

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2660

58th Legislature
2004 Regular Session

Passed by the House March 10, 2004
Yeas 96 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 10, 2004
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2660** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2660

AS AMENDED BY THE SENATE

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2004 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives G. Simpson, Carrell, McMahan, Lovick, Kenney and Wallace; by request of Office of the Lieutenant Governor)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to alcohol-related offenses; amending RCW
2 10.05.140, 46.20.308, 46.20.311, 46.20.342, 46.20.380, 46.20.394,
3 46.20.400, 46.20.410, 46.20.720, 46.20.740, 46.61.5055, 46.63.020,
4 46.68.041, and 46.68.260; reenacting and amending RCW 46.20.3101 and
5 46.20.391; and providing a contingent effective date.

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

7 **Sec. 1.** RCW 10.05.140 and 2003 c 220 s 2 are each amended to read
8 as follows:

9 As a condition of granting a deferred prosecution petition, the
10 court shall order that the petitioner shall not operate a motor vehicle
11 upon the public highways without a valid operator's license and proof
12 of liability insurance. The amount of liability insurance shall be
13 established by the court at not less than that established by RCW
14 46.29.490. As a condition of granting a deferred prosecution petition
15 on any alcohol-dependency based case, the court shall also order the
16 installation of an ignition interlock (~~((or other device))~~) under RCW
17 46.20.720 (~~((for a petitioner who has previously been convicted of a~~
18 ~~violation of RCW 46.61.502 or 46.61.504 or an equivalent local~~
19 ~~ordinance or a petitioner who has been charged with such an offense and~~

1 ~~had an alcohol concentration of at least .15, or by reason of the~~
2 ~~person's refusal to take a test offered pursuant to RCW 46.20.308 there~~
3 ~~is no test result indicating the person's alcohol concentration. For~~
4 ~~any other petitioner, the court may order the installation of an~~
5 ~~interlock device under RCW 46.20.720(1) as a condition of granting a~~
6 ~~deferred prosecution petition)). The required periods of use of the~~
7 ~~interlock shall be not less than the periods provided for in RCW~~
8 ~~46.20.720(2) (a), (b), and (c).~~ As a condition of granting a deferred
9 prosecution petition, the court may order the petitioner to make
10 restitution and to pay costs as defined in RCW 10.01.160. To help
11 ensure continued sobriety and reduce the likelihood of reoffense, the
12 court may order reasonable conditions during the period of the deferred
13 prosecution including, but not limited to, attendance at self-help
14 recovery support groups for alcoholism or drugs, complete abstinence
15 from alcohol and all nonprescribed mind-altering drugs, periodic
16 urinalysis or breath analysis, and maintaining law-abiding behavior.
17 The court may terminate the deferred prosecution program upon violation
18 of the deferred prosecution order.

19 **Sec. 2.** RCW 46.20.308 and 2004 c ... (Substitute House Bill No.
20 3055) s 2 are each amended to read as follows:

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

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

1 a concentration in violation of RCW 46.61.503 in his or her system and
2 being under the age of twenty-one. However, in those instances where
3 the person is incapable due to physical injury, physical incapacity, or
4 other physical limitation, of providing a breath sample or where the
5 person is being treated in a hospital, clinic, doctor's office,
6 emergency medical vehicle, ambulance, or other similar facility or
7 where the officer has reasonable grounds to believe that the person is
8 under the influence of a drug, a blood test shall be administered by a
9 qualified person as provided in RCW 46.61.506(5). The officer shall
10 inform the person of his or her right to refuse the breath or blood
11 test, and of his or her right to have additional tests administered by
12 any qualified person of his or her choosing as provided in RCW
13 46.61.506. The officer shall warn the driver, in substantially the
14 following language, that:

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

18 ~~(b) ((If the driver refuses to take the test, the driver will not
19 be eligible for an occupational permit; and~~

20 ~~(e))~~ If the driver refuses to take the test, the driver's refusal
21 to take the test may be used in a criminal trial; and

22 ~~((d))~~ (c) If the driver submits to the test and the test is
23 administered, the driver's license, permit, or privilege to drive will
24 be suspended, revoked, or denied for at least ninety days if the driver
25 is age twenty-one or over and the test indicates the alcohol
26 concentration of the driver's breath or blood is 0.08 or more, or if
27 the driver is under age twenty-one and the test indicates the alcohol
28 concentration of the driver's breath or blood is 0.02 or more, or if
29 the driver is under age twenty-one and the driver is in violation of
30 RCW 46.61.502 or 46.61.504.

31 (3) Except as provided in this section, the test administered shall
32 be of the breath only. If an individual is unconscious or is under
33 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
34 or vehicular assault as provided in RCW 46.61.522, or if an individual
35 is under arrest for the crime of driving while under the influence of
36 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
37 results from an accident in which there has been serious bodily injury

1 to another person, a breath or blood test may be administered without
2 the consent of the individual so arrested.

