

CERTIFICATION OF ENROLLMENT

SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1276

Chapter 3, Laws of 2015

(partial veto)

64th Legislature
2015 2nd Special Session

IMPAIRED DRIVING

EFFECTIVE DATE: 9/26/2015

Passed by the House June 11, 2015
Yeas 88 Nays 2

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate June 25, 2015
Yeas 38 Nays 6

BRAD OWEN

President of the Senate

Approved June 30, 2015 3:55 PM, with
the exception of Section 25, which is
vetoed.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of
the House of Representatives of the
State of Washington, do hereby
certify that the attached is **SECOND
ENGROSSED SECOND SUBSTITUTE HOUSE
BILL 1276** as passed by House of
Representatives and the Senate on
the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

June 30, 2015

**Secretary of State
State of Washington**

SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1276

Passed Legislature - 2015 2nd Special Session

State of Washington

64th Legislature

2015 Regular Session

By House General Government & Information Technology (originally sponsored by Representatives Klippert, Goodman, Hayes, Orwall, Moscoso, Pettigrew, Zeiger, Kilduff, and Fey)

READ FIRST TIME 02/27/15.

1 AN ACT Relating to impaired driving; amending RCW 10.21.055,
2 46.20.385, 46.20.740, 46.20.308, 46.20.750, 46.25.120, 46.61.5055,
3 46.01.260, 43.43.395, 46.52.130, 9.94A.589, 46.61.503, 46.20.755,
4 36.28A.320, 36.28A.330, 36.28A.370, 36.28A.390, 10.21.015, 46.61.506,
5 46.61.508, 46.61.504, and 18.360.030; adding a new section to chapter
6 46.61 RCW; adding a new section to chapter 18.130 RCW; creating a new
7 section; and prescribing penalties.

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

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

1 **Conditions of release—Requirements—Ignition interlock device—24/7**
2 **sobriety program monitoring**

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

5 (1)(a) When any person charged with (~~(or arrested for)~~) a
6 violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in
7 which the person has a prior offense as defined in RCW 46.61.5055 and
8 the current offense involves alcohol, is released from custody
9 (~~(before)~~) at arraignment or trial on bail or personal recognizance,
10 the court authorizing the release shall require, as a condition of
11 release(~~(r)~~) that person (~~(to a)~~) comply with one of the following
12 four requirements:

13 (i) Have a functioning ignition interlock device installed on all
14 motor vehicles operated by the person, with proof of installation
15 filed with the court by the person or the certified interlock
16 provider within five business days of the date of release from
17 custody or as soon thereafter as determined by the court based on
18 availability within the jurisdiction; or (~~(b)~~)

19 (ii) Comply with 24/7 sobriety program monitoring, as defined in
20 RCW 36.28A.330; or (~~(b)~~)

21 (iii) Have an ignition interlock device on all motor vehicles
22 operated by the person pursuant to (a)(i) of this subsection and
23 submit to 24/7 sobriety program monitoring pursuant to (a)(ii) of
24 this subsection, if available, or alcohol monitoring, at the expense
25 of the person, as provided in RCW 46.61.5055(5) (b) and (c); or

26 (iv) Have an ignition interlock device on all motor vehicles
27 operated by the person and that such person agrees not to operate any
28 motor vehicle without an ignition interlock device as required by the
29 court. Under this subsection (1)(a)(iv), the person must file a sworn
30 statement with the court upon release at arraignment that states the
31 person will not operate any motor vehicle without an ignition
32 interlock device while the ignition interlock restriction is imposed
33 by the court. Such person must also submit to 24/7 sobriety program
34 monitoring pursuant to (a)(ii) of this subsection, if available, or
35 alcohol monitoring, at the expense of the person, as provided in RCW
36 46.61.5055(5) (b) and (c).

37 (b) The court shall immediately notify the department of
38 licensing when an ignition interlock restriction is imposed: (i) As a
39 condition of release pursuant to (a) of this subsection; or (ii) in

1 instances where a person is charged with, or convicted of, a
2 violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, and
3 the offense involves alcohol. If the court imposes an ignition
4 interlock restriction, the department of licensing shall attach or
5 imprint a notation on the driving record of any person restricted
6 under this section stating that the person may operate only a motor
7 vehicle equipped with a functioning ignition interlock device.

8 (2)(a) Upon acquittal or dismissal of all pending or current
9 charges relating to a violation of RCW 46.61.502, 46.61.504,
10 46.61.520, or 46.61.522, or equivalent local ordinance, the court
11 shall authorize removal of the ignition interlock device and lift any
12 requirement to comply with electronic alcohol/drug monitoring imposed
13 under subsection (1) of this section. Nothing in this section limits
14 the authority of the court or department under RCW 46.20.720.

15 (b) If the court authorizes removal of an ignition interlock
16 device imposed under (a) of this subsection the court shall
17 immediately notify the department of licensing regarding the lifting
18 of the ignition interlock restriction and the department of licensing
19 shall release any attachment, imprint, or notation on such person's
20 driving record relating to the ignition interlock requirement imposed
21 under this section.

22 (3) When an ignition interlock restriction imposed as a condition
23 of release is canceled, the court shall provide a defendant with a
24 written order confirming release of the restriction. The written
25 order shall serve as proof of release of the restriction until which
26 time the department of licensing updates the driving record.

27 **Ignition interlock driver's license—Application—Eligibility—**
28 **Cancellation—Costs—Rules**

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

31 (1)(a) ~~((Beginning January 1, 2009,))~~ Any person licensed under
32 this chapter or who has a valid driver's license from another state,
33 who is convicted of: (i) A violation of RCW 46.61.502 or 46.61.504 or
34 an equivalent local or out-of-state statute or ordinance, or (ii) a
35 violation of RCW 46.61.520(1)(a) or an equivalent local or out-of-
36 state statute or ordinance, or (iii) a conviction for a violation of
37 RCW 46.61.520(1) (b) or (c) if the conviction is the result of a
38 charge that was originally filed as a violation of RCW

1 46.61.520(1)(a), or (iv) RCW 46.61.522(1)(b) or an equivalent local
2 or out-of-state statute or ordinance, or (v) RCW 46.61.522(1) (a) or
3 (c) if the conviction is the result of a charge that was originally
4 filed as a violation of RCW 46.61.522(1)(b) committed while under the
5 influence of intoxicating liquor or any drug, or (vi) who has had or
6 will have his or her license suspended, revoked, or denied under RCW
7 46.20.3101, or who is otherwise permitted under subsection (8) of
8 this section, may submit to the department an application for an
9 ignition interlock driver's license. The department, upon receipt of
10 the prescribed fee and upon determining that the petitioner is
11 eligible to receive the license, may issue an ignition interlock
12 driver's license.

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

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

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

35 (ii) Subject to any periodic renewal requirements established by
36 the department under this section and subject to any applicable
37 compliance requirements under this chapter or other law, an ignition
38 interlock driver's license granted upon a suspension or revocation
39 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
40 portion of any concurrent or consecutive suspension or revocation

1 that may be imposed as the result of administrative action and
2 criminal conviction arising out of the same incident.

3 (iii) The time period during which the person is licensed under
4 this section shall apply on a day-for-day basis toward satisfying the
5 period of time the ignition interlock device restriction is required
6 under RCW 46.20.720 (~~and~~), 46.61.5055, 10.05.140, 46.61.500(3), and
7 46.61.5249(4). Beginning with incidents occurring on or after
8 September 1, 2011, when calculating the period of time for the
9 restriction under RCW 46.20.720 (2) or (3), the department must also
10 give the person a day-for-day credit for the time period, beginning
11 from the date of the incident, during which the person kept an
12 ignition interlock device installed on all vehicles the person
13 operates. For the purposes of this subsection (1)(c)(iii), the term
14 "all vehicles" does not include vehicles that would be subject to the
15 employer exception under RCW 46.20.720(3).

