
SENATE BILL 5912

State of Washington

63rd Legislature

2013 Regular Session

By Senators Padden, Kline, Kohl-Welles, and Conway; by request of Governor Inslee

Read first time 04/15/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to driving while under the influence of
2 intoxicating liquor or drugs; amending RCW 46.55.360, 46.61.502,
3 46.61.504, 2.28.175, 3.66.068, 3.66.067, 3.50.320, 3.50.330, 35.20.255,
4 9.94A.525, 10.31.100, 43.43.395, 9.94A.533, 46.20.720, 46.20.270,
5 9.94A.603, 46.25.090, 46.25.120, 46.25.110, 9.94A.535, 3.62.090,
6 46.61.5249, 46.20.117, and 46.20.161; reenacting and amending RCW
7 46.61.5055 and 46.20.308; adding a new section to chapter 46.64 RCW;
8 adding new sections to chapter 43.10 RCW; creating a new section;
9 prescribing penalties; and providing an effective date.

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

11 **Sec. 1.** RCW 46.55.360 and 2011 c 167 s 3 are each amended to read
12 as follows:

13 (1)(a) When a driver of a vehicle is arrested for a violation of
14 RCW 46.61.502 or 46.61.504, the vehicle is subject to summary
15 impoundment and except for a commercial vehicle or farm transport
16 vehicle under subsection (3)(c) of this section, the vehicle must be
17 impounded. With the exception of the twelve-hour hold and any
18 installed ignition interlock requirements mandated under this section,

1 the procedures for notice, redemption, storage, auction, and sale shall
2 remain the same as for other impounded vehicles under this chapter.

3 (b) If the police officer directing that a vehicle be impounded
4 under this section has:

5 (i) Waited thirty minutes after the police officer contacted the
6 police dispatcher requesting a registered tow truck operator and the
7 tow truck responding has not arrived, or

8 (ii) If the police officer is presented with exigent circumstances
9 such as being called to another incident or due to limited available
10 resources being required to return to patrol,
11 the police officer may place the completed impound order and inventory
12 inside the vehicle and secure the vehicle by closing the windows and
13 locking the doors before leaving.

14 (c) If a police officer directing that a vehicle be impounded under
15 this section has secured the vehicle and left it pursuant to (b) of
16 this subsection, the police officer and the government or agency
17 employing the police officer shall not be liable for any damages to or
18 theft of the vehicle or its contents that occur between the time the
19 officer leaves and the time that the registered tow truck operator
20 takes custody of the vehicle, or for the actions of any person who
21 takes or removes the vehicle before the registered tow truck operator
22 arrives.

23 (2)(a)(i) When a driver of a vehicle is arrested for a violation of
24 RCW 46.61.502 or 46.61.504 and the driver is at least one of the
25 registered owners of the vehicle, the vehicle may not be redeemed
26 without installation of a certified functioning ignition interlock
27 device as defined in RCW 46.04.215.

28 (ii) At least one of the registered owners of the vehicle must
29 arrange for a certified ignition interlock vendor to install the
30 initial ignition interlock device at the place of the vehicle's
31 impoundment.

32 (iii) After the initial installation of the ignition interlock
33 device on the vehicle, the ignition interlock vendor must provide the
34 place of impoundment with two copies of a receipt that: (A) Confirms
35 the ignition interlock device has been initially installed and (B)
36 provides notification that the vehicle must be taken to the vendor's
37 place of business within twenty-four hours of the vehicle's release

1 from impoundment for proper calibration of the ignition interlock
2 device.

3 (iv)(A) Upon release of the vehicle to one of the vehicle's
4 registered owners, the place of impoundment must provide the registered
5 owner with a copy of the receipt from the ignition interlock vendor
6 noting the items under (a)(iii)(A) and (B) of this subsection.

7 (B) It is not a defense to the underlying crime under RCW 46.61.502
8 or 46.61.504 that the arrested driver or registered owner of the
9 vehicle did not receive a receipt pursuant to (a)(iii) and (iv) of this
10 subsection.

11 (v) After the vehicle has been released from impoundment, the owner
12 must take the vehicle to the ignition interlock vendor's place of
13 business in the state within twenty-four hours following the vehicle's
14 release in order for the ignition interlock device to be properly
15 calibrated to prevent the motor vehicle from being started when the
16 breath sample provided has an alcohol concentration of 0.025 or more.

17 (vi) The ignition interlock device shall remain equipped on the
18 vehicle registered to the driver pending the driver's acquittal,
19 dismissal, conviction, or other resolution of the charges. Upon
20 acquittal or dismissal of all pending or current charges relating to a
21 violation of RCW 46.61.502 or 46.61.504, the court shall authorize
22 removal of the ignition interlock device. Nothing in this section
23 limits the authority of the court or department under RCW 46.20.720.