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (8) A person receiving notification under subsection (6)(b) of this
32 section may, within thirty days after the notice has been given,
33 request in writing a formal hearing before the department. The person
34 shall pay a fee of one hundred dollars as part of the request. If the
35 request is mailed, it must be postmarked within thirty days after
36 receipt of the notification. Upon timely receipt of such a request for
37 a formal hearing, including receipt of the required one hundred dollar
38 fee, the department shall afford the person an opportunity for a

1 hearing. The department may waive the required one hundred dollar fee
2 if the person is an indigent as defined in RCW 10.101.010. Except as
3 otherwise provided in this section, the hearing is subject to and shall
4 be scheduled and conducted in accordance with RCW 46.20.329 and
5 46.20.332. The hearing shall be conducted in the county of the arrest,
6 except that all or part of the hearing may, at the discretion of the
7 department, be conducted by telephone or other electronic means. The
8 hearing shall be held within sixty days following the arrest or
9 following the date notice has been given in the event notice is given
10 by the department following a blood test, unless otherwise agreed to by
11 the department and the person, in which case the action by the
12 department shall be stayed, and any valid temporary license marked
13 under subsection (6)(c) of this section extended, if the person is
14 otherwise eligible for licensing. For the purposes of this section,
15 the scope of the hearing shall cover the issues of whether a law
16 enforcement officer had reasonable grounds to believe the person had
17 been driving or was in actual physical control of a motor vehicle
18 within this state while under the influence of intoxicating liquor or
19 any drug or had been driving or was in actual physical control of a
20 motor vehicle within this state while having alcohol in his or her
21 system in a concentration of 0.02 or more if the person was under the
22 age of twenty-one, whether the person was placed under arrest, and (a)
23 whether the person refused to submit to the test or tests upon request
24 of the officer after having been informed that such refusal would
25 result in the revocation of the person's license, permit, or privilege
26 to drive, or (b) if a test or tests were administered, whether the
27 applicable requirements of this section were satisfied before the
28 administration of the test or tests, whether the person submitted to
29 the test or tests, or whether a test was administered without express
30 consent as permitted under this section, and whether the test or tests
31 indicated that the alcohol concentration of the person's breath or
32 blood was 0.08 or more if the person was age twenty-one or over at the
33 time of the arrest, or 0.02 or more if the person was under the age of
34 twenty-one at the time of the arrest. The sworn report or report under
35 a declaration authorized by RCW 9A.72.085 submitted by a law
36 enforcement officer is prima facie evidence that the officer had
37 reasonable grounds to believe the person had been driving or was in
38 actual physical control of a motor vehicle within this state while

1 under the influence of intoxicating liquor or drugs, or both, or the
2 person had been driving or was in actual physical control of a motor
3 vehicle within this state while having alcohol in his or her system in
4 a concentration of 0.02 or more and was under the age of twenty-one and
5 that the officer complied with the requirements of this section.

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

21 (9) If the suspension, revocation, or denial is sustained after
22 such a hearing, the person whose license, privilege, or permit is
23 suspended, revoked, or denied has the right to file a petition in the
24 superior court of the county of arrest to review the final order of
25 revocation by the department in the same manner as an appeal from a
26 decision of a court of limited jurisdiction. Notice of appeal must be
27 filed within thirty days after the date the final order is served or
28 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
29 1.1, or other statutes or rules referencing de novo review, the appeal
30 shall be limited to a review of the record of the administrative
31 hearing. The appellant must pay the costs associated with obtaining
32 the record of the hearing before the hearing officer. The filing of
33 the appeal does not stay the effective date of the suspension,
34 revocation, or denial. A petition filed under this subsection must
35 include the petitioner's grounds for requesting review. Upon granting
36 petitioner's request for review, the court shall review the
37 department's final order of suspension, revocation, or denial as
38 expeditiously as possible. The review must be limited to a

1 determination of whether the department has committed any errors of
2 law. The superior court shall accept those factual determinations
3 supported by substantial evidence in the record: (a) That were
4 expressly made by the department; or (b) that may reasonably be
5 inferred from the final order of the department. The superior court
6 may reverse, affirm, or modify the decision of the department or remand
7 the case back to the department for further proceedings. The decision
8 of the superior court must be in writing and filed in the clerk's
9 office with the other papers in the case. The court shall state the
10 reasons for the decision. If judicial relief is sought for a stay or
11 other temporary remedy from the department's action, the court shall
12 not grant such relief unless the court finds that the appellant is
13 likely to prevail in the appeal and that without a stay the appellant
14 will suffer irreparable injury. If the court stays the suspension,
15 revocation, or denial it may impose conditions on such stay.

16 (10) If a person whose driver's license, permit, or privilege to
17 drive has been or will be suspended, revoked, or denied under
18 subsection (7) of this section, other than as a result of a breath or
19 blood test refusal, and who has not committed an offense for which he
20 or she was granted a deferred prosecution under chapter 10.05 RCW,
21 petitions a court for a deferred prosecution on criminal charges
22 arising out of the arrest for which action has been or will be taken
23 under subsection (7) of this section, the court may direct the
24 department to stay any actual or proposed suspension, revocation, or
25 denial for at least forty-five days but not more than ninety days. If
26 the court stays the suspension, revocation, or denial, it may impose
27 conditions on such stay. If the person is otherwise eligible for
28 licensing, the department shall issue a temporary license, or extend
29 any valid temporary license marked under subsection (6) of this
30 section, for the period of the stay. If a deferred prosecution
31 treatment plan is not recommended in the report made under RCW
32 10.05.050, or if treatment is rejected by the court, or if the person
33 declines to accept an offered treatment plan, or if the person violates
34 any condition imposed by the court, then the court shall immediately
35 direct the department to cancel the stay and any temporary marked
36 license or extension of a temporary license issued under this
37 subsection.