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

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

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

36 (5) The director shall cancel an ignition interlock driver's
37 license after receiving notice that the holder thereof has been
38 convicted of operating a motor vehicle in violation of its
39 restrictions, no longer meets the eligibility requirements, or has
40 been convicted of or found to have committed a separate offense or

1 any other act or omission that under this chapter would warrant
2 suspension or revocation of a regular driver's license. The
3 department must give notice of the cancellation as provided under RCW
4 46.20.245. A person whose ignition interlock driver's license has
5 been canceled under this section may reapply for a new ignition
6 interlock driver's license if he or she is otherwise qualified under
7 this section and pays the fee required under RCW 46.20.380.

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

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

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

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

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

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

3 (1) The department shall attach or imprint a notation on the
4 driving record of any person restricted under RCW 46.20.720,
5 46.61.5055, or 10.05.140 stating that the person may operate only a
6 motor vehicle equipped with a functioning ignition interlock device.
7 The department shall determine the person's eligibility for licensing
8 based upon written verification by a company doing business in the
9 state that it has installed the required device on a vehicle owned or
10 operated by the person seeking reinstatement. If, based upon
11 notification from the interlock provider or otherwise, the department
12 determines that an ignition interlock required under this section is
13 no longer installed or functioning as required, the department shall
14 suspend the person's license or privilege to drive. Whenever the
15 license or driving privilege of any person is suspended or revoked as
16 a result of noncompliance with an ignition interlock requirement, the
17 suspension shall remain in effect until the person provides notice
18 issued by a company doing business in the state that a vehicle owned
19 or operated by the person is equipped with a functioning ignition
20 interlock device.

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

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

29 **Implied consent—Test refusal—Procedures**

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

32 (1) Any person who operates a motor vehicle within this state is
33 deemed to have given consent, subject to the provisions of RCW
34 46.61.506, to a test or tests of his or her breath for the purpose of
35 determining the alcohol concentration(~~(, THC concentration, or~~
36 ~~presence of any drug)) in his or her breath if arrested for any
37 offense where, at the time of the arrest, the arresting officer has
38 reasonable grounds to believe the person had been driving or was in~~

1 actual physical control of a motor vehicle while under the influence
2 of intoxicating liquor or any drug or was in violation of RCW
3 46.61.503. (~~Neither consent nor this section precludes a police~~
4 ~~officer from obtaining a search warrant for a person's breath or~~
5 ~~blood.~~)

6 (2) The test or tests of breath shall be administered at the
7 direction of a law enforcement officer having reasonable grounds to
8 believe the person to have been driving or in actual physical control
9 of a motor vehicle within this state while under the influence of
10 intoxicating liquor or any drug or the person to have been driving or
11 in actual physical control of a motor vehicle while having alcohol
12 (~~or THC~~) in a concentration in violation of RCW 46.61.503 in his or
13 her system and being under the age of twenty-one. Prior to
14 administering a breath test pursuant to this section, the officer
15 shall inform the person of his or her right under this section to
16 refuse the breath test, and of his or her right to have additional
17 tests administered by any qualified person of his or her choosing as
18 provided in RCW 46.61.506. The officer shall warn the driver, in
19 substantially the following language, that:

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

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

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

28 (i) The driver is age twenty-one or over and the test indicates
29 either that the alcohol concentration of the driver's breath is 0.08
30 or more (~~or that the THC concentration of the driver's blood is 5.00~~
31 ~~or more~~); or

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

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

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

1 (3) (~~Except as provided in this section, the test administered~~
2 ~~shall be of the breath only. If an individual is unconscious or is~~
3 ~~under arrest for the crime of felony driving under the influence of~~
4 ~~intoxicating liquor or drugs under RCW 46.61.502(6), felony physical~~
5 ~~control of a motor vehicle while under the influence of intoxicating~~
6 ~~liquor or any drug under RCW 46.61.504(6), vehicular homicide as~~
7 ~~provided in RCW 46.61.520, or vehicular assault as provided in RCW~~
8 ~~46.61.522, or if an individual is under arrest for the crime of~~
9 ~~driving while under the influence of intoxicating liquor or drugs as~~
10 ~~provided in RCW 46.61.502, which arrest results from an accident in~~
11 ~~which there has been serious bodily injury to another person, a~~
12 ~~breath or blood test may be administered without the consent of the~~
13 ~~individual so arrested pursuant to a search warrant, a valid waiver~~
14 ~~of the warrant requirement, or when exigent circumstances exist.~~

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

21 (4) Nothing in subsection (1), (2), or (3) of this section
22 precludes a law enforcement officer from obtaining a person's blood
23 to test for alcohol, marijuana, or any drug, pursuant to a search
24 warrant, a valid waiver of the warrant requirement, when exigent
25 circumstances exist, or under any other authority of law. Any blood
26 drawn for the purpose of determining the person's alcohol, marijuana
27 levels, or any drug, is drawn pursuant to this section when the
28 officer has reasonable grounds to believe that the person is in
29 physical control or driving a vehicle under the influence or in
30 violation of RCW 46.61.503.

31 (5) If, after arrest and after (~~the~~) any other applicable
32 conditions and requirements of this section have been satisfied, a
33 test or tests of the person's blood or breath is administered and the
34 test results indicate that the alcohol concentration of the person's
35 breath or blood is 0.08 or more, or the THC concentration of the
36 person's blood is 5.00 or more, if the person is age twenty-one or
37 over, or that the alcohol concentration of the person's breath or
38 blood is 0.02 or more, or the THC concentration of the person's blood
39 is above 0.00, if the person is under the age of twenty-one, or the
40 person refuses to submit to a test, the arresting officer or other

1 law enforcement officer at whose direction any test has been given,
2 or the department, where applicable, if the arrest results in a test
3 of the person's blood, shall:

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

8 (b) Serve notice in writing on the person on behalf of the
9 department of his or her right to a hearing, specifying the steps he
10 or she must take to obtain a hearing as provided by subsection (7) of
11 this section (~~and that the person waives the right to a hearing if~~
12 ~~he or she receives an ignition interlock driver's license));~~

13 (c) Serve notice in writing that the license or permit, if any,
14 is a temporary license that is valid for sixty days from the date of
15 arrest or from the date notice has been given in the event notice is
16 given by the department following a blood test, or until the
17 suspension, revocation, or denial of the person's license, permit, or
18 privilege to drive is sustained at a hearing pursuant to subsection
19 (7) of this section, whichever occurs first. No temporary license is
20 valid to any greater degree than the license or permit that it
21 replaces; and

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

26 (i) That the officer had reasonable grounds to believe the
27 arrested person had been driving or was in actual physical control of
28 a motor vehicle within this state while under the influence of
29 intoxicating liquor or drugs, or both, or was under the age of
30 twenty-one years and had been driving or was in actual physical
31 control of a motor vehicle while having an alcohol or THC
32 concentration in violation of RCW 46.61.503;

33 (ii) That after receipt of ~~((the))~~ any applicable warnings
34 required by subsection (2) of this section the person refused to
35 submit to a test of his or her breath, or a test was administered and
36 the results indicated that the alcohol concentration of the person's
37 breath or blood was 0.08 or more, or the THC concentration of the
38 person's blood was 5.00 or more, if the person is age twenty-one or
39 over, or that the alcohol concentration of the person's breath or
40 blood was 0.02 or more, or the THC concentration of the person's

1 blood was above 0.00, if the person is under the age of twenty-one;
2 and

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

5 (6) The department of licensing, upon the receipt of a sworn
6 report or report under a declaration authorized by RCW 9A.72.085
7 under subsection (5)(d) of this section, shall suspend, revoke, or
8 deny the person's license, permit, or privilege to drive or any
9 nonresident operating privilege, as provided in RCW 46.20.3101, such
10 suspension, revocation, or denial to be effective beginning sixty
11 days from the date of arrest or from the date notice has been given
12 in the event notice is given by the department following a blood
13 test, or when sustained at a hearing pursuant to subsection (7) of
14 this section, whichever occurs first.