24 (b) When a driver of a vehicle is arrested for a violation of RCW
25 46.61.502 or 46.61.504 and the driver is a registered owner of the
26 vehicle, the impounded vehicle may not be redeemed: (i) Within a
27 twelve-hour period following the time the impounded vehicle arrives at
28 the registered tow truck operator's storage facility as noted in the
29 registered tow truck operator's master log, unless there are two or
30 more registered owners of the vehicle or there is a legal owner of the
31 vehicle that is not the driver of the vehicle; and (ii) unless the
32 vehicle has been equipped with a certified ignition interlock device
33 pursuant to (a) of this subsection. A registered owner who is not the
34 driver of the vehicle or a legal owner who is not the driver of the
35 vehicle may redeem the impounded vehicle after it arrives at the
36 registered tow truck operator's storage facility as noted in the
37 registered tow truck operator's master log after the vehicle has been
38 equipped with a certified ignition interlock device.

1 ~~((b))~~ (c) When a driver of a vehicle is arrested for a violation
2 of RCW 46.61.502 or 46.61.504 and the driver is a registered owner of
3 the vehicle, the police officer directing the impound shall notify the
4 driver that the impounded vehicle may not be redeemed: (i) Within a
5 twelve-hour period following the time the impounded vehicle arrives at
6 the registered tow truck operator's storage facility as noted in the
7 registered tow truck operator's master log, unless there are two or
8 more registered owners or there is a legal owner who is not the driver
9 of the vehicle; and (ii) unless the vehicle has been equipped with a
10 certified ignition interlock device pursuant to (a) of this subsection.
11 The police officer directing the impound shall notify the driver that
12 the impounded vehicle may be redeemed by either a registered owner or
13 legal owner, who is not the driver of the vehicle, after the impounded
14 vehicle arrives at the registered tow truck operator's storage facility
15 as noted in the registered tow truck operator's master log and the
16 vehicle has been equipped with a certified ignition interlock device.

17 (3)(a) When a driver of a vehicle is arrested for a violation of
18 RCW 46.61.502 or 46.61.504 and the driver is not a registered owner of
19 the vehicle, the impounded vehicle may be redeemed by a registered
20 owner or legal owner, who is not the driver of the vehicle, after the
21 impounded vehicle arrives at the registered tow truck operator's
22 storage facility as noted in the registered tow truck operator's master
23 log.

24 (b) When a driver of a vehicle is arrested for a violation of RCW
25 46.61.502 or 46.61.504 and the driver is not a registered owner of the
26 vehicle, the police officer directing the impound shall notify the
27 driver that the impounded vehicle may be redeemed by a registered owner
28 or legal owner, who is not the driver of the vehicle, after the
29 impounded vehicle arrives at the registered tow truck operator's
30 storage facility as noted in the registered tow truck operator's master
31 log.

32 (c) If the vehicle is a commercial vehicle or farm transport
33 vehicle and the driver of the vehicle is not the owner of the vehicle,
34 before the summary impoundment directed under subsection (1) of this
35 section, the police officer shall attempt in a reasonable and timely
36 manner to contact the owner of the vehicle and may release the vehicle
37 to the owner if the owner is reasonably available, as long as the owner
38 was not in the vehicle at the time of the stop and arrest.

1 (d) The registered tow truck operator shall notify the agency that
2 ordered that the vehicle be impounded when the vehicle arrives at the
3 registered tow truck operator's storage facility and has been entered
4 into the master log starting the twelve-hour period.

5 (4) A registered tow truck operator that releases an impounded
6 vehicle pursuant to the requirements stated in this section is not
7 liable for injuries or damages sustained by the operator of the vehicle
8 or sustained by third parties that may result from the vehicle driver's
9 intoxicated state.

10 (5) For purposes of this section "farm transport vehicle" means a
11 motor vehicle owned by a farmer and that is being actively used in the
12 transportation of the farmer's or another farmer's farm, orchard,
13 aquatic farm, or dairy products, including livestock and plant or
14 animal wastes, from point of production to market or disposal, or
15 supplies or commodities to be used on the farm, orchard, aquatic farm,
16 or dairy, and that has a gross vehicle weight rating of 7,258 kilograms
17 (16,001 pounds) or more.

18 **Sec. 2.** RCW 46.61.502 and 2013 c 3 s 33 (Initiative Measure No.
19 502) are each amended to read as follows:

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

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

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

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

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

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

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

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

21 (4)(a) Analyses of blood or breath samples obtained more than two
22 hours after the alleged driving may be used as evidence that within two
23 hours of the alleged driving, a person had an alcohol concentration of
24 0.08 or more in violation of subsection (1)(a) of this section, and in
25 any case in which the analysis shows an alcohol concentration above
26 0.00 may be used as evidence that a person was under the influence of
27 or affected by intoxicating liquor or any drug in violation of
28 subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

12 (iv) A violation of this subsection (6) or RCW 46.61.504(6).

13 (7) If an offender is sentenced to the custody of the department
14 for a violation of this section, the court shall, in addition to the
15 other terms of the sentence, sentence the offender to six months of
16 community custody unless treatment is ordered, in which case the period
17 of community custody may include up to the period of treatment, but
18 shall not exceed one year.

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

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

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

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

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

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

36 (2) The fact that a person charged with a violation of this section
37 is or has been entitled to use a drug under the laws of this state does

1 not constitute a defense against any charge of violating this section.
2 No person may be convicted under this section if, prior to being
3 pursued by a law enforcement officer, the person has moved the vehicle
4 safely off the roadway.

