

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5399

56th Legislature
1999 Regular Session

Passed by the Senate April 22, 1999
YEAS 45 NAYS 0

President of the Senate

Passed by the House April 16, 1999
YEAS 97 NAYS 0

**Speaker of the
House of Representatives**

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5399** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5399

AS AMENDED BY THE HOUSE

Passed Legislature - 1999 Regular Session

State of Washington 56th Legislature 1999 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Rossi, Kline, Costa and McCaslin)

Read first time 03/03/99.

1 AN ACT Relating to traffic offenses; amending RCW 9.94A.360,
2 46.20.720, and 10.05.140; reenacting and amending RCW 46.20.308;
3 prescribing penalties; and declaring an emergency.

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

5 **Sec. 1.** RCW 9.94A.360 and 1998 c 211 s 4 are each amended to read
6 as follows:

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

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

11 (1) A prior conviction is a conviction which exists before the date
12 of sentencing for the offense for which the offender score is being
13 computed. Convictions entered or sentenced on the same date as the
14 conviction for which the offender score is being computed shall be
15 deemed "other current offenses" within the meaning of RCW 9.94A.400.

16 (2) Class A and sex prior felony convictions shall always be
17 included in the offender score. Class B prior felony convictions other
18 than sex offenses shall not be included in the offender score, if since
19 the last date of release from confinement (including full-time

1 residential treatment) pursuant to a felony conviction, if any, or
2 entry of judgment and sentence, the offender had spent ten consecutive
3 years in the community without committing any crime that subsequently
4 results in a conviction. Class C prior felony convictions other than
5 sex offenses shall not be included in the offender score if, since the
6 last date of release from confinement (including full-time residential
7 treatment) pursuant to a felony conviction, if any, or entry of
8 judgment and sentence, the offender had spent five consecutive years in
9 the community without committing any crime that subsequently results in
10 a conviction. Serious traffic convictions 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
14 spent five years in the community without committing any crime that
15 subsequently results in a conviction. This subsection applies to both
16 adult and juvenile prior convictions.

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

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

29 (5)(a) In the case of multiple prior convictions, for the purpose
30 of computing the offender score, count all convictions separately,
31 except:

32 (i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to
33 encompass the same criminal conduct, shall be counted as one offense,
34 the offense that yields the highest offender score. The current
35 sentencing court shall determine with respect to other prior adult
36 offenses for which sentences were served concurrently or prior juvenile
37 offenses for which sentences were served consecutively, whether those
38 offenses shall be counted as one offense or as separate offenses using
39 the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and

1 if the court finds that they shall be counted as one offense, then the
2 offense that yields the highest offender score shall be used. The
3 current sentencing court may presume that such other prior offenses
4 were not the same criminal conduct from sentences imposed on separate
5 dates, or in separate counties or jurisdictions, or in separate
6 complaints, indictments, or informations;

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

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

19 (6) If the present conviction is one of the anticipatory offenses
20 of criminal attempt, solicitation, or conspiracy, count each prior
21 conviction as if the present conviction were for a completed offense.

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

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

32 (9) If the present conviction is for Murder 1 or 2, Assault 1,
33 Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or Rape 1, count
34 three points for prior adult and juvenile convictions for crimes in
35 these categories, two points for each prior adult and juvenile violent
36 conviction (not already counted), one point for each prior adult
37 nonviolent felony conviction, and 1/2 point for each prior juvenile
38 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 (~~or~~
9 ~~serious traffic offense,~~) count one point for each adult and 1/2 point
10 for each juvenile prior conviction; for each serious traffic offense,
11 other than those used for an enhancement pursuant to RCW 46.61.520(2),
12 count one point for each adult and 1/2 point for each juvenile prior
13 conviction. (~~This subsection shall not apply when additional time is~~
14 ~~added to a sentence pursuant to RCW 46.61.520(2).)~~)

15 (12) If the present conviction is for a drug offense count three
16 points for each adult prior felony drug offense conviction and two
17 points for each juvenile drug offense. All other adult and juvenile
18 felonies are scored as in subsection (8) of this section if the current
19 drug offense is violent, or as in subsection (7) of this section if the
20 current drug offense is nonviolent.