1 A suspension, revocation, or denial imposed under this section,
2 other than as a result of a breath or blood test refusal, shall be
3 stayed if the person is accepted for deferred prosecution as provided
4 in chapter 10.05 RCW for the incident upon which the suspension,
5 revocation, or denial is based. If the deferred prosecution is
6 terminated, the stay shall be lifted and the suspension, revocation, or
7 denial reinstated. If the deferred prosecution is completed, the stay
8 shall be lifted and the suspension, revocation, or denial canceled.

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

15 **Sec. 3.** RCW 46.20.311 and 2003 c 366 s 2 are each amended to read
16 as follows:

17 (1)(a) The department shall not suspend a driver's license or
18 privilege to drive a motor vehicle on the public highways for a fixed
19 period of more than one year, except as specifically permitted under
20 RCW 46.20.267, 46.20.342, or other provision of law.

21 (b) Except for a suspension under RCW 46.20.267, 46.20.289,
22 46.20.291(5), 46.61.740, or 74.20A.320, whenever the license or driving
23 privilege of any person is suspended by reason of a conviction, a
24 finding that a traffic infraction has been committed, pursuant to
25 chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the
26 suspension shall remain in effect until the person gives and thereafter
27 maintains proof of financial responsibility for the future as provided
28 in chapter 46.29 RCW.

29 (c) If the suspension is the result of a violation of RCW 46.61.502
30 or 46.61.504, the department shall determine the person's eligibility
31 for licensing based upon the reports provided by the alcoholism agency
32 or probation department designated under RCW 46.61.5056 and shall deny
33 reinstatement until enrollment and participation in an approved program
34 has been established and the person is otherwise qualified. If the
35 suspension is the result of a violation of RCW 46.61.502 or 46.61.504,
36 and the person is required pursuant to RCW 46.20.720 to drive only a
37 motor vehicle equipped with a functioning ignition interlock (~~or other~~

1 ~~biological or technical device~~)), the department shall determine the
2 person's eligibility for licensing based upon written verification by
3 a company doing business in the state that it has installed the
4 required device on a vehicle owned (~~and/or~~) or operated by the person
5 seeking reinstatement. If, based upon notification from the interlock
6 provider or otherwise, the department determines that an interlock
7 required under RCW 46.20.720 is no longer installed or functioning as
8 required, the department shall suspend the person's license or
9 privilege to drive. Whenever the license or driving privilege of any
10 person is suspended or revoked as a result of noncompliance with an
11 ignition interlock requirement, the suspension shall remain in effect
12 until the person provides notice issued by a company doing business in
13 the state that a vehicle owned or operated by the person is equipped
14 with a functioning ignition interlock device.

15 (d) Whenever the license or driving privilege of any person is
16 suspended as a result of certification of noncompliance with a child
17 support order under chapter 74.20A RCW or a residential or visitation
18 order, the suspension shall remain in effect until the person provides
19 a release issued by the department of social and health services
20 stating that the person is in compliance with the order.

21 (~~(b)~~) (e)(i) The department shall not issue to the person a new,
22 duplicate, or renewal license until the person pays a reissue fee of
23 twenty dollars.

24 (ii) If the suspension is the result of a violation of RCW
25 46.61.502 or 46.61.504, or is the result of administrative action under
26 RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

27 (2)(a) Any person whose license or privilege to drive a motor
28 vehicle on the public highways has been revoked, unless the revocation
29 was for a cause which has been removed, is not entitled to have the
30 license or privilege renewed or restored until: (i) After the
31 expiration of one year from the date the license or privilege to drive
32 was revoked; (ii) after the expiration of the applicable revocation
33 period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the
34 expiration of two years for persons convicted of vehicular homicide; or
35 (iv) after the expiration of the applicable revocation period provided
36 by RCW 46.20.265.

37 (b)(i) After the expiration of the appropriate period, the person

1 may make application for a new license as provided by law together with
2 a reissue fee in the amount of twenty dollars.

3 (ii) If the revocation is the result of a violation of RCW
4 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one
5 hundred fifty dollars. If the revocation is the result of a violation
6 of RCW 46.61.502 or 46.61.504, the department shall determine the
7 person's eligibility for licensing based upon the reports provided by
8 the alcoholism agency or probation department designated under RCW
9 46.61.5056 and shall deny reissuance of a license, permit, or privilege
10 to drive until enrollment and participation in an approved program has
11 been established and the person is otherwise qualified. If the
12 revocation is the result of a violation of RCW 46.61.502 or 46.61.504,
13 and the person is required pursuant to RCW 46.20.720 to drive only a
14 motor vehicle equipped with a functioning ignition interlock or other
15 biological or technical device, the department shall determine the
16 person's eligibility for licensing based upon written verification by
17 a company doing business in the state that it has installed the
18 required device on a vehicle owned (~~and/or~~) or operated by the person
19 applying for a new license. If, following issuance of a new license,
20 the department determines, based upon notification from the interlock
21 provider or otherwise, that an interlock required under RCW 46.20.720
22 is no longer functioning, the department shall suspend the person's
23 license or privilege to drive until the department has received written
24 verification from an interlock provider that a functioning interlock is
25 installed.

26 (c) Except for a revocation under RCW 46.20.265, the department
27 shall not then issue a new license unless it is satisfied after
28 investigation of the driving ability of the person that it will be safe
29 to grant the privilege of driving a motor vehicle on the public
30 highways, and until the person gives and thereafter maintains proof of
31 financial responsibility for the future as provided in chapter 46.29
32 RCW. For a revocation under RCW 46.20.265, the department shall not
33 issue a new license unless it is satisfied after investigation of the
34 driving ability of the person that it will be safe to grant that person
35 the privilege of driving a motor vehicle on the public highways.