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

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

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

34 (b) Analyses of blood samples obtained more than two hours after
35 the alleged being in actual physical control of a vehicle may be used
36 as evidence that within two hours of the alleged being in control of
37 the vehicle, a person had a THC concentration of 5.00 or more in
38 violation of subsection (1)(b) of this section, and in any case in

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

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

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

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

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

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

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

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

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

18 (7) If an offender is sentenced to the custody of the department
19 for a violation of this section, the court shall, in addition to the
20 other terms of the sentence, sentence the offender to six months of
21 community custody unless treatment is ordered, in which case the period
22 of community custody may include up to the period of treatment, but
23 shall not exceed one year.

24 **Sec. 4.** RCW 2.28.175 and 2012 c 183 s 1 are each amended to read
25 as follows:

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

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

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

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

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

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

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

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

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

25 (A) That is a sex offense;

26 (B) That is a serious violent offense;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **Sec. 6.** RCW 3.66.067 and 2001 c 94 s 1 are each amended to read as
23 follows:

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

1 **Sec. 7.** RCW 3.50.320 and 2001 c 94 s 4 are each amended to read as
2 follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **Sec. 9.** RCW 35.20.255 and 2010 c 274 s 407 are each amended to
12 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

27 **Sec. 10.** RCW 9.94A.525 and 2011 c 166 s 3 are each amended to read
28 as follows:

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

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

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

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

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

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

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

22 (e) If the present conviction is felony driving while under the
23 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
24 felony physical control of a vehicle while under the influence of
25 intoxicating liquor or any drug (RCW 46.61.504(6)), ((prior convictions
26 of felony driving while under the influence of intoxicating liquor or
27 any drug, felony physical control of a vehicle while under the
28 influence of intoxicating liquor or any drug, and serious traffic
29 offenses shall be included in the offender score if: (i) The prior
30 convictions were committed within five years since the last date of
31 release from confinement (including full-time residential treatment) or
32 entry of judgment and sentence; or (ii) the prior convictions would be
33 considered "prior offenses within ten years" as defined in RCW
34 46.61.5055)) all predicate crimes for the offense as defined by RCW
35 46.61.5055(15) shall be included in the offender score, and prior
36 convictions for felony driving while under the influence of
37 intoxicating liquor or any drug (RCW 46.61.502(6)) or felony physical
38 control of a vehicle while under the influence of intoxicating liquor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **Sec. 11.** RCW 10.31.100 and 2010 c 274 s 201 are each amended to
2 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the person has committed a violation of RCW 46.61.502 or 46.61.504,
2 relating to persons under the influence of intoxicating liquor or
3 drugs, and has a prior offense as defined in RCW 46.61.5055.

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

7 **Sec. 12.** RCW 46.61.5055 and 2012 c 183 s 12, 2012 c 42 s 2, and
8 2012 c 28 s 1 are each reenacted and amended to read as follows:

9 (1) **No prior offenses in seven years.** Except as provided in RCW
10 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation
11 of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven
12 years shall be punished as follows:

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

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

36 (ii) By a fine of not less than three hundred fifty dollars nor

1 more than five thousand dollars. Three hundred fifty dollars of the
2 fine may not be suspended or deferred unless the court finds the
3 offender to be indigent; or

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

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

27 (ii) By a fine of not less than five hundred dollars nor more than
28 five thousand dollars. Five hundred dollars of the fine may not be
29 suspended or deferred unless the court finds the offender to be
30 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 violation
33 of RCW 46.61.502 or 46.61.504 and who has one prior offense within
34 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 whom
37 for reasons other than the person's refusal to take a test offered

1 pursuant to RCW 46.20.308 there is no test result indicating the
2 person's alcohol concentration:

3 (i) By imprisonment for (~~not less than thirty days nor more than~~
4 ~~three hundred sixty four days~~) six months and sixty days of electronic
5 home monitoring; or, if available in that county, by community-based
6 treatment for six months along with 24/7 sobriety program monitoring
7 pursuant to sections 27 through 43 of this act. In lieu of the
8 mandatory minimum term of sixty days electronic home monitoring, the
9 court may order at least an additional four days in jail. The offender
10 shall pay for the cost of the electronic monitoring. The county or
11 municipality where the penalty is being imposed shall determine the
12 cost. The court may also require the offender's electronic home
13 monitoring device include an alcohol detection breathalyzer or other
14 separate alcohol monitoring device, and may restrict the amount of
15 alcohol the offender may consume during the time the offender is on
16 electronic home monitoring. Thirty days of imprisonment and sixty days
17 of electronic home monitoring may not be suspended or deferred unless
18 the court finds that the imposition of this mandatory minimum sentence
19 would impose a substantial risk to the offender's physical or mental
20 well-being. Whenever the mandatory minimum sentence is suspended or
21 deferred, the court shall state in writing the reason for granting the
22 suspension or deferral and the facts upon which the suspension or
23 deferral is based; and