21 (13) If the present conviction is for Willful Failure to Return
22 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
23 Release, RCW 72.65.070, or Escape from Community Custody, RCW
24 72.09.310, count only prior escape convictions in the offender score.
25 Count adult prior escape convictions as one point and juvenile prior
26 escape convictions as 1/2 point.

27 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or
28 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
29 juvenile prior convictions as 1/2 point.

30 (15) If the present conviction is for Burglary 2 or residential
31 burglary, count priors as in subsection (7) of this section; however,
32 count two points for each adult and juvenile prior Burglary 1
33 conviction, two points for each adult prior Burglary 2 or residential
34 burglary conviction, and one point for each juvenile prior Burglary 2
35 or residential burglary conviction.

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

1 (17) If the present conviction is for an offense committed while
2 the offender was under community placement, add one point.

3 **Sec. 2.** RCW 46.20.308 and 1998 c 213 s 1, 1998 c 209 s 1, 1998 c
4 207 s 7, and 1998 c 41 s 4 are each reenacted and amended to read as
5 follows:

6 (1) Any person who operates a motor vehicle within this state is
7 deemed to have given consent, subject to the provisions of RCW
8 46.61.506, to a test or tests of his or her breath or blood for the
9 purpose of determining the alcohol concentration or presence of any
10 drug in his or her breath or blood if arrested for any offense where,
11 at the time of the arrest, the arresting officer has reasonable grounds
12 to believe the person had been driving or was in actual physical
13 control of a motor vehicle while under the influence of intoxicating
14 liquor or any drug or was in violation of RCW 46.61.503.

15 (2) The test or tests of breath shall be administered at the
16 direction of a law enforcement officer having reasonable grounds to
17 believe the person to have been driving or in actual physical control
18 of a motor vehicle within this state while under the influence of
19 intoxicating liquor or any drug or the person to have been driving or
20 in actual physical control of a motor vehicle while having alcohol in
21 a concentration in violation of RCW 46.61.503 in his or her system and
22 being under the age of twenty-one. However, in those instances where
23 the person is incapable due to physical injury, physical incapacity, or
24 other physical limitation, of providing a breath sample or where the
25 person is being treated in a hospital, clinic, doctor's office,
26 emergency medical vehicle, ambulance, or other similar facility in
27 which a breath testing instrument is not present or where the officer
28 has reasonable grounds to believe that the person is under the
29 influence of a drug, a blood test shall be administered by a qualified
30 person as provided in RCW 46.61.506(4). The officer shall inform the
31 person of his or her right to refuse the breath or blood test, and of
32 his or her right to have additional tests administered by any qualified
33 person of his or her choosing as provided in RCW 46.61.506. The
34 officer shall warn the driver that:

35 (a) His or her license, permit, or privilege to drive will be
36 revoked or denied if he or she refuses to submit to the test;

37 (b) His or her license, permit, or privilege to drive will be
38 suspended, revoked, or denied if the test is administered and the test

1 indicates the alcohol concentration of the person's breath or blood is
2 0.08 or more, in the case of a person age twenty-one or over, or in
3 violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a
4 person under age twenty-one; and

5 (c) His or her refusal to take the test may be used in a criminal
6 trial.

7 (3) Except as provided in this section, the test administered shall
8 be of the breath only. If an individual is unconscious or is under
9 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
10 or vehicular assault as provided in RCW 46.61.522, or if an individual
11 is under arrest for the crime of driving while under the influence of
12 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
13 results from an accident in which there has been serious bodily injury
14 to another person, a breath or blood test may be administered without
15 the consent of the individual so arrested.