36 (3)(a) Whenever the driver's license of any person is suspended
37 pursuant to Article IV of the nonresident violators compact or RCW

1 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue
2 to the person any new or renewal license until the person pays a
3 reissue fee of twenty dollars.

4 (b) If the suspension is the result of a violation of the laws of
5 this or any other state, province, or other jurisdiction involving (i)
6 the operation or physical control of a motor vehicle upon the public
7 highways while under the influence of intoxicating liquor or drugs, or
8 (ii) the refusal to submit to a chemical test of the driver's blood
9 alcohol content, the reissue fee shall be one hundred fifty dollars.

10 **Sec. 4.** RCW 46.20.3101 and 1998 c 213 s 2, 1998 c 209 s 2, and
11 1998 c 207 s 8 are each reenacted and amended to read as follows:

12 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
13 deny the arrested person's license, permit, or privilege to drive as
14 follows:

15 (1) In the case of a person who has refused a test or tests:

16 (a) For a first refusal within seven years, where there has not
17 been a previous incident within seven years that resulted in
18 administrative action under this section, revocation or denial for one
19 year;

20 (b) For a second or subsequent refusal within seven years, or for
21 a first refusal where there has been one or more previous incidents
22 within seven years that have resulted in administrative action under
23 this section, revocation or denial for two years or until the person
24 reaches age twenty-one, whichever is longer. (~~(A revocation imposed~~
25 ~~under this subsection (1)(b) shall run consecutively to the period of~~
26 ~~any suspension, revocation, or denial imposed pursuant to a criminal~~
27 ~~conviction arising out of the same incident.))~~

28 (2) In the case of an incident where a person has submitted to or
29 been administered a test or tests indicating that the alcohol
30 concentration of the person's breath or blood was 0.08 or more:

31 (a) For a first incident within seven years, where there has not
32 been a previous incident within seven years that resulted in
33 administrative action under this section, suspension for ninety days;

34 (b) For a second or subsequent incident within seven years,
35 revocation or denial for two years.

36 (3) In the case of an incident where a person under age twenty-one

1 has submitted to or been administered a test or tests indicating that
2 the alcohol concentration of the person's breath or blood was in
3 violation of RCW 46.61.502, 46.61.503, or 46.61.504:

4 (a) For a first incident within seven years, suspension or denial
5 for ninety days;

6 (b) For a second or subsequent incident within seven years,
7 revocation or denial for one year or until the person reaches age
8 twenty-one, whichever is longer.

9 (4) The department shall grant credit on a day-for-day basis for
10 any portion of a suspension, revocation, or denial already served under
11 this section for a suspension, revocation, or denial imposed under RCW
12 46.61.5055 arising out of the same incident.

13 **Sec. 5.** RCW 46.20.342 and 2001 c 325 s 3 are each amended to read
14 as follows:

15 (1) It is unlawful for any person to drive a motor vehicle in this
16 state while that person is in a suspended or revoked status or when his
17 or her privilege to drive is suspended or revoked in this or any other
18 state. Any person who has a valid Washington driver's license is not
19 guilty of a violation of this section.

20 (a) A person found to be an habitual offender under chapter 46.65
21 RCW, who violates this section while an order of revocation issued
22 under chapter 46.65 RCW prohibiting such operation is in effect, is
23 guilty of driving while license suspended or revoked in the first
24 degree, a gross misdemeanor. Upon the first such conviction, the
25 person shall be punished by imprisonment for not less than ten days.
26 Upon the second conviction, the person shall be punished by
27 imprisonment for not less than ninety days. Upon the third or
28 subsequent conviction, the person shall be punished by imprisonment for
29 not less than one hundred eighty days. If the person is also convicted
30 of the offense defined in RCW 46.61.502 or 46.61.504, when both
31 convictions arise from the same event, the minimum sentence of
32 confinement shall be not less than ninety days. The minimum sentence
33 of confinement required shall not be suspended or deferred. A
34 conviction under this subsection does not prevent a person from
35 petitioning for reinstatement as provided by RCW 46.65.080.

36 (b) A person who violates this section while an order of suspension
37 or revocation prohibiting such operation is in effect and while the

1 person is not eligible to reinstate his or her driver's license or
2 driving privilege, other than for a suspension for the reasons
3 described in (c) of this subsection, is guilty of driving while license
4 suspended or revoked in the second degree, a gross misdemeanor. This
5 subsection applies when a person's driver's license or driving
6 privilege has been suspended or revoked by reason of:

7 (i) A conviction of a felony in the commission of which a motor
8 vehicle was used;

9 (ii) A previous conviction under this section;

10 (iii) A notice received by the department from a court or diversion
11 unit as provided by RCW 46.20.265, relating to a minor who has
12 committed, or who has entered a diversion unit concerning an offense
13 relating to alcohol, legend drugs, controlled substances, or imitation
14 controlled substances;

15 (iv) A conviction of RCW 46.20.410, relating to the violation of
16 restrictions of an occupational or a temporary restricted driver's
17 license;

18 (v) A conviction of RCW 46.20.345, relating to the operation of a
19 motor vehicle with a suspended or revoked license;

20 (vi) A conviction of RCW 46.52.020, relating to duty in case of
21 injury to or death of a person or damage to an attended vehicle;