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

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

33 (i) By imprisonment for (~~not less than forty five days nor more~~
34 ~~than three hundred sixty four days~~) six months and ninety days of
35 electronic home monitoring; or, if available in that county, by
36 community-based treatment for six months along with 24/7 sobriety
37 program monitoring pursuant to sections 27 through 43 of this act. In
38 lieu of the mandatory minimum term of ninety days electronic home

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

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

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

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

29 (i) By imprisonment for (~~not less than ninety days nor more than~~)
30 three hundred sixty-four days (~~and~~), one hundred twenty days of
31 electronic home monitoring, and the person shall be prohibited from
32 purchasing or attempting to purchase alcohol for ten years. Any person
33 sentenced under this subsection shall surrender his or her current
34 Washington state driver's license or permit to drive within forty-eight
35 hours and obtain a new alternative vertically oriented driver's license
36 or permit through the department of licensing. In lieu of the
37 mandatory minimum term of one hundred twenty days of electronic home
38 monitoring, the court may order at least an additional eight days in

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

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

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

25 (i) By imprisonment for (~~not less than one hundred twenty days nor~~
26 ~~more than~~) three hundred sixty-four days and one hundred fifty days of
27 electronic home monitoring, and the person is prohibited from
28 purchasing or attempting to purchase alcohol for ten years. Any person
29 sentenced under this subsection shall surrender his or her current
30 Washington state driver's license or permit to drive within forty-eight
31 hours and obtain a new alternative vertically oriented driver's license
32 or permit through the department of licensing. In lieu of the
33 mandatory minimum term of one hundred fifty days of electronic home
34 monitoring, the court may order at least an additional ten days in
35 jail. The offender shall pay for the cost of the electronic
36 monitoring. The county or municipality where the penalty is being
37 imposed shall determine the cost. The court may also require the
38 offender's electronic home monitoring device include an alcohol

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

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

16 (4) **Four or more prior offenses in ten years.** A person who is
17 convicted of a violation of RCW 46.61.502 or 46.61.504 shall be
18 punished under chapter 9.94A RCW and pursuant to subsection (5) of this
19 section if:

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

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

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

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

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

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

29 (5) In addition to the penalties under chapter 9.94A RCW, a person
30 convicted under subsection (4) of this section for a violation of RCW
31 46.61.502 or 46.61.504 is prohibited from purchasing or attempting to
32 purchase alcohol for ten years. Any person sentenced under chapter
33 9.94A RCW pursuant to subsection (4) of this section shall surrender
34 his or her current Washington state driver's license or permit to drive
35 within forty-eight hours and obtain a new alternative vertically
36 oriented driver's license or permit through the department of
37 licensing.

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

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

16 ~~((+6))~~ (7) Penalty for having a minor passenger in vehicle. In
17 addition to any other penalty provided by law, if a person who is
18 convicted of a violation of RCW 46.61.502 or 46.61.504 committed the
19 offense while a passenger under the age of sixteen was in the vehicle,
20 the ~~((court shall))~~ following must occur:

21 (a) ~~((Order))~~ The court shall require the use of an ignition
22 interlock or other device for an additional six months;

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

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

37 (d) In any case in which the person has two or three prior offenses
38 within seven years, and except as provided in RCW 46.61.502(6) or

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

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

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

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

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

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

21 ((+8)) (9) Treatment and information school. An offender
22 punishable under this section is subject to the alcohol assessment and
23 treatment provisions of RCW 46.61.5056.

24 ((+9)) (10) Driver's license privileges of the defendant. The
25 license, permit, or nonresident privilege of a person convicted of
26 driving or being in physical control of a motor vehicle while under the
27 influence of intoxicating liquor or drugs must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (~~((+10))~~) (11) Probation of driving privilege. After expiration of
35 any period of suspension, revocation, or denial of the offender's
36 license, permit, or privilege to drive required by this section, the
37 department shall place the offender's driving privilege in probationary
38 status pursuant to RCW 46.20.355.

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

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

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

1 (~~(12)~~) (13) Waiver of electronic home monitoring. A court may
2 waive the electronic home monitoring requirements of this chapter when:

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

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

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

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

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

26 (~~(13)~~) (14) Extraordinary medical placement. An offender serving
27 a sentence under this section, whether or not a mandatory minimum term
28 has expired, may be granted an extraordinary medical placement by the
29 jail administrator subject to the standards and limitations set forth
30 in RCW 9.94A.728(3).