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

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

27 (6) If, after arrest and after the other applicable conditions and
28 requirements of this section have been satisfied, a test or tests of
29 the person's blood or breath is administered and the test results
30 indicate that the alcohol concentration of the person's breath or blood
31 is 0.08 or more if the person is age twenty-one or over, or is in
32 violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is
33 under the age of twenty-one, or the person refuses to submit to a test,
34 the arresting officer or other law enforcement officer at whose
35 direction any test has been given, or the department, where applicable,
36 if the arrest results in a test of the person's blood, shall:

37 (a) Serve notice in writing on the person on behalf of the
38 department of its intention to suspend, revoke, or deny the person's

1 license, permit, or privilege to drive as required by subsection (7) of
2 this section;

3 (b) Serve notice in writing on the person on behalf of the
4 department of his or her right to a hearing, specifying the steps he or
5 she must take to obtain a hearing as provided by subsection (8) of this
6 section;

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

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

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

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

27 (ii) That after receipt of the warnings required by subsection (2)
28 of this section the person refused to submit to a test of his or her
29 blood or breath, or a test was administered and the results indicated
30 that the alcohol concentration of the person's breath or blood was 0.08
31 or more if the person is age twenty-one or over, or was in violation of
32 RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age
33 of twenty-one; and

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

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

1 revocation, or denial to be effective beginning sixty days from the
2 date of arrest or from the date notice has been given in the event
3 notice is given by the department following a blood test, or when
4 sustained at a hearing pursuant to subsection (8) of this section,
5 whichever occurs first.

6 (8) A person receiving notification under subsection (6)(b) of this
7 section may, within thirty days after the notice has been given,
8 request in writing a formal hearing before the department. The person
9 shall pay a fee of one hundred dollars as part of the request. If the
10 request is mailed, it must be postmarked within thirty days after
11 receipt of the notification. Upon timely receipt of such a request for
12 a formal hearing, including receipt of the required one hundred dollar
13 fee, the department shall afford the person an opportunity for a
14 hearing. The department may waive the required one hundred dollar fee
15 if the person is an indigent as defined in RCW 10.101.010. Except as
16 otherwise provided in this section, the hearing is subject to and shall
17 be scheduled and conducted in accordance with RCW 46.20.329 and
18 46.20.332. The hearing shall be conducted in the county of the arrest,
19 except that all or part of the hearing may, at the discretion of the
20 department, be conducted by telephone or other electronic means. The
21 hearing shall be held within sixty days following the arrest or
22 following the date notice has been given in the event notice is given
23 by the department following a blood test, unless otherwise agreed to by
24 the department and the person, in which case the action by the
25 department shall be stayed, and any valid temporary license marked
26 under subsection (6)(c) of this section extended, if the person is
27 otherwise eligible for licensing. For the purposes of this section,
28 the scope of the hearing shall cover the issues of whether a law
29 enforcement officer had reasonable grounds to believe the person had
30 been driving or was in actual physical control of a motor vehicle
31 within this state while under the influence of intoxicating liquor or
32 any drug or had been driving or was in actual physical control of a
33 motor vehicle within this state while having alcohol in his or her
34 system in a concentration in violation of RCW 46.61.503 and was under
35 the age of twenty-one, whether the person was placed under arrest, and
36 (a) whether the person refused to submit to the test or tests upon
37 request of the officer after having been informed that such refusal
38 would result in the revocation of the person's license, permit, or
39 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 if the person was age twenty-
7 one or over at the time of the arrest, or was in violation of RCW
8 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of
9 twenty-one at the time of the arrest. The sworn report or report under
10 a declaration authorized by RCW 9A.72.085 submitted by a law
11 enforcement officer is prima facie evidence that the officer had
12 reasonable grounds to believe the person had been driving or was in
13 actual physical control of a motor vehicle within this state while
14 under the influence of intoxicating liquor or drugs, or both, or the
15 person had been driving or was in actual physical control of a motor
16 vehicle within this state while having alcohol in his or her system in
17 a concentration in violation of RCW 46.61.503 and was under the age of
18 twenty-one and that the officer complied with the requirements of this
19 section.

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

35 (9) If the suspension, revocation, or denial is sustained after
36 such a hearing, the person whose license, privilege, or permit is
37 suspended, revoked, or denied has the right to file a petition in the
38 superior court of the county of arrest to review the final order of
39 revocation by the department in the same manner as an appeal from a

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

29 (10) If a person whose driver's license, permit, or privilege to
30 drive has been or will be suspended, revoked, or denied under
31 subsection (7) of this section, other than as a result of a breath or
32 blood test refusal, and who has not committed an offense within the
33 last five years for which he or she was granted a deferred prosecution
34 under chapter 10.05 RCW, petitions a court for a deferred prosecution
35 on criminal charges arising out of the arrest for which action has been
36 or will be taken under subsection (7) of this section, the court may
37 direct the department to stay any actual or proposed suspension,
38 revocation, or denial for at least forty-five days but not more than
39 ninety days. If the court stays the suspension, revocation, or denial,

