the provisions of a search warrant or exigent
34 circumstances: PROVIDED, That nothing in this section shall relieve a
35 physician, registered nurse, licensed practical nurse, nursing
36 assistant as defined in chapter 18.88A RCW, physician assistant as
37 defined in chapter 18.71A RCW, first responder as defined in chapter
38 18.73 RCW, emergency medical technician as defined in chapter 18.73
39 RCW, health care assistant as defined in chapter 18.135 RCW, a

1 forensic phlebotomist under section 23 of this act, or any technician
2 trained in withdrawing blood from professional discipline arising
3 from the use of improper procedures or from failing to exercise the
4 required standard of care.

5 NEW SECTION. **Sec. 22.** A new section is added to chapter 43.70
6 RCW to read as follows:

7 (1) The secretary, in consultation with health profession boards
8 and commissions, the Washington state criminal justice training
9 commission, and the Washington state patrol, shall establish by rule
10 the administrative procedures and administrative requirements for
11 initial issue, renewal, and reissue of a credential for forensic
12 phlebotomists as defined in section 23 of this act. Failure to renew
13 invalidates the credential and all privileges granted by the
14 credential. Administrative procedures and administrative requirements
15 do not include establishing, monitoring, and enforcing qualifications
16 for licensure, scope or standards of practice, continuing competency
17 mechanisms, and discipline when such authority is authorized in
18 statute to a health profession board or commission or to the criminal
19 justice training commission. For the purposes of this section, "in
20 consultation with" means providing an opportunity for meaningful
21 participation in development of rules consistent with processes set
22 forth in RCW 34.05.310.

23 (2) Notwithstanding any provision of law to the contrary that
24 provides for a licensing period for any type of license subject to
25 this chapter including those under RCW 18.130.040, the secretary may,
26 from time to time, extend or otherwise modify the duration of any
27 licensing, certification, or registration period, whether an initial
28 or renewal period, if the secretary determines that it would result
29 in a more economical or efficient operation of state government and
30 that the public health, safety, or welfare would not be substantially
31 adversely affected thereby. However, no license, certification, or
32 registration may be issued or approved for a period in excess of four
33 years, without renewal. Such extension, reduction, or other
34 modification of a licensing, certification, or registration period
35 shall be by rule or regulation of the department adopted in
36 accordance with the provisions of chapter 34.05 RCW. Such rules and
37 regulations may provide a method for imposing and collecting such
38 additional proportional fee as may be required for the extended or
39 modified period.

1 NEW SECTION. **Sec. 23.** A new section is added to chapter 46.04
2 RCW to read as follows:

3 "Forensic phlebotomist" means a police officer, law enforcement
4 officer, or employee of a correctional facility or detention
5 facility, who completed a venipuncture training program required
6 under section 22 of this act and who is collecting a blood sample for
7 forensic testing pursuant to a search warrant, a waiver of the
8 warrant requirement, or exigent circumstances.

9 **Sec. 24.** RCW 46.61.506 and 2013 c 3 s 37 are each amended to
10 read as follows:

11 (1) Upon the trial of any civil or criminal action or proceeding
12 arising out of acts alleged to have been committed by any person
13 while driving or in actual physical control of a vehicle while under
14 the influence of intoxicating liquor or any drug, if the person's
15 alcohol concentration is less than 0.08 or the person's THC
16 concentration is less than 5.00, it is evidence that may be
17 considered with other competent evidence in determining whether the
18 person was under the influence of intoxicating liquor or any drug.

19 (2)(a) The breath analysis of the person's alcohol concentration
20 shall be based upon grams of alcohol per two hundred ten liters of
21 breath.

22 (b) The blood analysis of the person's THC concentration shall be
23 based upon nanograms per milliliter of whole blood.

24 (c) The foregoing provisions of this section shall not be
25 construed as limiting the introduction of any other competent
26 evidence bearing upon the question whether the person was under the
27 influence of intoxicating liquor or any drug.

28 (3) Analysis of the person's blood or breath to be considered
29 valid under the provisions of this section or RCW 46.61.502 or
30 46.61.504 shall have been performed according to methods approved by
31 the state toxicologist and by an individual possessing a valid permit
32 issued by the state toxicologist for this purpose. The state
33 toxicologist is directed to approve satisfactory techniques or
34 methods, to supervise the examination of individuals to ascertain
35 their qualifications and competence to conduct such analyses, and to
36 issue permits which shall be subject to termination or revocation at
37 the discretion of the state toxicologist.