15 (7) A person receiving notification under subsection (5)(b) of
16 this section may, within twenty days after the notice has been given,
17 request in writing a formal hearing before the department. The person
18 shall pay a fee of three hundred seventy-five dollars as part of the
19 request. If the request is mailed, it must be postmarked within
20 twenty days after receipt of the notification. Upon timely receipt of
21 such a request for a formal hearing, including receipt of the
22 required three hundred seventy-five dollar fee, the department shall
23 afford the person an opportunity for a hearing. The department may
24 waive the required three hundred seventy-five dollar fee if the
25 person is an indigent as defined in RCW 10.101.010. Except as
26 otherwise provided in this section, the hearing is subject to and
27 shall be scheduled and conducted in accordance with RCW 46.20.329 and
28 46.20.332. The hearing shall be conducted in the county of the
29 arrest, except that all or part of the hearing may, at the discretion
30 of the department, be conducted by telephone or other electronic
31 means. The hearing shall be held within sixty days following the
32 arrest or following the date notice has been given in the event
33 notice is given by the department following a blood test, unless
34 otherwise agreed to by the department and the person, in which case
35 the action by the department shall be stayed, and any valid temporary
36 license (~~marked~~) under subsection (5) of this section extended, if
37 the person is otherwise eligible for licensing. For the purposes of
38 this section, the scope of the hearing shall cover the issues of
39 whether a law enforcement officer had reasonable grounds to believe
40 the person had been driving or was in actual physical control of a

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

1 concentration above 0.00, and was under the age of twenty-one and
2 that the officer complied with the requirements of this section.

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

18 (8) If the suspension, revocation, or denial is sustained after
19 such a hearing, the person whose license, privilege, or permit is
20 suspended, revoked, or denied has the right to file a petition in the
21 superior court of the county of arrest to review the final order of
22 revocation by the department in the same manner as an appeal from a
23 decision of a court of limited jurisdiction. Notice of appeal must be
24 filed within thirty days after the date the final order is served or
25 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
26 1.1, or other statutes or rules referencing de novo review, the
27 appeal shall be limited to a review of the record of the
28 administrative hearing. The appellant must pay the costs associated
29 with obtaining the record of the hearing before the hearing officer.
30 The filing of the appeal does not stay the effective date of the
31 suspension, revocation, or denial. A petition filed under this
32 subsection must include the petitioner's grounds for requesting
33 review. Upon granting petitioner's request for review, the court
34 shall review the department's final order of suspension, revocation,
35 or denial as expeditiously as possible. The review must be limited to
36 a determination of whether the department has committed any errors of
37 law. The superior court shall accept those factual determinations
38 supported by substantial evidence in the record: (a) That were
39 expressly made by the department; or (b) that may reasonably be
40 inferred from the final order of the department. The superior court

1 may reverse, affirm, or modify the decision of the department or
2 remand the case back to the department for further proceedings. The
3 decision of the superior court must be in writing and filed in the
4 clerk's office with the other papers in the case. The court shall
5 state the reasons for the decision. If judicial relief is sought for
6 a stay or other temporary remedy from the department's action, the
7 court shall not grant such relief unless the court finds that the
8 appellant is likely to prevail in the appeal and that without a stay
9 the appellant will suffer irreparable injury. If the court stays the
10 suspension, revocation, or denial it may impose conditions on such
11 stay.

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

36 (b) A suspension, revocation, or denial imposed under this
37 section, other than as a result of a breath test refusal, shall be
38 stayed if the person is accepted for deferred prosecution as provided
39 in chapter 10.05 RCW for the incident upon which the suspension,
40 revocation, or denial is based. If the deferred prosecution is

1 terminated, the stay shall be lifted and the suspension, revocation,
2 or denial reinstated. If the deferred prosecution is completed, the
3 stay shall be lifted and the suspension, revocation, or denial
4 canceled.

5 (c) The provisions of (b) of this subsection relating to a stay
6 of a suspension, revocation, or denial and the cancellation of any
7 suspension, revocation, or denial do not apply to the suspension,
8 revocation, denial, or disqualification of a person's commercial
9 driver's license or privilege to operate a commercial motor vehicle.

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

16 **Circumventing ignition interlock—Penalty**

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

19 (1) A person who is restricted to the use of a vehicle equipped
20 with an ignition interlock device (~~(and who tampers with the device
21 or directs, authorizes, or requests another to tamper with the
22 device, in order to circumvent the device by modifying, detaching,
23 disconnecting, or otherwise disabling it,)~~) is guilty of a gross
24 misdemeanor if the restricted driver:

25 (a) Tampers with the device by modifying, detaching,
26 disconnecting, or otherwise disabling it to allow the restricted
27 driver to operate the vehicle;

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

31 (c) Has, directs, authorizes, or requests another person to
32 tamper with the device by modifying, detaching, disconnecting, or
33 otherwise disabling it to allow the restricted driver to operate the
34 vehicle; or

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

1 (2) A person who knowingly assists another person who is
2 restricted to the use of a vehicle equipped with an ignition
3 interlock device to circumvent the device or to start and operate
4 that vehicle (~~((in violation of a court order))~~) is guilty of a gross
5 misdemeanor. The provisions of this subsection do not apply if the
6 starting of a motor vehicle, or the request to start a motor vehicle,
7 equipped with an ignition interlock device is done for the purpose of
8 safety or mechanical repair of the device or the vehicle and the
9 person subject to the court order does not operate the vehicle.

10 (3) Any sentence imposed for a violation of subsection (1) of
11 this section shall be served consecutively with any sentence imposed
12 under RCW 46.20.740, 46.61.502, 46.61.504, 46.61.5055,
13 46.61.520(1)(a), or 46.61.522(1)(b).

14 **Commercial vehicles—Test for alcohol or drugs—Disqualification for**
15 **refusal of test or positive test—Procedures**

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

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

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

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

34 (4) A law enforcement officer who at the time of stopping or
35 detaining a commercial motor vehicle driver has reasonable grounds to
36 believe that driver was driving a commercial motor vehicle while
37 having alcohol, marijuana, or any drug in his or her system or while
38 under the influence of alcohol, marijuana, or any drug may obtain a

1 blood test pursuant to a search warrant, a valid waiver of the
2 warrant requirement, when exigent circumstances exist, or under any
3 other authority of law.

4 (5) If the person refuses testing, or (~~submits to~~) a test is
5 administered that discloses an alcohol concentration of 0.04 or more
6 or any measurable amount of THC concentration, the law enforcement
7 officer shall submit a sworn report to the department certifying that
8 the test was requested pursuant to subsection (1) of this section or
9 a blood test was administered pursuant to subsection (4) of this
10 section and that the person refused to submit to testing, or
11 (~~submitted to~~) a test was administered that disclosed an alcohol
12 concentration of 0.04 or more or any measurable amount of THC
13 concentration.