22 (vii) A conviction of RCW 46.61.024, relating to attempting to
23 elude pursuing police vehicles;

24 (viii) A conviction of RCW 46.61.500, relating to reckless driving;

25 (ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a
26 person under the influence of intoxicating liquor or drugs;

27 (x) A conviction of RCW 46.61.520, relating to vehicular homicide;

28 (xi) A conviction of RCW 46.61.522, relating to vehicular assault;

29 (xii) A conviction of RCW 46.61.527(4), relating to reckless
30 endangerment of roadway workers;

31 (xiii) A conviction of RCW 46.61.530, relating to racing of
32 vehicles on highways;

33 (xiv) A conviction of RCW 46.61.685, relating to leaving children
34 in an unattended vehicle with motor running;

35 (xv) A conviction of RCW 46.61.740, relating to theft of motor
36 vehicle fuel;

37 (xvi) A conviction of RCW 46.64.048, relating to attempting,
38 aiding, abetting, coercing, and committing crimes;

1 (xvii) An administrative action taken by the department under
2 chapter 46.20 RCW; or

3 (xviii) A conviction of a local law, ordinance, regulation, or
4 resolution of a political subdivision of this state, the federal
5 government, or any other state, of an offense substantially similar to
6 a violation included in this subsection.

7 (c) A person who violates this section when his or her driver's
8 license or driving privilege is, at the time of the violation,
9 suspended or revoked solely because (i) the person must furnish proof
10 of satisfactory progress in a required alcoholism or drug treatment
11 program, (ii) the person must furnish proof of financial responsibility
12 for the future as provided by chapter 46.29 RCW, (iii) the person has
13 failed to comply with the provisions of chapter 46.29 RCW relating to
14 uninsured accidents, (iv) the person has failed to respond to a notice
15 of traffic infraction, failed to appear at a requested hearing,
16 violated a written promise to appear in court, or has failed to comply
17 with the terms of a notice of traffic infraction or citation, as
18 provided in RCW 46.20.289, (v) the person has committed an offense in
19 another state that, if committed in this state, would not be grounds
20 for the suspension or revocation of the person's driver's license, (vi)
21 the person has been suspended or revoked by reason of one or more of
22 the items listed in (b) of this subsection, but was eligible to
23 reinstate his or her driver's license or driving privilege at the time
24 of the violation, or (vii) the person has received traffic citations or
25 notices of traffic infraction that have resulted in a suspension under
26 RCW 46.20.267 relating to intermediate drivers' licenses, or any
27 combination of (i) through (vii), is guilty of driving while license
28 suspended or revoked in the third degree, a misdemeanor.

29 (2) Upon receiving a record of conviction of any person or upon
30 receiving an order by any juvenile court or any duly authorized court
31 officer of the conviction of any juvenile under this section, the
32 department shall:

33 (a) For a conviction of driving while suspended or revoked in the
34 first degree, as provided by subsection (1)(a) of this section, extend
35 the period of administrative revocation imposed under chapter 46.65 RCW
36 for an additional period of one year from and after the date the person
37 would otherwise have been entitled to apply for a new license or have
38 his or her driving privilege restored; or

1 (b) For a conviction of driving while suspended or revoked in the
2 second degree, as provided by subsection (1)(b) of this section, not
3 issue a new license or restore the driving privilege for an additional
4 period of one year from and after the date the person would otherwise
5 have been entitled to apply for a new license or have his or her
6 driving privilege restored; or

7 (c) Not extend the period of suspension or revocation if the
8 conviction was under subsection (1)(c) of this section. If the
9 conviction was under subsection (1)(a) or (b) of this section and the
10 court recommends against the extension and the convicted person has
11 obtained a valid driver's license, the period of suspension or
12 revocation shall not be extended.

13 **Sec. 6.** RCW 46.20.380 and 1985 ex.s. c 1 s 6 are each amended to
14 read as follows:

15 No person may file an application for an occupational or a
16 temporary restricted driver's license as provided in RCW 46.20.391
17 unless he or she first pays to the director or other person authorized
18 to accept applications and fees for driver's licenses a fee of
19 (~~twenty-five~~) one hundred dollars. The applicant shall receive upon
20 payment an official receipt for the payment of such fee. All such fees
21 shall be forwarded to the director who shall transmit such fees to the
22 state treasurer in the same manner as other driver's license fees.

23 **Sec. 7.** RCW 46.20.391 and 1999 c 274 s 4 and 1999 c 272 s 1 are
24 each reenacted and amended to read as follows:

25 (1)(a) Any person licensed under this chapter who is convicted of
26 an offense relating to motor vehicles for which suspension or
27 revocation of the driver's license is mandatory, other than vehicular
28 homicide or vehicular assault, or who has had his or her license
29 suspended, revoked, or denied under RCW 46.20.3101 (~~((2)(a) or~~
30 ~~(3)(a))~~), may submit to the department an application for (~~an~~
31 ~~occupational~~) a temporary restricted driver's license. The
32 department, upon receipt of the prescribed fee and upon determining
33 that the petitioner is (~~engaged in an occupation or trade that makes~~
34 ~~it essential that the petitioner operate a motor vehicle~~) eligible to
35 receive the license, may issue (~~an occupational~~) a temporary
36 restricted driver's license and may set definite restrictions as

1 provided in RCW 46.20.394. No person may petition for, and the
2 department shall not issue, ~~((an occupational))~~ a temporary restricted
3 driver's license that is effective during the first thirty days of any
4 suspension or revocation imposed ~~((either))~~ for a violation of RCW
5 46.61.502 or 46.61.504 or ~~((under RCW 46.20.3101 (2)(a) or (3)(a), or~~
6 ~~for both a violation of RCW 46.61.502 or 46.61.504 and under RCW~~
7 ~~46.20.3101 (2)(a) or (3)(a) where the action arises from the same~~
8 ~~incident. A person aggrieved by the decision of the department on the~~
9 ~~application for an occupational driver's license may request a hearing~~
10 ~~as provided by rule of the department)),~~ for a suspension, revocation,
11 or denial imposed under RCW 46.20.3101, during the required minimum
12 portion of the periods of suspension, revocation, or denial established
13 under (c) of this subsection.