38 (4)(a) A breath test performed by any instrument approved by the
39 state toxicologist shall be admissible at trial or in an

1 administrative proceeding if the prosecution or department produces
2 prima facie evidence of the following:

3 (i) The person who performed the test was authorized to perform
4 such test by the state toxicologist;

5 (ii) The person being tested did not vomit or have anything to
6 eat, drink, or smoke for at least fifteen minutes prior to
7 administration of the test;

8 (iii) The person being tested did not have any foreign
9 substances, not to include dental work, fixed or removable, in his or
10 her mouth at the beginning of the fifteen-minute observation period;

11 (iv) Prior to the start of the test, the temperature of any
12 liquid simulator solution utilized as an external standard, as
13 measured by a thermometer approved of by the state toxicologist was
14 thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

15 (v) The internal standard test resulted in the message
16 "verified";

17 (vi) The two breath samples agree to within plus or minus ten
18 percent of their mean to be determined by the method approved by the
19 state toxicologist;

20 (vii) The result of the test of the liquid simulator solution
21 external standard or dry gas external standard result did lie
22 between .072 to .088 inclusive; and

23 (viii) All blank tests gave results of .000.

24 (b) For purposes of this section, "prima facie evidence" is
25 evidence of sufficient circumstances that would support a logical and
26 reasonable inference of the facts sought to be proved. In assessing
27 whether there is sufficient evidence of the foundational facts, the
28 court or administrative tribunal is to assume the truth of the
29 prosecution's or department's evidence and all reasonable inferences
30 from it in a light most favorable to the prosecution or department.

31 (c) Nothing in this section shall be deemed to prevent the
32 subject of the test from challenging the reliability or accuracy of
33 the test, the reliability or functioning of the instrument, or any
34 maintenance procedures. Such challenges, however, shall not preclude
35 the admissibility of the test once the prosecution or department has
36 made a prima facie showing of the requirements contained in (a) of
37 this subsection. Instead, such challenges may be considered by the
38 trier of fact in determining what weight to give to the test result.

39 (5) When a blood test is administered under the provisions of RCW
40 46.20.308, the withdrawal of blood for the purpose of determining its

1 alcoholic or drug content may be performed only by a physician(~~(, a~~
2 ~~registered nurse, a licensed practical nurse, a nursing assistant as~~
3 ~~defined in chapter 18.88A RCW, a physician assistant as defined in~~
4 ~~chapter 18.71A RCW, a first responder as defined in chapter 18.73~~
5 ~~RCW, an emergency medical technician as defined in chapter 18.73 RCW,~~
6 ~~a health care assistant as defined in chapter 18.135 RCW, or any~~
7 ~~technician trained in withdrawing blood)) licensed under chapter
8 18.71 RCW; an osteopathic physician licensed under chapter 18.57 RCW;
9 a registered nurse, licensed practical nurse, or advanced registered
10 nurse practitioner licensed under chapter 18.79 RCW; a physician
11 assistant licensed under chapter 18.71A RCW; an osteopathic physician
12 assistant licensed under chapter 18.57A RCW; an advanced emergency
13 medical technician or paramedic licensed under chapter 18.73 RCW;
14 until July 1, 2016, a health care assistant certified under chapter
15 18.135 RCW; or a medical assistant-certified or medical assistant-
16 phlebotomist certified under chapter 18.360 RCW. This limitation
17 shall not apply to the taking of breath specimens.~~

18 (6) The person tested may have a (~~(physician))~~ licensed or
19 certified health care provider listed in subsection (5) of this
20 section, or a qualified technician, chemist, (~~(registered nurse,))~~ or
21 other qualified person of his or her own choosing administer one or
22 more tests in addition to any administered at the direction of a law
23 enforcement officer. The test will be admissible if the person
24 establishes the general acceptability of the testing technique or
25 method. The failure or inability to obtain an additional test by a
26 person shall not preclude the admission of evidence relating to the
27 test or tests taken at the direction of a law enforcement officer.