31 (~~(14)~~) (15) Definitions. For purposes of this section and RCW
32 46.61.502 and 46.61.504:

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

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

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

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

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

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

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

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

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

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

36 (x) If a deferred prosecution is revoked based on a subsequent
37 conviction for an offense listed in this subsection (~~(+14)~~) (15)(a),

1 the subsequent conviction shall not be treated as a prior offense of
2 the revoked deferred prosecution for the purposes of sentencing; or
3 (xi) A deferred sentence imposed in a prosecution for a violation
4 of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local
5 ordinance, if the charge under which the deferred sentence was imposed
6 was originally filed as a violation of RCW 46.61.502 or 46.61.504, or
7 an equivalent local ordinance, or a violation of RCW 46.61.520 or
8 46.61.522;

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

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

15 **Sec. 13.** RCW 43.43.395 and 2012 c 183 s 16 are each amended to
16 read as follows:

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

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

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

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

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

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

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

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

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

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

1 **Sec. 14.** RCW 9.94A.533 and 2012 c 42 s 3 are each amended to read
2 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 **Sec. 15.** RCW 46.20.720 and 2012 c 183 s 9 are each amended to read
33 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **Sec. 16.** RCW 46.20.308 and 2013 c 3 s 31 (Initiative Measure No.
11 502), 2012 c 183 s 7, and 2012 c 80 s 12 are each reenacted and amended
12 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **Sec. 17.** RCW 46.20.270 and 2010 c 249 s 11 are each amended to
2 read as follows:

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

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

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

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

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

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

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

32 **Sec. 18.** RCW 9.94A.603 and 2006 c 73 s 4 are each amended to read
33 as follows:

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

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

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

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

11 **Sec. 19.** RCW 46.25.090 and 2011 c 227 s 4 are each amended to read
12 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (i) Not less than sixty days if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **Sec. 20.** RCW 46.25.120 and 2006 c 327 s 5 are each amended to read
14 as follows:

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

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

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

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

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

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

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

1 **Sec. 21.** RCW 46.25.110 and 1989 c 178 s 13 are each amended to
2 read as follows:

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

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

12 **Sec. 22.** RCW 9.94A.535 and 2011 c 87 s 1 are each amended to read
13 as follows:

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

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

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

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

32 (1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **Sec. 23.** RCW 3.62.090 and 2004 c 15 s 5 are each amended to read
31 as follows:

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

1 this section shall not be suspended or waived by the court. This
2 public safety and education assessment shall not be applied to the
3 mandatory fine imposed under RCW 46.61.5055(7) for defendants convicted
4 of a violation of RCW 46.61.502 or 46.61.504 committed while a
5 passenger under the age of sixteen was in the vehicle.

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

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

20 **Sec. 24.** RCW 46.61.5249 and 2012 c 183 s 13 are each amended to
21 read as follows:

22 (1)(a) A person is guilty of negligent driving in the first degree
23 if he or she operates a motor vehicle in a manner that is both
24 negligent and endangers or is likely to endanger any person or
25 property, and exhibits the effects of having consumed liquor,
26 marijuana, or an illegal drug or exhibits the effects of having inhaled
27 or ingested any chemical, whether or not a legal substance, for its
28 intoxicating or hallucinatory effects.

29 (b) It is an affirmative defense to negligent driving in the first
30 degree by means of exhibiting the effects of having consumed an illegal
31 drug that must be proved by the defendant by a preponderance of the
32 evidence, that the driver has a valid prescription for the drug
33 consumed, and has been consuming it according to the prescription
34 directions and warnings.

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

36 (2) For the purposes of this section:

1 (a) "Negligent" means the failure to exercise ordinary care, and is
2 the doing of some act that a reasonably careful person would not do
3 under the same or similar circumstances or the failure to do something
4 that a reasonably careful person would do under the same or similar
5 circumstances.

6 (b) "Exhibiting the effects of having consumed liquor" means that
7 a person has the odor of liquor on his or her breath, or that by
8 speech, manner, appearance, behavior, lack of coordination, or
9 otherwise exhibits that he or she has consumed liquor, and either:

10 (i) Is in possession of or in close proximity to a container that
11 has or recently had liquor in it; or

12 (ii) Is shown by other evidence to have recently consumed liquor.

13 (c) "Exhibiting the effects of having consumed marijuana" means
14 that a person has the odor of marijuana on his or her person, or by
15 speech, manner, appearance, behavior, lack of coordination, or
16 otherwise exhibits that he or she has consumed marijuana and either:

17 (i) Is in possession of or in close proximity to a container that
18 has or recently had marijuana in it; or

19 (ii) Is shown by other evidence to have recently consumed
20 marijuana.

21 (d) "Exhibiting the effects of having consumed an illegal drug"
22 means that a person by speech, manner, appearance, behavior, lack of
23 coordination, or otherwise exhibits that he or she has consumed an
24 illegal drug and either:

25 (i) Is in possession of an illegal drug; or

26 (ii) Is shown by other evidence to have recently consumed an
27 illegal drug.

28 ~~((d))~~ (e) "Exhibiting the effects of having inhaled or ingested
29 any chemical, whether or not a legal substance, for its intoxicating or
30 hallucinatory effects" means that a person by speech, manner,
31 appearance, behavior, or lack of coordination or otherwise exhibits
32 that he or she has inhaled or ingested a chemical and either:

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

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

37 ~~((e))~~ (f) "Illegal drug" means a controlled substance under
38 chapter 69.50 RCW for which the driver does not have a valid

1 prescription or that is not being consumed in accordance with the
2 prescription directions and warnings, or a legend drug under chapter
3 69.41 RCW for which the driver does not have a valid prescription or
4 that is not being consumed in accordance with the prescription
5 directions and warnings.

6 (3) Any act prohibited by this section that also constitutes a
7 crime under any other law of this state may be the basis of prosecution
8 under such other law notwithstanding that it may also be the basis for
9 prosecution under this section.