14 (b) An applicant under this subsection whose driver's license is
15 suspended or revoked for an alcohol-related offense shall provide proof
16 to the satisfaction of the department that a functioning ignition
17 interlock device has been installed on a vehicle owned or operated by
18 the person.

19 (i) The department shall require the person to maintain such a
20 device on a vehicle owned or operated by the person and shall restrict
21 the person to operating only vehicles equipped with such a device, for
22 the remainder of the period of suspension, revocation, or denial.

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

31 (iii) The time period during which the person is licensed under
32 this section shall apply on a day-for-day basis toward satisfying the
33 period of time the ignition interlock device restriction is required
34 under RCW 46.20.720 (1) and (2) (a), (b), and (c).

35 (c) The department shall provide by rule the minimum portions of
36 the periods of suspension, revocation, or denial set forth in RCW
37 46.20.3101 after which a person may apply for a temporary restricted
38 driver's license under this section. In establishing the minimum

1 portions of the periods of suspension, revocation, or denial, the
2 department shall consider the requirements of federal law regarding
3 state eligibility for grants or other funding, and shall establish such
4 periods so as to ensure that the state will maintain its eligibility,
5 or establish eligibility, to obtain incentive grants or any other
6 federal funding.

7 (2)(a) A person licensed under this chapter whose driver's license
8 is suspended administratively due to failure to appear or pay a traffic
9 ticket under RCW 46.20.289; a violation of the financial responsibility
10 laws under chapter 46.29 RCW; or for multiple violations within a
11 specified period of time under RCW 46.20.291, may apply to the
12 department for an occupational driver's license (~~((if the applicant~~
13 ~~demonstrates to the satisfaction of the department that one of the~~
14 ~~following additional conditions are met:~~

15 ~~(i) The applicant is in an apprenticeship program or an on-the-job~~
16 ~~training program for which a driver's license is required;~~

17 ~~(ii) The applicant presents evidence that he or she has applied for~~
18 ~~a position in an apprenticeship or on the job training program and the~~
19 ~~program has certified that a driver's license is required to begin the~~
20 ~~program, provided that a license granted under this provision shall be~~
21 ~~in effect no longer than fourteen days;~~

22 ~~(iii) The applicant is in a program that assists persons who are~~
23 ~~enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to~~
24 ~~become gainfully employed and the program requires a driver's license;~~
25 ~~or~~

26 ~~(iv) The applicant is undergoing substance abuse treatment or is~~
27 ~~participating in meetings of a twelve-step group such as alcoholics~~
28 ~~anonymous)).~~

29 (b) If the suspension is for failure to respond, pay, or comply
30 with a notice of traffic infraction or conviction, the applicant must
31 enter into a payment plan with the court.

32 (c) An occupational driver's license issued to an applicant
33 described in (a) of this subsection shall be valid for the period of
34 the suspension or revocation (~~((but not more than two years))~~).

35 (~~((d) Upon receipt of evidence that a holder of an occupational~~
36 ~~driver's license granted under this subsection is no longer enrolled in~~
37 ~~an apprenticeship or on the job training program, the director shall~~
38 ~~give written notice by first class mail to the driver that the~~

1 ~~occupational driver's license shall be canceled. The effective date of~~
2 ~~cancellation shall be fifteen days from the date of mailing the notice.~~
3 ~~If at any time before the cancellation goes into effect the driver~~
4 ~~submits evidence of continued enrollment in the program, the~~
5 ~~cancellation shall be stayed. If the cancellation becomes effective,~~
6 ~~the driver may obtain, at no additional charge, a new occupational~~
7 ~~driver's license upon submittal of evidence of enrollment in another~~
8 ~~program that meets the criteria set forth in this subsection.~~

9 ~~(e) The department shall not issue an occupational driver's license~~
10 ~~under (a)(iv) of this subsection if the applicant is able to receive~~
11 ~~transit services sufficient to allow for the applicant's participation~~
12 ~~in the programs referenced under (a)(iv) of this subsection.)~~

13 (3) An applicant for an occupational or temporary restricted
14 driver's license who qualifies under subsection (1) or (2) of this
15 section is eligible to receive such license only if:

16 (a) ~~((Within one year immediately preceding the date of the offense~~
17 ~~that gave rise to the present conviction, the applicant has not~~
18 ~~committed any offense relating to motor vehicles for which suspension~~
19 ~~or revocation of a driver's license is mandatory; and~~