28 (7) Upon the request of the person who shall submit to a test or
29 tests at the request of a law enforcement officer, full information
30 concerning the test or tests shall be made available to him or her or
31 his or her attorney.

32 **Sec. 25.** RCW 46.61.508 and 1977 ex.s. c 143 s 1 are each amended
33 to read as follows:

34 No physician(~~(, registered nurse, qualified technician))~~ licensed
35 under chapter 18.71 RCW; osteopathic physician licensed under chapter
36 18.57 RCW; registered nurse, licensed practical nurse, or advanced
37 registered nurse practitioner licensed under chapter 18.79 RCW;
38 physician assistant licensed under chapter 18.71A RCW; osteopathic
39 physician assistant licensed under chapter 18.57A RCW; advanced

1 emergency medical technician or paramedic licensed under chapter
2 18.73 RCW; until July 1, 2016, health care assistant certified under
3 chapter 18.135 RCW; or medical assistant-certified or medical
4 assistant-phlebotomist certified under chapter 18.360 RCW, or
5 hospital, or duly licensed clinical laboratory employing or utilizing
6 services of such (~~physician, registered nurse, or qualified~~
7 ~~technician~~)) licensed or certified health care provider, shall incur
8 any civil or criminal liability as a result of the act of withdrawing
9 blood from any person when directed by a law enforcement officer to
10 do so for the purpose of a blood test under the provisions of a
11 search warrant, a waiver of the search warrant requirement, exigent
12 circumstances, any other authority of law, or RCW 46.20.308, as now
13 or hereafter amended: PROVIDED, That nothing in this section shall
14 relieve (~~any physician, registered nurse, qualified technician~~)
15 such licensed or certified health care provider, or hospital or duly
16 licensed clinical laboratory from civil liability arising from the
17 use of improper procedures or failing to exercise the required
18 standard of care.

19 **Sec. 26.** RCW 46.61.504 and 2013 c 3 s 35 are each amended to
20 read as follows:

21 (1) A person is guilty of being in actual physical control of a
22 motor vehicle while under the influence of intoxicating liquor or any
23 drug if the person has actual physical control of a vehicle within
24 this state:

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

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

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

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

37 (2) The fact that a person charged with a violation of this
38 section is or has been entitled to use a drug under the laws of this
39 state does not constitute a defense against any charge of violating

1 this section. No person may be convicted under this section and it is
2 an affirmative defense to any action pursuant to RCW 46.20.308 to
3 suspend, revoke, or deny the privilege to drive if, prior to being
4 pursued by a law enforcement officer, the person has moved the
5 vehicle safely off the roadway.

6 (3)(a) It is an affirmative defense to a violation of subsection
7 (1)(a) of this section which the defendant must prove by a
8 preponderance of the evidence that the defendant consumed a
9 sufficient quantity of alcohol after the time of being in actual
10 physical control of the vehicle and before the administration of an
11 analysis of the person's breath or blood to cause the defendant's
12 alcohol concentration to be 0.08 or more within two hours after being
13 in such control. The court shall not admit evidence of this defense
14 unless the defendant notifies the prosecution prior to the omnibus or
15 pretrial hearing in the case of the defendant's intent to assert the
16 affirmative defense.

17 (b) It is an affirmative defense to a violation of subsection
18 (1)(b) of this section, which the defendant must prove by a
19 preponderance of the evidence, that the defendant consumed a
20 sufficient quantity of marijuana after the time of being in actual
21 physical control of the vehicle and before the administration of an
22 analysis of the person's blood to cause the defendant's THC
23 concentration to be 5.00 or more within two hours after being in
24 control of the vehicle. The court shall not admit evidence of this
25 defense unless the defendant notifies the prosecution prior to the
26 omnibus or pretrial hearing in the case of the defendant's intent to
27 assert the affirmative defense.

28 (4)(a) Analyses of blood or breath samples obtained more than two
29 hours after the alleged being in actual physical control of a vehicle
30 may be used as evidence that within two hours of the alleged being in
31 such control, a person had an alcohol concentration of 0.08 or more
32 in violation of subsection (1)(a) of this section, and in any case in
33 which the analysis shows an alcohol concentration above 0.00 may be
34 used as evidence that a person was under the influence of or affected
35 by intoxicating liquor or any drug in violation of subsection (1)(c)
36 or (d) of this section.