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

1 the final order of disqualification by the department in the manner
2 provided in RCW 46.20.334.

3 ((+6+)) (7) If a motor carrier or employer who is required to
4 have a testing program under 49 C.F.R. 382 knows that a commercial
5 driver in his or her employ has refused to submit to testing under
6 this section and has not been disqualified from driving a commercial
7 motor vehicle, the employer may notify law enforcement or his or her
8 medical review officer or breath alcohol technician that the driver
9 has refused to submit to the required testing.

10 ((+7+)) (8) The hearing provisions of this section do not apply
11 to those persons disqualified from driving a commercial motor vehicle
12 under RCW 46.25.090(7).

13 **Open container law for marijuana**

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

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

17 (i) For the registered owner of a motor vehicle, or the driver if
18 the registered owner is not then present, or passengers in the
19 vehicle, to keep marijuana in a motor vehicle when the vehicle is
20 upon a highway, unless it is (A) in the trunk of the vehicle, (B) in
21 some other area of the vehicle not normally occupied or directly
22 accessible by the driver or passengers if the vehicle does not have a
23 trunk, or (C) in a package, container, or receptacle that has not
24 been opened or the seal broken or contents partially removed. A
25 utility compartment or glove compartment is deemed to be within the
26 area occupied by the driver and passengers;

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

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

33 (b) There is a rebuttable presumption that it is a traffic
34 infraction if the original container of marijuana is incorrectly
35 labeled and there is a subsequent violation of (a)(i) of this
36 subsection.

37 (2) As used in this section, "marijuana" or "marihuana" means all
38 parts of the plant *Cannabis*, whether growing or not; the seeds

1 thereof; the resin extracted from any part of the plant; and every
2 compound, manufacture, salt, derivative, mixture, or preparation of
3 the plant, its seeds, or resin. The term does not include the mature
4 stalks of the plant, fiber produced from the stalks, oil or cake made
5 from the seeds of the plant, any other compound, manufacture, salt,
6 derivative, mixture, or preparation of the mature stalks, except the
7 resin extracted therefrom, fiber, oil, or cake, or the sterilized
8 seed of the plant which is incapable of germination.

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

10 **Sec. 9.** RCW 46.61.5055 and 2015 c 265 s 33 are each amended to
11 read as follows:

12 (1) **No prior offenses in seven years.** Except as provided in RCW
13 46.61.502(6) or 46.61.504(6), a person who is convicted of a
14 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
15 within seven years shall be punished as follows:

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

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

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

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

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

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

31 (2) **One prior offense in seven years.** Except as provided in RCW
32 46.61.502(6) or 46.61.504(6), a person who is convicted of a
33 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
34 within seven years shall be punished as follows:

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

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

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

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

31 (i) By imprisonment for not less than forty-five days nor more
32 than three hundred sixty-four days and ninety days of electronic home
33 monitoring. In lieu of the mandatory minimum term of ninety days
34 electronic home monitoring, the court may order at least an
35 additional six 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. Forty-
6 five days of imprisonment and ninety days of electronic home
7 monitoring may not be suspended unless the court finds that the
8 imposition of this mandatory minimum sentence would impose a
9 substantial risk to the offender's physical or mental well-being.
10 Whenever the mandatory minimum sentence is suspended, the court shall
11 state in writing the reason for granting the suspension and the facts
12 upon which the suspension is based; and

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

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

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

27 (i) By imprisonment for not less than ninety days nor more than
28 three hundred sixty-four days, if available in that county or city, a
29 six-month period of 24/7 sobriety program monitoring pursuant to RCW
30 36.28A.300 through 36.28A.390, and one hundred twenty days of
31 electronic home monitoring. In lieu of the mandatory minimum term of
32 one hundred twenty days of electronic home monitoring, the court may
33 order at least an additional eight days in jail. The court shall
34 order an expanded alcohol assessment and treatment, if deemed
35 appropriate by the assessment. The offender shall pay for the cost of
36 the electronic monitoring. The county or municipality where the
37 penalty is being imposed shall determine the cost. The court may also
38 require the offender's electronic home monitoring device include an
39 alcohol detection breathalyzer or other separate alcohol monitoring
40 device, and may restrict the amount of alcohol the offender may

1 consume during the time the offender is on electronic home
2 monitoring. Ninety days of imprisonment and one hundred twenty days
3 of electronic home monitoring may not be suspended unless the court
4 finds that the imposition of this mandatory minimum sentence would
5 impose a substantial risk to the offender's physical or mental well-
6 being. Whenever the mandatory minimum sentence is suspended, the
7 court shall state in writing the reason for granting the suspension
8 and the facts upon which the suspension is based; and

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

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

17 (i) By imprisonment for not less than one hundred twenty days nor
18 more than three hundred sixty-four days, if available in that county
19 or city, a six-month period of 24/7 sobriety program monitoring
20 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty
21 days of electronic home monitoring. In lieu of the mandatory minimum
22 term of one hundred fifty days of electronic home monitoring, the
23 court may order at least an additional ten days in jail. The offender
24 shall pay for the cost of the electronic monitoring. The court shall
25 order an expanded alcohol assessment and treatment, if deemed
26 appropriate by the assessment. 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. One hundred twenty days of imprisonment and one hundred
33 fifty days of electronic home monitoring may not be suspended unless
34 the court finds that the imposition of this mandatory minimum
35 sentence would impose a substantial risk to the offender's physical
36 or mental well-being. Whenever the mandatory minimum sentence is
37 suspended, the court shall state in writing the reason for granting
38 the suspension and the facts upon which the suspension is based; and

39 (ii) By a fine of not less than one thousand five hundred dollars
40 nor more than five thousand dollars. One thousand five hundred

1 dollars of the fine may not be suspended unless the court finds the
2 offender to be indigent.

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

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

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

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

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

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

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

16 (5) **Monitoring.**

17 (a) **Ignition interlock device.** The court shall require any person
18 convicted of a violation of RCW 46.61.502 or 46.61.504 or an
19 equivalent local ordinance to comply with the rules and requirements
20 of the department regarding the installation and use of a functioning
21 ignition interlock device installed on all motor vehicles operated by
22 the person.

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

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

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

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

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

8 (6) **Penalty for having a minor passenger in vehicle.** If a person
9 who is convicted of a violation of RCW 46.61.502 or 46.61.504
10 committed the offense while a passenger under the age of sixteen was
11 in the vehicle, the court shall:

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

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

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

26 (d) In any case in which the person has two or three prior
27 offenses within seven years, and except as provided in RCW
28 46.61.502(6) or 46.61.504(6), order an additional ten days of
29 imprisonment and a fine of not less than three thousand dollars and
30 not more than ten thousand dollars. One thousand dollars of the fine
31 may not be suspended unless the court finds the offender to be
32 indigent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (11) **Conditions of probation.** (a) In addition to any
26 nonsuspendable and nondeferrable jail sentence required by this
27 section, whenever the court imposes up to three hundred sixty-four
28 days in jail, the court shall also suspend but shall not defer a
29 period of confinement for a period not exceeding five years. The
30 court shall impose conditions of probation that include: (i) Not
31 driving a motor vehicle within this state without a valid license to
32 drive (~~(and)~~); (ii) not driving a motor vehicle within this state
33 without proof of liability insurance or other financial
34 responsibility for the future pursuant to RCW 46.30.020; (~~(+ii)~~)
35 (iii) not driving or being in physical control of a motor vehicle
36 within this state while having an alcohol concentration of 0.08 or
37 more or a THC concentration of 5.00 nanograms per milliliter of whole
38 blood or higher, within two hours after driving; (~~(and-(iii))~~) (iv)
39 not refusing to submit to a test of his or her breath or blood to
40 determine alcohol or drug concentration upon request of a law

1 enforcement officer who has reasonable grounds to believe the person
2 was driving or was in actual physical control of a motor vehicle
3 within this state while under the influence of intoxicating liquor or
4 drug; and (v) not driving a motor vehicle in this state without a
5 functioning ignition interlock device as required by the department
6 under RCW 46.20.720(3). The court may impose conditions of probation
7 that include nonrepetition, installation of an ignition interlock
8 device on the probationer's motor vehicle, alcohol or drug treatment,
9 supervised probation, or other conditions that may be appropriate.
10 The sentence may be imposed in whole or in part upon violation of a
11 condition of probation during the suspension period.