20 ~~(b))~~ Within seven years immediately preceding the date of the
21 offense that gave rise to the present conviction or incident, the
22 applicant has not committed ~~((any of the following offenses:—(i)~~
23 ~~Driving or being in actual physical control of a motor vehicle while~~
24 ~~under the influence of intoxicating liquor; (ii))~~ vehicular homicide
25 under RCW 46.61.520~~((+))~~ or ~~((+iii))~~ vehicular assault under RCW
26 46.61.522; and

27 ~~((+e))~~ (b) The applicant demonstrates that it is necessary for him
28 or her to operate a motor vehicle because he or she:

29 (i) Is engaged in an occupation or trade that makes it essential
30 that he or she operate a motor vehicle~~((, except as allowed under~~
31 ~~subsection (2)(a) of this section))~~;

32 (ii) Is undergoing continuing health care or providing continuing
33 care to another who is dependent upon the applicant;

34 (iii) Is enrolled in an educational institution and pursuing a
35 course of study leading to a diploma, degree, or other certification of
36 successful educational completion;

37 (iv) Is undergoing substance abuse treatment or is participating in

1 meetings of a twelve-step group such as Alcoholics Anonymous that
2 requires the petitioner to drive to or from the treatment or meetings;

3 (v) Is fulfilling court-ordered community service responsibilities;

4 (vi) Is in a program that assists persons who are enrolled in a
5 WorkFirst program pursuant to chapter 74.08A RCW to become gainfully
6 employed and the program requires a driver's license;

7 (vii) Is in an apprenticeship, on-the-job training, or welfare-to-
8 work program; or

9 (viii) Presents evidence that he or she has applied for a position
10 in an apprenticeship or on-the-job training program for which a
11 driver's license is required to begin the program, provided that a
12 license granted under this provision shall be in effect for no longer
13 than fourteen days; and

14 ~~((d))~~ (c) The applicant files satisfactory proof of financial
15 responsibility under chapter 46.29 RCW; and

16 (d) Upon receipt of evidence that a holder of an occupational
17 driver's license granted under this subsection is no longer enrolled in
18 an apprenticeship or on-the-job training program, the director shall
19 give written notice by first class mail to the driver that the
20 occupational driver's license shall be canceled. The effective date of
21 cancellation shall be fifteen days from the date of mailing the notice.
22 If at any time before the cancellation goes into effect the driver
23 submits evidence of continued enrollment in the program, the
24 cancellation shall be stayed. If the cancellation becomes effective,
25 the driver may obtain, at no additional charge, a new occupational
26 driver's license upon submittal of evidence of enrollment in another
27 program that meets the criteria set forth in this subsection; and

28 (e) The department shall not issue an occupational driver's license
29 under (b)(iv) of this subsection if the applicant is able to receive
30 transit services sufficient to allow for the applicant's participation
31 in the programs referenced under (b)(iv) of this subsection.

32 (4) A person aggrieved by the decision of the department on the
33 application for an occupational or temporary restricted driver's
34 license may request a hearing as provided by rule of the department.

35 (5) The director shall cancel an occupational or temporary
36 restricted driver's license upon receipt of notice that the holder
37 thereof has been convicted of operating a motor vehicle in violation of
38 its restrictions, or of a separate offense that under chapter 46.20 RCW

1 would warrant suspension or revocation of a regular driver's license.
2 The cancellation is effective as of the date of the conviction, and
3 continues with the same force and effect as any suspension or
4 revocation under this title.

5 **Sec. 8.** RCW 46.20.394 and 1999 c 272 s 2 are each amended to read
6 as follows:

7 In issuing an occupational or a temporary restricted driver's
8 license under RCW 46.20.391, the department shall describe the type of
9 (~~occupation permitted~~) qualifying circumstances for the license and
10 shall set forth in detail the specific hours of the day during which
11 the person may drive to and from his (~~place of work~~) or her
12 residence, which may not exceed twelve hours in any one day; the days
13 of the week during which the license may be used; and the general
14 routes over which the person may travel. In issuing an occupational or
15 temporary restricted driver's license that meets the qualifying
16 circumstance under RCW 46.20.391 (~~((2)(a)(iv))~~) (3)(b)(iv), the
17 department shall set forth in detail the specific hours during which
18 the person may drive to and from substance abuse treatment or meetings
19 of a twelve-step group such as alcoholics anonymous, the days of the
20 week during which the license may be used, and the general routes over
21 which the person may travel. These restrictions shall be prepared in
22 written form by the department, which document shall be carried in the
23 vehicle at all times and presented to a law enforcement officer under
24 the same terms as the occupational or temporary restricted driver's
25 license. Any violation of the restrictions constitutes a violation of
26 RCW 46.20.342 and subjects the person to all procedures and penalties
27 therefor.

28 **Sec. 9.** RCW 46.20.400 and 1967 c 32 s 33 are each amended to read
29 as follows:

30 If an occupational or a temporary restricted driver's license is
31 issued and is not revoked during the period for which issued the
32 licensee may obtain a new driver's license at the end of such period,
33 but no new driver's (~~permit shall~~) license may be issued to such
34 person until he or she surrenders his or her occupational or temporary
35 restricted driver's license and his or her copy of the order, and the

1 director is satisfied that ((he)) the person complies with all other
2 provisions of law relative to the issuance of a driver's license.

3 **Sec. 10.** RCW 46.20.410 and 1967 c 32 s 34 are each amended to read
4 as follows:

5 Any person convicted for violation of any restriction of an
6 occupational or a temporary restricted driver's license shall in
7 addition to the immediate revocation of such license and any other
8 penalties provided by law be fined not less than fifty nor more than
9 two hundred dollars or imprisoned for not more than six months or both
10 such fine and imprisonment.