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

15 NEW SECTION. **Sec. 25.** (1) The legislature recognizes that traffic
16 deaths and serious injuries related to impaired driving and speeding
17 are preventable and cause a public safety problem in Washington state.
18 Such crashes have a significant bearing on overall law enforcement and
19 court caseloads. The legislature further recognizes the growing costs
20 associated with traffic safety education, enforcement, and advocacy
21 programs established by local governments and community-based
22 organizations.

23 (2) It is the legislature's intent by enacting section 26 of this
24 act to establish a penalty that will hold convicted motor vehicle
25 offenders accountable and help to offset the costs of effective city,
26 county, or community programs created to reduce traffic deaths and
27 serious injuries.

28 NEW SECTION. **Sec. 26.** A new section is added to chapter 46.64 RCW
29 to read as follows:

30 (1) All superior courts, and courts organized under Title 3 or 35
31 RCW, must impose a penalty assessment of one hundred dollars on any
32 person who is convicted for a violation of RCW 46.20.342, 46.20.750,
33 46.52.010, 46.52.020, 46.61.024, 46.61.500, 46.61.502, 46.61.503,
34 46.61.520, 46.61.522, 46.61.5249, or 46.61.530. The penalty assessment
35 is in addition to, and does not supersede, any other penalty,

1 restitution, fines, or costs provided by law. The court may not
2 reduce, waive, or suspend the penalty assessment unless the court finds
3 the offender to be indigent.

4 (2)(a) The penalty assessment must be forwarded to the city or
5 county in which the court imposing the assessment is located and must
6 be used solely for the purposes of funding the following programs
7 according to the following priorities:

8 (i) Priority 1: Traffic safety task forces that provide education,
9 prevention, and enforcement programs designed to reduce motor vehicle-
10 related deaths and serious injuries; or

11 (ii) Priority 2: Effective strategies to reduce motor vehicle-
12 related deaths and serious injuries, such as those found in the
13 Washington state strategic highway safety plan: Target Zero.

14 (b) If the city or county does not have the programs specified in
15 (a) of this subsection, the city or county may use the revenue from the
16 penalty assessment to establish or contract for such programs,
17 including recognized community-based traffic safety programs.

18 (c) Revenue from the penalty assessment must not be used for
19 indigent criminal defense.

20 (d) The penalty assessment is not subject to any state or local
21 remittance requirements under chapter 3.50, 3.62, 7.68, 10.82, or 35.21
22 RCW.

23 NEW SECTION. **Sec. 27.** A new section is added to chapter 43.10 RCW
24 to read as follows:

25 There is created a statewide 24/7 sobriety program to be
26 administered by the office of the attorney general. The program shall
27 coordinate efforts among various state and local government entities
28 for the purpose of finding and implementing alternatives to
29 incarceration for conviction under RCW 46.61.502 or 46.61.504.

30 NEW SECTION. **Sec. 28.** A new section is added to chapter 43.10 RCW
31 to read as follows:

32 There is hereby established in the state treasury the 24/7 sobriety
33 account. The account shall be maintained and administered by the
34 office of the attorney general to defray costs of operating the 24/7
35 sobriety program, including purchasing and maintaining equipment and
36 funding support services. The office of the attorney general may

1 accept for deposit in the account money from donations, gifts, grants,
2 participation fees, and user fees or payments. Expenditures from the
3 account shall be budgeted through the normal budget process.

4 NEW SECTION. **Sec. 29.** A new section is added to chapter 43.10 RCW
5 to read as follows:

6 The definitions in this section apply throughout sections 27
7 through 43 of this act unless the context clearly requires otherwise.

8 (1) "Drug patch" means any type of device that is affixed to a
9 person's skin and tests for the presence of marijuana or controlled
10 substances in the person's body.

11 (2) "Electronic alcohol monitoring device" means any electronic
12 instrument that is attached to a person and is capable of determining
13 and monitoring the presence of alcohol in a person's body, and includes
14 any associated equipment a participant needs in order for the device to
15 properly perform.

16 (3) "Ignition interlock device" means an instrument that is
17 attached to a motor vehicle's ignition system in which a participant
18 submits to a breath test that detects the presence of alcohol in the
19 participant's body, provides simultaneous testing and photo
20 confirmation information to the participating agency, and does not
21 permit the starting and continued operation of the participant's
22 vehicle if the test detects alcohol.

23 (4) "Participant" means a person who has been ordered by a court or
24 directed by the department of corrections to participate in the 24/7
25 sobriety program.

26 (5) "Participating agency" means a sheriff's office or a designated
27 entity named by a sheriff that has agreed to participate in the 24/7
28 sobriety program by enrolling participants, administering one or more
29 of the tests, and submitting reports to the attorney general.