37 (b) Analyses of blood samples obtained more than two hours after
38 the alleged being in actual physical control of a vehicle may be used
39 as evidence that within two hours of the alleged being in control of
40 the vehicle, a person had a THC concentration of 5.00 or more in

1 violation of subsection (1)(b) of this section, and in any case in
2 which the analysis shows a THC concentration above 0.00 may be used
3 as evidence that a person was under the influence of or affected by
4 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

9 (a) The person has four or more prior offenses within ten years
10 as defined in RCW 46.61.5055; or

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

12 (i) Vehicular homicide while under the influence of intoxicating
13 liquor or any drug, RCW 46.61.520(1)(a);

14 (ii) Vehicular assault while under the influence of intoxicating
15 liquor or any drug, RCW 46.61.522(1)(b);

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

18 (iv) A violation of this subsection (6) or RCW 46.61.502(6).

19 **Sec. 27.** RCW 18.360.030 and 2012 c 153 s 4 are each amended to
20 read as follows:

21 (1) The secretary shall adopt rules specifying the minimum
22 qualifications for a medical assistant-certified, medical assistant-
23 hemodialysis technician, and medical assistant-phlebotomist. The
24 qualifications for a medical assistant-hemodialysis technician must
25 be equivalent to the qualifications for hemodialysis technicians
26 regulated pursuant to chapter 18.135 RCW as of January 1, 2012.

27 (2) The secretary shall adopt rules that establish the minimum
28 requirements necessary for a health care practitioner, clinic, or
29 group practice to endorse a medical assistant as qualified to perform
30 the duties authorized by this chapter and be able to file an
31 attestation of that endorsement with the department.

32 (3) The medical quality assurance commission, the board of
33 osteopathic medicine and surgery, the podiatric medical board, the
34 nursing care quality assurance commission, the board of naturopathy,
35 and the optometry board shall each review and identify other
36 specialty assistive personnel not included in this chapter and the
37 tasks they perform. The department of health shall compile the
38 information from each disciplining authority listed in this

1 subsection and submit the compiled information to the legislature no
2 later than December 15, 2012.

3 (4) The secretary shall adopt rules specifying requirements for
4 delegation, training, and supervision for a medical assistant-
5 phlebotomist who is also a local, state, federal, or tribal law
6 enforcement employee or correctional employee, and whose practice is
7 limited to collecting blood samples for forensic testing under the
8 provisions of RCW 46.20.308 or pursuant to a search warrant, a valid
9 waiver of the warrant requirement, when exigent circumstances exist,
10 or under any other authority of law."

E2SHB 1276 - S AMD 391

By Senators Padden, Keiser

WITHDRAWN 4/15/2015

11 On page 1, line 1 of the title, after "driving;" strike the
12 remainder of the title and insert "amending RCW 10.21.055, 46.20.385,
13 46.20.740, 46.20.308, 46.20.750, 46.25.120, 46.61.5055, 46.01.260,
14 43.43.395, 9.94A.589, 46.61.503, 46.20.755, 36.28A.320, 36.28A.330,
15 36.28A.370, 36.28A.390, 10.21.015, 46.61.506, 46.61.508, 46.61.504,
16 and 18.360.030; reenacting and amending RCW 46.52.130; adding a new
17 section to chapter 46.61 RCW; adding a new section to chapter 18.130
18 RCW; adding a new section to chapter 43.70 RCW; adding a new section
19 to chapter 46.04 RCW; creating a new section; and prescribing
20 penalties."

EFFECT: (1) The 24/7 sobriety program remains a pilot program.

(2) First-time DUI or PC offenders are not eligible for the 24/7 sobriety program. The 24/7 sobriety program is used for DUI or PC offenders only.

(3) The secretary of the department of health, in consultation with other health profession boards and commissions, the Washington criminal justice training commission, and the Washington state patrol, must establish rules, administrative procedures, and requirements for the licensing, certification, and registration of forensic phlebotomists.

(4) It is not professional misconduct for any technician trained in withdrawing blood, to collect a blood sample without a person's consent when these professionals are directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant, exigent circumstances, or other authority of law.

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