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

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

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

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

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

35 (c) The court determines that there is reason to believe that the
36 offender would violate the conditions of the electronic home
37 monitoring penalty.

38 Whenever the mandatory minimum term of electronic home monitoring
39 is waived, the court shall state in writing the reason for granting
40 the waiver and the facts upon which the waiver is based, and shall

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

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

11 (13) **Extraordinary medical placement.** An offender serving a
12 sentence under this section, whether or not a mandatory minimum term
13 has expired, may be granted an extraordinary medical placement by the
14 jail administrator subject to the standards and limitations set forth
15 in RCW 9.94A.728(~~((3))~~) (1)(c).

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

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

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

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

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

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

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

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

34 ~~((vi))~~ (vii) A conviction for a violation of RCW 47.68.220 or
35 an equivalent local ordinance committed in a careless or reckless
36 manner if the conviction is the result of a charge that was
37 originally filed as a violation of RCW 47.68.220 or an equivalent
38 local ordinance while under the influence of intoxicating liquor or
39 any drug;

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

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

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

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

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

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

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

30 ~~((xiii))~~ (xv) A deferred prosecution under chapter 10.05 RCW
31 granted in a prosecution for a violation of RCW 46.61.5249, or an
32 equivalent local ordinance, if the charge under which the deferred
33 prosecution was granted was originally filed as a violation of RCW
34 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
35 46.61.520 or 46.61.522;

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

1 prosecution under chapter 10.05 RCW, including a requirement that the
2 defendant participate in a chemical dependency treatment program; or
3 ~~((xv))~~ (xvii) A deferred sentence imposed in a prosecution for
4 a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
5 equivalent local ordinance, if the charge under which the deferred
6 sentence was imposed was originally filed as a violation of RCW
7 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
8 violation of RCW 46.61.520 or 46.61.522;

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

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

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

18 (d) "Within ten years" means that the arrest for a prior offense
19 occurred within ten years before or after the arrest for the current
20 offense.

21 (15) All fines imposed by this section apply to adult offenders
22 only.

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

25 (1) Except as provided in subsection (2) of this section, the
26 director may destroy applications for vehicle registrations, copies
27 of vehicle registrations issued, applications for drivers' licenses,
28 copies of issued drivers' licenses, certificates of title and
29 registration or other documents, and records or supporting papers on
30 file in the department that have been microfilmed or photographed or
31 are more than five years old. The director may destroy applications
32 for vehicle registrations that are renewal applications when the
33 computer record of the applications has been updated.

34 (2)(a) The director shall not destroy records of convictions or
35 adjudications of RCW 46.61.502, 46.61.503, 46.61.504, 46.61.520, and
36 46.61.522, or records of deferred prosecutions granted under RCW
37 10.05.120 and shall maintain such records permanently on file.

38 (b) The director shall not, within fifteen years from the date of
39 conviction or adjudication, destroy records if the offense was

1 originally charged as one of the offenses designated in (a) of this
2 subsection, convictions or adjudications of the following offenses:
3 RCW 46.61.500 or 46.61.5249 or any other violation that was
4 originally charged as one of the offenses designated in (a) of this
5 subsection.

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

8 **Ignition interlock devices—Standards—Compliance**

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

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

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

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

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

37 (i) Fuel cell technology. For the purposes of this subsection,
38 "fuel cell technology" consists of the following electrochemical

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

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

9 (ii) Technology capable of taking a photo identification of the
10 user giving the breath sample and recording on the photo the time the
11 breath sample was given; and

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

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

18 (i) Meet or exceed the minimum test standards according to rules
19 adopted by the state patrol. Only a notarized statement from a
20 laboratory that is accredited and certified ~~((by))~~ under the current
21 edition of ISO (the international organization of standardization)
22 17025 standard for testing and calibration laboratories and is
23 capable of performing the tests specified will be accepted as proof
24 of meeting or exceeding the standards. The notarized statement must
25 include the name and signature of the person in charge of the tests
26 under the certification statement. The state patrol must adopt by
27 rule the required language of the certification statement that must,
28 at a minimum, outline that the testing meets or exceeds all
29 specifications listed in the federal register adopted in rule by the
30 state patrol; and

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

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

34 **Sec. 12.** RCW 46.52.130 and 2015 c 265 s 4 are each amended to
35 read as follows:

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

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

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

5 (i) The total number of vehicles involved;

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

7 (iii) Whether the vehicles were occupied at the time of the
8 accident; and

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

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

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

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

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

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

24 (ii) Nothing in this section prevents a court from providing a
25 copy of the driver's abstract to the individual named in the abstract
26 or that named individual's attorney, provided that the named
27 individual has a pending or open infraction or criminal case in that
28 court. A pending case includes criminal cases that have not reached a
29 disposition by plea, stipulation, trial, or amended charge. An open
30 infraction or criminal case includes cases on probation, payment
31 agreement or subject to, or in collections. Courts may charge a
32 reasonable fee for the production and copying of the abstract for the
33 individual.

34 (b) **Employers or prospective employers.** (i)(A) An abstract of the
35 full driving record maintained by the department may be furnished to
36 an employer or prospective employer or an agent acting on behalf of
37 an employer or prospective employer of the named individual for
38 purposes related to driving by the individual as a condition of
39 employment or otherwise at the direction of the employer.

1 (B) Release of an abstract of the driving record of an employee
2 or prospective employee requires a statement signed by: (I) The
3 employee or prospective employee that authorizes the release of the
4 record; and (II) the employer attesting that the information is
5 necessary for employment purposes related to driving by the
6 individual as a condition of employment or otherwise at the direction
7 of the employer. If the employer or prospective employer authorizes
8 an agent to obtain this information on their behalf, this must be
9 noted in the statement. The statement must also note that any
10 information contained in the abstract related to an adjudication that
11 is subject to a court order sealing the juvenile record of an
12 employee or prospective employee may not be used by the employer or
13 prospective employer, or an agent authorized to obtain this
14 information on their behalf, unless required by federal regulation or
15 law. The employer or prospective employer must afford the employee or
16 prospective employee an opportunity to demonstrate that an
17 adjudication contained in the abstract is subject to a court order
18 sealing the juvenile record.

19 (C) Upon request of the person named in the abstract provided
20 under this subsection, and upon that same person furnishing copies of
21 court records ruling that the person was not at fault in a motor
22 vehicle accident, the department must indicate on any abstract
23 provided under this subsection that the person was not at fault in
24 the motor vehicle accident.

25 (D) No employer or prospective employer, nor any agent of an
26 employer or prospective employer, may use information contained in
27 the abstract related to an adjudication that is subject to a court
28 order sealing the juvenile record of an employee or prospective
29 employee for any purpose unless required by federal regulation or
30 law. The employee or prospective employee must furnish a copy of the
31 court order sealing the juvenile record to the employer or
32 prospective employer, or the agent of the employer or prospective
33 employer, as may be required to ensure the application of this
34 subsection.