30 (6) "Participation agreement" means a written document executed by
31 a participant agreeing to participate in the 24/7 sobriety program in
32 a form approved by the attorney general that contains the following
33 information:

- 34 (a) The type, frequency, and time period of testing;
35 (b) The location of testing;
36 (c) The fees and payment procedures required for testing; and

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

3 (7) "24/7 sobriety program" means a twenty-four hour and seven day
4 a week sobriety program in which a participant submits to the testing
5 of the participant's blood, breath, urine, or other bodily substances
6 in order to determine the presence of alcohol, marijuana, or any
7 controlled substance in the participant's body.

8 (8) "Twice-a-day testing" means the 24/7 sobriety program test in
9 which a participant submits to a breath test that detects the presence
10 of alcohol in the participant's body and is performed at least twice
11 daily with testing times approximately twelve hours apart.

12 NEW SECTION. **Sec. 30.** A new section is added to chapter 43.10 RCW
13 to read as follows:

14 Each county, through its sheriff, may participate in the 24/7
15 sobriety program. If a sheriff is unwilling or unable to participate
16 in the 24/7 sobriety program, the sheriff may designate an entity
17 willing to provide the service. If twice-a-day testing is ordered, the
18 sheriff, or designated entity, shall establish the testing locations
19 and times for each county but shall have at least one location and two
20 daily testing times approximately twelve hours apart.

21 NEW SECTION. **Sec. 31.** A new section is added to chapter 43.10 RCW
22 to read as follows:

23 The court may condition any bond or pretrial release upon
24 participation in the 24/7 sobriety program and payment of associated
25 costs and expenses.

26 NEW SECTION. **Sec. 32.** A new section is added to chapter 43.10 RCW
27 to read as follows:

28 The court may condition the granting of a suspended imposition of
29 sentence, suspended execution of sentence, probation, or release upon
30 participation in the 24/7 sobriety program and payment of associated
31 costs and expenses.

32 NEW SECTION. **Sec. 33.** A new section is added to chapter 43.10 RCW
33 to read as follows:

1 The department of corrections may condition release upon
2 participation in the 24/7 sobriety program and payment of associated
3 costs and expenses.

4 NEW SECTION. **Sec. 34.** A new section is added to chapter 43.10 RCW
5 to read as follows:

6 The office of the attorney general may adopt rules for the
7 administration of the 24/7 sobriety program to:

- 8 (1) Regulate the nature, method, and manner of testing;
- 9 (2) Provide for procedures and apparatus for testing including
10 electronic monitoring devices and ignition interlock devices; and
- 11 (3) Require the submission of reports and information by law
12 enforcement agencies within this state.

13 NEW SECTION. **Sec. 35.** A new section is added to chapter 43.10 RCW
14 to read as follows:

15 Funds in the 24/7 sobriety account shall be distributed as
16 follows:

17 (1) Any daily user fee collected in the administration of twice-a-
18 day testing, drug patch testing, or urinalysis testing under the 24/7
19 sobriety program shall be collected by the sheriff, or an entity
20 designated by the sheriff, and deposited with the county treasurer of
21 the proper county, the proceeds of which shall be applied and used only
22 to defray the recurring costs of the 24/7 sobriety program including
23 maintaining equipment, funding support services, and ensuring
24 compliance;

25 (2) Any installation and deactivation fee collected in the
26 administration of electronic alcohol monitoring device testing shall be
27 collected by the sheriff, or an entity designated by the sheriff, and
28 deposited with the county treasurer of the proper county, the proceeds
29 of which shall be applied and used only to defray the recurring costs
30 of the 24/7 sobriety program including maintaining equipment, funding
31 support services, and ensuring compliance;

32 (3) Any daily user fee collected in the administration of
33 electronic alcohol monitoring device testing shall be deposited in the
34 24/7 sobriety account. A participant shall pay all electronic alcohol
35 monitoring device testing user fees to the clerk of court in the county
36 where the participant is enrolled in the program if the test is ordered

1 by a court. If the test is directed by the department of corrections,
2 the fees shall be paid to the directing entity as provided in the
3 written directive;

4 (4) The department of corrections may collect an installation fee
5 and a deactivation fee in their administration of electronic alcohol
6 monitoring device testing. These fees shall be deposited into the
7 state general fund;

8 (5) Any enrollment and monitoring fee collected in the
9 administration of ignition interlock device testing shall be collected
10 by the sheriff, or an entity designated by the sheriff, and deposited
11 with the county treasurer of the proper county, the proceeds of which
12 shall be applied and used only to defray the recurring costs of the
13 24/7 sobriety program including maintaining equipment, funding support
14 services, and ensuring compliance; and

15 (6) Any participation fee collected in the administration of
16 testing under the 24/7 sobriety program to cover program administration
17 costs incurred by the office of the attorney general shall be collected
18 by the sheriff, or an entity designated by the sheriff, and deposited
19 in the 24/7 sobriety account.

20 NEW SECTION. **Sec. 36.** A new section is added to chapter 43.10 RCW
21 to read as follows:

22 A participant submitting to twice-a-day testing shall pay a user
23 fee of one dollar to three dollars, inclusive, for each test.

24 NEW SECTION. **Sec. 37.** A new section is added to chapter 43.10 RCW
25 to read as follows:

26 A participant submitting to urinalysis testing shall pay a user fee
27 of five dollars to ten dollars, inclusive, for each test. If further
28 analysis of the sample is required or requested, the participant is
29 responsible for payment of the actual costs incurred by the
30 participating agency for the analysis of the sample.