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

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

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

26 **Sec. 3.** RCW 46.20.720 and 1998 c 210 s 2 are each amended to read
27 as follows:

28 (1) The court may order that after a period of suspension,
29 revocation, or denial of driving privileges, and for up to as long as
30 the court has jurisdiction, any person convicted of any offense
31 involving the use, consumption, or possession of alcohol while
32 operating a motor vehicle may drive only a motor vehicle equipped with
33 a functioning ignition interlock or other biological or technical
34 device.

35 (2) If a person is convicted of a violation of RCW 46.61.502 or
36 46.61.504 or an equivalent local ordinance and it is: (a) The person's
37 first conviction or a deferred prosecution under chapter 10.05 RCW and
38 his or her alcohol concentration was at least 0.15, or by reason of the

1 person's refusal to take a test offered pursuant to RCW 46.20.308 there
2 is no test result indicating the person's alcohol concentration; or (b)
3 the person's second or subsequent conviction; or (c) the person's first
4 conviction and the person has a previous deferred prosecution under
5 chapter 10.05 RCW or it is a deferred prosecution under chapter 10.05
6 RCW and the person has a previous conviction, the court shall order
7 that after ((a)) any applicable period of suspension, revocation, or
8 denial of driving privileges, the person may drive only a motor vehicle
9 equipped with a functioning ignition interlock or other biological or
10 technical device. The court may waive the requirement for the use of
11 such a device if the court makes a specific finding in writing that
12 such devices are not reasonably available in the local area. Nothing
13 in this section may be interpreted as entitling a person to more than
14 one deferred prosecution.

15 (3) The court shall establish a specific calibration setting at
16 which the ignition interlock or other biological or technical device
17 will prevent the motor vehicle from being started and the period of
18 time that the person shall be subject to the restriction. In the case
19 of a person under subsection (2) of this section, the period of time of
20 the restriction will be as follows:

21 (a) For a person (i) who is subject to RCW 46.61.5055 (1)(b), (2),
22 or (3), or who is subject to a deferred prosecution program under
23 chapter 10.05 RCW, and (ii) who has not previously been restricted
24 under this section, a period of not less than one year;

25 (b) For a person who has previously been restricted under (a) of
26 this subsection, a period of not less than five years;

27 (c) For a person who has previously been restricted under (b) of
28 this subsection, a period of not less than ten years.

29 For purposes of this section, "convicted" means being found guilty
30 of an offense or being placed on a deferred prosecution program under
31 chapter 10.05 RCW.

32 **Sec. 4.** RCW 10.05.140 and 1997 c 229 s 2 are each amended to read
33 as follows:

34 As a condition of granting a deferred prosecution petition, the
35 court shall order that the petitioner shall not operate a motor vehicle
36 upon the public highways without a valid operator's license and proof
37 of liability insurance. The amount of liability insurance shall be
38 established by the court at not less than that established by RCW

1 46.29.490. As a condition of granting a deferred prosecution petition,
2 the court (~~may~~) shall also order the installation of an interlock or
3 other device under RCW 46.20.720 for a petitioner who has previously
4 been convicted of a violation of RCW 46.61.502 or 46.61.504 or an
5 equivalent local ordinance or a petitioner who has been charged with
6 such an offense and had an alcohol concentration of at least .15, or by
7 reason of the person's refusal to take a test offered pursuant to RCW
8 46.20.308 there is no test result indicating the person's alcohol
9 concentration. For any other petitioner, the court may order the
10 installation of an interlock device under RCW 46.20.720(1) as a
11 condition of granting a deferred prosecution petition. As a condition
12 of granting a deferred prosecution petition, the court may order the
13 petitioner to make restitution and to pay costs as defined in RCW
14 10.01.160. The court may terminate the deferred prosecution program
15 upon violation of this section.

16 NEW SECTION. Sec. 5. This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and takes effect
19 immediately.

--- END ---