35 (ii) In addition to the methods described in (b)(i) of this
36 subsection, the director may enter into a contractual agreement with
37 an employer or its agent for the purpose of reviewing the driving
38 records of existing employees for changes to the record during
39 specified periods of time. The department shall establish a fee for
40 this service, which must be deposited in the highway safety fund. The

1 fee for this service must be set at a level that will not result in a
2 net revenue loss to the state. Any information provided under this
3 subsection must be treated in the same manner and is subject to the
4 same restrictions as driving record abstracts.

5 (c) **Volunteer organizations.** (i) An abstract of the full driving
6 record maintained by the department may be furnished to a volunteer
7 organization or an agent for a volunteer organization for which the
8 named individual has submitted an application for a position that
9 would require driving by the individual at the direction of the
10 volunteer organization.

11 (ii) Release of an abstract of the driving record of a
12 prospective volunteer requires a statement signed by: (A) The
13 prospective volunteer that authorizes the release of the record; and
14 (B) the volunteer organization attesting that the information is
15 necessary for purposes related to driving by the individual at the
16 direction of the volunteer organization. If the volunteer
17 organization authorizes an agent to obtain this information on their
18 behalf, this must be noted in the statement.

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

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

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

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

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

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

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

39 (B) Include convictions under RCW 46.61.5249 and 46.61.525,
40 except that the abstract must report the convictions only as

1 negligent driving without reference to whether they are for first or
2 second degree negligent driving; and

3 (C) Exclude any deferred prosecution under RCW 10.05.060, except
4 that if a person is removed from a deferred prosecution under RCW
5 10.05.090, the abstract must show the deferred prosecution as well as
6 the removal.

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

11 (iv) Any insurance company or its agent, for underwriting
12 purposes relating to the operation of commercial motor vehicles, may
13 not use any information contained in the abstract relative to any
14 person's operation of motor vehicles while not engaged in such
15 employment. Any insurance company or its agent, for underwriting
16 purposes relating to the operation of noncommercial motor vehicles,
17 may not use any information contained in the abstract relative to any
18 person's operation of commercial motor vehicles.

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

29 (f) **Alcohol/drug assessment or treatment agencies.** An abstract of
30 the driving record maintained by the department covering the period
31 of not more than the last five years may be furnished to an alcohol/
32 drug assessment or treatment agency approved by the department of
33 social and health services to which the named individual has applied
34 or been assigned for evaluation or treatment, for purposes of
35 assisting employees in making a determination as to what level of
36 treatment, if any, is appropriate, except that the abstract must:

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

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

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

16 (h) **State colleges, universities, or agencies, or units of local**
17 **government.** An abstract of the full driving record maintained by the
18 department may be furnished to (i) state colleges, universities, or
19 agencies for employment and risk management purposes or (ii) units of
20 local government authorized to self-insure under RCW 48.62.031 for
21 employment and risk management purposes.

22 (i) **Superintendent of public instruction.** An abstract of the full
23 driving record maintained by the department may be furnished to the
24 superintendent of public instruction for review of public school bus
25 driver records. The superintendent or superintendent's designee may
26 discuss information on the driving record with an authorized
27 representative of the employing school district for employment and
28 risk management purposes.

29 (3) **Release to third parties prohibited.** Any person or entity
30 receiving an abstract of a person's driving record under subsection
31 (2)(b) through (i) of this section shall use the abstract exclusively
32 for his, her, or its own purposes or as otherwise expressly permitted
33 under this section, and shall not divulge any information contained
34 in the abstract to a third party.

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

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

3 (b) Any intentional violation of this section is a class C
4 felony.

5 (6) Effective July 1, 2019, the contents of a driving abstract
6 pursuant to this section shall not include any information related to
7 sealed juvenile records unless that information is required by
8 federal law or regulation.

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

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

27 (b) Whenever a person is convicted of two or more serious violent
28 offenses arising from separate and distinct criminal conduct, the
29 standard sentence range for the offense with the highest seriousness
30 level under RCW 9.94A.515 shall be determined using the offender's
31 prior convictions and other current convictions that are not serious
32 violent offenses in the offender score and the standard sentence
33 range for other serious violent offenses shall be determined by using
34 an offender score of zero. The standard sentence range for any
35 offenses that are not serious violent offenses shall be determined
36 according to (a) of this subsection. All sentences imposed under
37 (~~(b) or (e)~~) this subsection (1)(b) shall be served consecutively to
38 each other and concurrently with sentences imposed under (a) of this
39 subsection.

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

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

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

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

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

33 (4) Whenever any person granted probation under RCW 9.95.210 or
34 9.92.060, or both, has the probationary sentence revoked and a prison
35 sentence imposed, that sentence shall run consecutively to any
36 sentence imposed pursuant to this chapter, unless the court
37 pronouncing the subsequent sentence expressly orders that they be
38 served concurrently.

39 (5) In the case of consecutive sentences, all periods of total
40 confinement shall be served before any partial confinement, community

1 restitution, community supervision, or any other requirement or
2 conditions of any of the sentences. Except for exceptional sentences
3 as authorized under RCW 9.94A.535, if two or more sentences that run
4 consecutively include periods of community supervision, the aggregate
5 of the community supervision period shall not exceed twenty-four
6 months.

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

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

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

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

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

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

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

34 (3) No person may be convicted under this section for being in
35 physical control of a motor vehicle and it is an affirmative defense
36 to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny
37 the privilege to drive, if, prior to being pursued by a law
38 enforcement officer, the person has moved the vehicle safely off the
39 roadway.

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

6 (~~(4)~~) (5) A violation of this section is a misdemeanor.

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

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

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

30 There is hereby established in the state treasury the 24/7
31 sobriety account. The account shall be maintained and administered by
32 the criminal justice training commission to reimburse the state for
33 costs associated with establishing and operating the 24/7 sobriety
34 program and the Washington association of sheriffs and police chiefs
35 for ongoing 24/7 sobriety program administration costs. (~~{The}~~) An
36 appropriation is not required for expenditures and the account is not
37 subject to allotment procedures under chapter 43.88 RCW. Funds in the
38 account may not lapse and must carry forward from biennium to

1 biennium. Interest earned by the account must be retained in the
2 account. The criminal justice training commission may accept for
3 deposit in the account money from donations, gifts, grants,
4 participation fees, and user fees or payments. (~~Expenditures from~~
5 ~~the account shall be budgeted through the normal budget process.~~)

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

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

10 (1) "24/7 (~~electronic alcohol/drug monitoring~~) sobriety
11 program" means (~~the monitoring by the use of any electronic~~
12 ~~instrument that is capable of determining and monitoring the presence~~
13 ~~of alcohol or drugs in a person's body and includes any associated~~
14 ~~equipment a participant needs in order for the device to properly~~
15 ~~perform. Monitoring may also include mandatory urine analysis tests~~
16 ~~as ordered by the court)) a program in which a participant submits to
17 testing of the participant's blood, breath, urine, or other bodily
18 substance to determine the presence of alcohol or any drug as defined
19 in RCW 46.61.540. Testing must take place at a location or locations
20 designated by the participating agency, or, with the concurrence of
21 the Washington association of sheriffs and police chiefs, by an
22 alternate method.~~