31 NEW SECTION. **Sec. 38.** A new section is added to chapter 43.10 RCW
32 to read as follows:

33 A participant submitting to wear a drug patch shall pay a user fee
34 of forty to fifty dollars, inclusive, for each drug patch attached.

1 NEW SECTION. **Sec. 42.** A new section is added to chapter 43.10 RCW
2 to read as follows:

3 Each participant in the 24/7 sobriety program shall pay a
4 participation fee of one to three dollars, inclusive, per day.

5 NEW SECTION. **Sec. 43.** A new section is added to chapter 43.10 RCW
6 to read as follows:

7 The attorney general shall meet annually with participating
8 agencies to review fees and collection procedures for the 24/7 sobriety
9 program. The attorney general shall set and give notice of the time
10 and place for the meeting. The attorney general shall set, by rule,
11 the annual fees within the ranges established.

12 **Sec. 44.** RCW 46.20.117 and 2012 c 80 s 6 are each amended to read
13 as follows:

14 (1) **Issuance.** The department shall issue an identicard, containing
15 a picture, if the applicant:

16 (a) Does not hold a valid Washington driver's license;

17 (b) Proves his or her identity as required by RCW 46.20.035; and

18 (c) Pays the required fee. Except as provided in subsection (5) of
19 this section, the fee is forty-five dollars from October 1, 2012, to
20 June 30, 2013, and fifty-four dollars after June 30, 2013, unless an
21 applicant is a recipient of continuing public assistance grants under
22 Title 74 RCW, who is referred in writing by the secretary of social and
23 health services. For those persons the fee must be the actual cost of
24 production of the identicard.

25 (2) **Design and term.** (a) The identicard must:

26 ~~((a))~~ (i) Be distinctly designed so that it will not be confused
27 with the official driver's license; and

28 ~~((b))~~ (ii) Except as provided in subsection (5) of this section,
29 expire on the sixth anniversary of the applicant's birthdate after
30 issuance.

31 (b) An identicard issued to a person that has been convicted of two
32 or more violations of RCW 46.61.502 or 46.61.504 must be vertically
33 oriented pursuant to RCW 46.61.5055 (3) through (5).

34 (3) **Renewal.** An application for identicard renewal may be
35 submitted by means of:

36 (a) Personal appearance before the department; or

1 (b) Mail or electronic commerce, if permitted by rule of the
2 department and if the applicant did not renew his or her identicard by
3 mail or by electronic commerce when it last expired.

4 An identicard may not be renewed by mail or by electronic commerce
5 unless the renewal issued by the department includes a photograph of
6 the identicard holder.

7 (4) **Cancellation.** The department may cancel an identicard if the
8 holder of the identicard used the card or allowed others to use the
9 card in violation of RCW 46.20.0921.

10 (5) **Alternative issuance/renewal/extension.** The department may
11 issue or renew an identicard for a period other than five years from
12 October 1, 2012, to June 30, 2013, or six years after June 30, 2013, or
13 may extend by mail or electronic commerce an identicard that has
14 already been issued, in order to evenly distribute, as nearly as
15 possible, the yearly renewal rate of identicard holders. The fee for
16 an identicard issued or renewed for a period other than five years from
17 October 1, 2012, to June 30, 2013, or six years after June 30, 2013, or
18 that has been extended by mail or electronic commerce, is nine dollars
19 for each year that the identicard is issued, renewed, or extended. The
20 department may adopt any rules as are necessary to carry out this
21 subsection.

22 **Sec. 45.** RCW 46.20.161 and 2012 c 80 s 8 are each amended to read
23 as follows:

24 (1) The department, upon receipt of a fee of forty-five dollars
25 from October 1, 2012, to June 30, 2013, and fifty-four dollars after
26 June 30, 2013, unless the driver's license is issued for a period other
27 than five years from October 1, 2012, to June 30, 2013, or six years
28 after June 30, 2013, in which case the fee shall be nine dollars for
29 each year that the license is issued, which includes the fee for the
30 required photograph, shall issue to every qualifying applicant a
31 driver's license. A driver's license issued to a person under the age
32 of eighteen is an intermediate license, subject to the restrictions
33 imposed under RCW 46.20.075, until the person reaches the age of
34 eighteen. The license must include a distinguishing number assigned to
35 the licensee, the name of record, date of birth, Washington residence
36 address, photograph, a brief description of the licensee, and either a
37 facsimile of the signature of the licensee or a space upon which the

1 licensee shall write his or her usual signature with pen and ink
2 immediately upon receipt of the license. No license is valid until it
3 has been so signed by the licensee.

4 (2) Any driver's license issued, including those issued under RCW
5 46.20.385, to a person that has been convicted of two or more
6 violations of RCW 46.61.502 or 46.61.504 must be vertically oriented
7 pursuant to RCW 46.61.5055 (3) through (5).

8 NEW SECTION. Sec. 46. Sections 30 through 33 and 35 through 43 of
9 this act take effect January 1, 2015.

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