23 (2) "Participant" means a person who has (~~one or more prior~~
24 ~~convictions for~~) been charged with or convicted of a violation of
25 RCW 46.61.502 (~~or~~), 46.61.504, or those crimes listed in RCW
26 46.61.5055(14), in which the use of alcohol or drugs as defined in
27 RCW 46.61.540 was a contributing factor in the commission of the
28 crime and who has been ordered by a court to participate in the 24/7
29 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 licensed under
20 chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57
21 RCW; registered nurse, licensed practical nurse, or advanced
22 registered nurse practitioner licensed under chapter 18.79 RCW;
23 physician assistant licensed under chapter 18.71A RCW; osteopathic
24 physician assistant licensed under chapter 18.57A RCW; advanced
25 emergency medical technician or paramedic licensed under chapter
26 18.73 RCW; until July 1, 2016, health care assistant certified under
27 chapter 18.135 RCW; or medical assistant-certified or medical
28 assistant-phlebotomist certified under chapter 18.360 RCW, or
29 hospital, or duly licensed clinical laboratory employing or utilizing
30 services of such licensed or certified health care provider, to
31 collect a blood sample without a person's consent when the physician
32 licensed under chapter 18.71 RCW; osteopathic physician licensed
33 under chapter 18.57 RCW; registered nurse, licensed practical nurse,
34 or advanced registered nurse practitioner licensed under chapter
35 18.79 RCW; physician assistant licensed under chapter 18.71A RCW;
36 osteopathic physician assistant licensed under chapter 18.57A RCW;
37 advanced emergency medical technician or paramedic licensed under
38 chapter 18.73 RCW; until July 1, 2016, health care assistant
39 certified under chapter 18.135 RCW; or medical assistant-certified or

1 medical assistant-phlebotomist certified under chapter 18.360 RCW, or
2 hospital, or duly licensed clinical laboratory employing or utilizing
3 services of such licensed or certified health care provider
4 withdrawing blood was directed by a law enforcement officer to do so
5 for the purpose of a blood test under the provisions of a search
6 warrant or exigent circumstances: PROVIDED, That nothing in this
7 section shall relieve a physician licensed under chapter 18.71 RCW;
8 osteopathic physician licensed under chapter 18.57 RCW; registered
9 nurse, licensed practical nurse, or advanced registered nurse
10 practitioner licensed under chapter 18.79 RCW; physician assistant
11 licensed under chapter 18.71A RCW; osteopathic physician assistant
12 licensed under chapter 18.57A RCW; advanced emergency medical
13 technician or paramedic licensed under chapter 18.73 RCW; until July
14 1, 2016, health care assistant certified under chapter 18.135 RCW; or
15 medical assistant-certified or medical assistant-phlebotomist
16 certified under chapter 18.360 RCW, or hospital, or duly licensed
17 clinical laboratory employing or utilizing services of such licensed
18 or certified health care provider withdrawing blood from professional
19 discipline arising from the use of improper procedures or from
20 failing to exercise the required standard of care.

21 **Sec. 22.** RCW 46.61.506 and 2013 c 3 s 37 are each amended to
22 read as follows:

23 (1) Upon the trial of any civil or criminal action or proceeding
24 arising out of acts alleged to have been committed by any person
25 while driving or in actual physical control of a vehicle while under
26 the influence of intoxicating liquor or any drug, if the person's
27 alcohol concentration is less than 0.08 or the person's THC
28 concentration is less than 5.00, it is evidence that may be
29 considered with other competent evidence in determining whether the
30 person was under the influence of intoxicating liquor or any drug.

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

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

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

1 (3) Analysis of the person's blood or breath to be considered
2 valid under the provisions of this section or RCW 46.61.502 or
3 46.61.504 shall have been performed according to methods approved by
4 the state toxicologist and by an individual possessing a valid permit
5 issued by the state toxicologist for this purpose. The state
6 toxicologist is directed to approve satisfactory techniques or
7 methods, to supervise the examination of individuals to ascertain
8 their qualifications and competence to conduct such analyses, and to
9 issue permits which shall be subject to termination or revocation at
10 the discretion of the state toxicologist.

11 (4)(a) A breath test performed by any instrument approved by the
12 state toxicologist shall be admissible at trial or in an
13 administrative proceeding if the prosecution or department produces
14 prima facie evidence of the following:

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

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

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

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

27 (v) The internal standard test resulted in the message
28 "verified";

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

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

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

36 (b) For purposes of this section, "prima facie evidence" is
37 evidence of sufficient circumstances that would support a logical and
38 reasonable inference of the facts sought to be proved. In assessing
39 whether there is sufficient evidence of the foundational facts, the
40 court or administrative tribunal is to assume the truth of the

1 prosecution's or department's evidence and all reasonable inferences
2 from it in a light most favorable to the prosecution or department.

3 (c) Nothing in this section shall be deemed to prevent the
4 subject of the test from challenging the reliability or accuracy of
5 the test, the reliability or functioning of the instrument, or any
6 maintenance procedures. Such challenges, however, shall not preclude
7 the admissibility of the test once the prosecution or department has
8 made a prima facie showing of the requirements contained in (a) of
9 this subsection. Instead, such challenges may be considered by the
10 trier of fact in determining what weight to give to the test result.

11 (5) When a blood test is administered under the provisions of RCW
12 46.20.308, the withdrawal of blood for the purpose of determining its
13 alcoholic or drug content may be performed only by a physician(~~(,—a~~
14 ~~registered nurse, a licensed practical nurse, a nursing assistant as~~
15 ~~defined in chapter 18.88A RCW, a physician assistant as defined in~~
16 ~~chapter 18.71A RCW, a first responder as defined in chapter 18.73~~
17 ~~RCW, an emergency medical technician as defined in chapter 18.73 RCW,~~
18 ~~a health care assistant as defined in chapter 18.135 RCW, or any~~
19 ~~technician trained in withdrawing blood)) licensed under chapter
20 18.71 RCW; an osteopathic physician licensed under chapter 18.57 RCW;
21 a registered nurse, licensed practical nurse, or advanced registered
22 nurse practitioner licensed under chapter 18.79 RCW; a physician
23 assistant licensed under chapter 18.71A RCW; an osteopathic physician
24 assistant licensed under chapter 18.57A RCW; an advanced emergency
25 medical technician or paramedic licensed under chapter 18.73 RCW;
26 until July 1, 2016, a health care assistant certified under chapter
27 18.135 RCW; or a medical assistant-certified or medical assistant-
28 phlebotomist certified under chapter 18.360 RCW. This limitation
29 shall not apply to the taking of breath specimens.~~

30 (6) The person tested may have a (~~(physician))~~ licensed or
31 certified health care provider listed in subsection (5) of this
32 section, or a qualified technician, chemist, (~~(registered nurse,))~~ or
33 other qualified person of his or her own choosing administer one or
34 more tests in addition to any administered at the direction of a law
35 enforcement officer. The test will be admissible if the person
36 establishes the general acceptability of the testing technique or
37 method. The failure or inability to obtain an additional test by a
38 person shall not preclude the admission of evidence relating to the
39 test or tests taken at the direction of a law enforcement officer.

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

5 **Sec. 23.** RCW 46.61.508 and 1977 ex.s. c 143 s 1 are each amended
6 to read as follows:

7 No physician(~~(, registered nurse, qualified technician)~~) licensed
8 under chapter 18.71 RCW; osteopathic physician licensed under chapter
9 18.57 RCW; registered nurse, licensed practical nurse, or advanced
10 registered nurse practitioner licensed under chapter 18.79 RCW;
11 physician assistant licensed under chapter 18.71A RCW; osteopathic
12 physician assistant licensed under chapter 18.57A RCW; advanced
13 emergency medical technician or paramedic licensed under chapter
14 18.73 RCW; until July 1, 2016, health care assistant certified under
15 chapter 18.135 RCW; or medical assistant-certified or medical
16 assistant-phlebotomist certified under chapter 18.360 RCW, or
17 hospital, or duly licensed clinical laboratory employing or utilizing
18 services of such (~~(physician, registered nurse, or qualified~~
19 ~~technician)~~) licensed or certified health care provider, shall incur
20 any civil or criminal liability as a result of the act of withdrawing
21 blood from any person when directed by a law enforcement officer to
22 do so for the purpose of a blood test under the provisions of a
23 search warrant, a waiver of the search warrant requirement, exigent
24 circumstances, any other authority of law, or RCW 46.20.308, as now
25 or hereafter amended: PROVIDED, That nothing in this section shall
26 relieve (~~(any physician, registered nurse, qualified technician)~~)
27 such licensed or certified health care provider, or hospital or duly
28 licensed clinical laboratory from civil liability arising from the
29 use of improper procedures or failing to exercise the required
30 standard of care.

31 **Sec. 24.** RCW 46.61.504 and 2013 c 3 s 35 are each amended to
32 read as follows:

33 (1) A person is guilty of being in actual physical control of a
34 motor vehicle while under the influence of intoxicating liquor or any
35 drug if the person has actual physical control of a vehicle within
36 this state:

37 (a) And the person has, within two hours after being in actual
38 physical control of the vehicle, an alcohol concentration of 0.08 or

1 higher as shown by analysis of the person's breath or blood made
2 under RCW 46.61.506; or

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

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

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

11 (2) The fact that a person charged with a violation of this
12 section is or has been entitled to use a drug under the laws of this
13 state does not constitute a defense against any charge of violating
14 this section. No person may be convicted under this section and it is
15 an affirmative defense to any action pursuant to RCW 46.20.308 to
16 suspend, revoke, or deny the privilege to drive if, prior to being
17 pursued by a law enforcement officer, the person has moved the
18 vehicle safely off the roadway.

19 (3)(a) It is an affirmative defense to a violation of subsection
20 (1)(a) of this section which the defendant must prove by a
21 preponderance of the evidence that the defendant consumed a
22 sufficient quantity of alcohol after the time of being in actual
23 physical control of the vehicle and before the administration of an
24 analysis of the person's breath or blood to cause the defendant's
25 alcohol concentration to be 0.08 or more within two hours after being
26 in such control. The court shall not admit evidence of this defense
27 unless the defendant notifies the prosecution prior to the omnibus or
28 pretrial hearing in the case of the defendant's intent to assert the
29 affirmative defense.

30 (b) It is an affirmative defense to a violation of subsection
31 (1)(b) of this section, which the defendant must prove by a
32 preponderance of the evidence, that the defendant consumed a
33 sufficient quantity of marijuana after the time of being in actual
34 physical control of the vehicle and before the administration of an
35 analysis of the person's blood to cause the defendant's THC
36 concentration to be 5.00 or more within two hours after being in
37 control of the vehicle. The court shall not admit evidence of this
38 defense unless the defendant notifies the prosecution prior to the
39 omnibus or pretrial hearing in the case of the defendant's intent to
40 assert the affirmative defense.

1 (4)(a) Analyses of blood or breath samples obtained more than two
2 hours after the alleged being in actual physical control of a vehicle
3 may be used as evidence that within two hours of the alleged being in
4 such control, a person had an alcohol concentration of 0.08 or more
5 in violation of subsection (1)(a) of this section, and in any case in
6 which the analysis shows an alcohol concentration above 0.00 may be
7 used as evidence that a person was under the influence of or affected
8 by intoxicating liquor or any drug in violation of subsection (1)(c)
9 or (d) of this section.

10 (b) Analyses of blood samples obtained more than two hours after
11 the alleged being in actual physical control of a vehicle may be used
12 as evidence that within two hours of the alleged being in control of
13 the vehicle, a person had a THC concentration of 5.00 or more in
14 violation of subsection (1)(b) of this section, and in any case in
15 which the analysis shows a THC concentration above 0.00 may be used
16 as evidence that a person was under the influence of or affected by
17 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

32 ***Sec. 25. RCW 18.360.030 and 2012 c 153 s 4 are each amended to**
33 **read as follows:**

34 **(1) The secretary shall adopt rules specifying the minimum**
35 **qualifications for a medical assistant-certified, medical assistant-**
36 **hemodialysis technician, and medical assistant-phlebotomist. The**
37 **qualifications for a medical assistant-hemodialysis technician must**
38 **be equivalent to the qualifications for hemodialysis technicians**
39 **regulated pursuant to chapter 18.135 RCW as of January 1, 2012.**

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

6 (3) The medical quality assurance commission, the board of
7 osteopathic medicine and surgery, the podiatric medical board, the
8 nursing care quality assurance commission, the board of naturopathy,
9 and the optometry board shall each review and identify other
10 specialty assistive personnel not included in this chapter and the
11 tasks they perform. The department of health shall compile the
12 information from each disciplining authority listed in this
13 subsection and submit the compiled information to the legislature no
14 later than December 15, 2012.

15 (4)(a) The secretary shall adopt rules specifying requirements
16 for delegation, training, and supervision for a medical assistant-
17 phlebotomist who is also a local, state, federal, or tribal law
18 enforcement employee or correctional employee, and whose practice is
19 limited to collecting venipuncture blood samples for forensic testing
20 under the provisions of RCW 46.20.308 or pursuant to a search
21 warrant, a valid waiver of the warrant requirement, when exigent
22 circumstances exist, or under any other authority of law. The rules
23 shall provide standards for the minimum number of venipuncture
24 collections necessary to maintain endorsement for collecting blood
25 samples for forensic testing. The rules shall provide standards for
26 location, conditions, and supervision of venipuncture collections.

27 (b) Until July 1, 2020, pursuant to (a) of this subsection, the
28 rules shall include, but are not limited to:

29 (i) Requiring each medical assistant-phlebotomist to perform
30 fifty venipuncture collections during the first year of
31 certification;

32 (ii) Requiring mandatory annual ongoing training in order for
33 such person to maintain certification as a medical assistant-
34 phlebotomist; and

35 (iii) Requiring that any venipuncture blood samples collected for
36 forensic testing take place at a site that provides for antiseptic
37 techniques and that all such sites are inspected annually by the
38 department.

*Sec. 25 was vetoed. See message at end of chapter.

Passed by the House June 11, 2015.
Passed by the Senate June 25, 2015.
Approved by the Governor June 30, 2015, with the exception of
certain items that were vetoed.
Filed in Office of Secretary of State June 30, 2015.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 25,
Second Engrossed Second Substitute House Bill No. 1276 entitled:

"AN ACT Relating to impaired driving."

The Department of Health has a Medical Assistant-phlebotomist credential that is currently available to law enforcement and corrections personnel. Creating a new sub-category is therefore unnecessary. MA-phlebotomist training programs specific to law enforcement forensic needs can be developed without a change in current law or rules and MA-phlebotomist training is typically on-the-job, and can be completed in a few days.

Section 25 also creates substantial new responsibilities and costs as it requires the Department to inspect every police station, jail, corrections facility, or other location where a law enforcement MA-phlebotomist may take blood samples. The section also sets new ongoing training and minimum procedure standards for law enforcement MA-phlebotomists that no other medical assistants have, and that must be regulated by the Department. For these reasons, I am vetoing this section.

For these reasons I have vetoed Section 25 of Second Engrossed Second Substitute House Bill No. 1276.

With the exception of Section 25, Second Engrossed Second Substitute House Bill No. 1276 is approved."

--- END ---