11 **Sec. 11.** RCW 46.20.720 and 2003 c 366 s 1 are each amended to read
12 as follows:

13 (1) The court may order that after a period of suspension,
14 revocation, or denial of driving privileges, and for up to as long as
15 the court has jurisdiction, any person convicted of any offense
16 involving the use, consumption, or possession of alcohol while
17 operating a motor vehicle may drive only a motor vehicle equipped with
18 a functioning ignition interlock ~~((or other biological or technical~~
19 ~~device))~~. The court shall establish a specific calibration setting at
20 which the interlock will prevent the vehicle from being started. The
21 court shall also establish the period of time for which interlock use
22 will be required.

23 (2)~~((a))~~ The department shall require that, after any applicable
24 period of suspension, revocation, or denial of driving privileges, a
25 person may drive only a motor vehicle equipped with a functioning
26 ignition interlock ~~((or other biological or technical~~) device if the
27 person is convicted of ~~((a))~~ an alcohol-related violation of RCW
28 46.61.502 or 46.61.504 or an equivalent local ordinance ~~((and it is:~~

29 ~~(i) The person's first conviction or a deferred prosecution under~~
30 ~~chapter 10.05 RCW and his or her alcohol concentration was at least~~
31 ~~0.15, or by reason of the person's refusal to take a test offered~~
32 ~~pursuant to RCW 46.20.308 there is no test result indicating the~~
33 ~~person's alcohol concentration;~~

34 ~~(ii) The person's second or subsequent conviction; or~~

35 ~~(iii) The person's first conviction and the person has a previous~~

1 ~~deferred prosecution under chapter 10.05 RCW or it is a deferred~~
2 ~~prosecution under chapter 10.05 RCW and the person has a previous~~
3 ~~conviction)).~~

4 ~~((b))~~ The department may waive the requirement for the use of
5 such a device if it concludes that such devices are not reasonably
6 available in the local area. ~~((Nothing in this section may be~~
7 ~~interpreted as entitling a person to more than one deferred~~
8 ~~prosecution.~~

9 ~~(3) In the case of a person under subsection (1) of this section,~~
10 ~~the court shall establish a specific calibration setting at which the~~
11 ~~ignition interlock or other biological or technical device will prevent~~
12 ~~the motor vehicle from being started and the period of time that the~~
13 ~~person shall be subject to the restriction. In the case of a person~~
14 ~~under subsection (2) of this section,)~~ The device is not necessary on
15 vehicles owned by a person's employer and driven as a requirement of
16 employment during working hours.

17 The ignition interlock ~~((or other biological or technical))~~ device
18 shall be calibrated to prevent the motor vehicle from being started
19 when the breath sample provided has an alcohol concentration of 0.025
20 or more~~(, and))~~. The period of time of the restriction will be as
21 follows:

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

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

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

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

33 **Sec. 12.** RCW 46.20.740 and 2001 c 55 s 1 are each amended to read
34 as follows:

35 (1) The department shall attach or imprint a notation on the
36 driving record of any person restricted under RCW 46.20.720 stating
37 that the person may operate only a motor vehicle equipped with ~~((an))~~

1 a functioning ignition interlock ((~~or other biological or technical~~))
2 device. The department shall determine the person's eligibility for
3 licensing based upon written verification by a company doing business
4 in the state that it has installed the required device on a vehicle
5 owned or operated by the person seeking reinstatement. If, based upon
6 notification from the interlock provider or otherwise, the department
7 determines that an ignition interlock required under this section is no
8 longer installed or functioning as required, the department shall
9 suspend the person's license or privilege to drive. Whenever the
10 license or driving privilege of any person is suspended or revoked as
11 a result of noncompliance with an ignition interlock requirement, the
12 suspension shall remain in effect until the person provides notice
13 issued by a company doing business in the state that a vehicle owned or
14 operated by the person is equipped with a functioning ignition
15 interlock device.

16 (2) It is a misdemeanor for a person with such a notation on his or
17 her driving record to operate a motor vehicle that is not so equipped.

18 **Sec. 13.** RCW 46.61.5055 and 2003 c 103 s 1 are each amended to
19 read as follows:

20 (1) A person who is convicted of a violation of RCW 46.61.502 or
21 46.61.504 and who has no prior offense within seven years shall be
22 punished as follows:

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

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

1 monitoring. The county or municipality in which the penalty is being
2 imposed shall determine the cost. The court may also require the
3 offender's electronic home monitoring device to include an alcohol
4 detection breathalyzer, and the court may restrict the amount of
5 alcohol the offender may consume during the time the offender is on
6 electronic home monitoring; and

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

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

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

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

35 ~~(iii) By a court ordered restriction under RCW 46.20.720)).~~

36 (2) A person who is convicted of a violation of RCW 46.61.502 or
37 46.61.504 and who has one prior offense within seven years shall be
38 punished as follows:

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

5 (i) By imprisonment for not less than thirty days nor more than one
6 year and sixty days of electronic home monitoring. The offender shall
7 pay for the cost of the electronic monitoring. The county or
8 municipality where the penalty is being imposed shall determine the
9 cost. The court may also require the offender's electronic home
10 monitoring device include an alcohol detection breathalyzer, and may
11 restrict the amount of alcohol the offender may consume during the time
12 the offender is on electronic home monitoring. Thirty days of
13 imprisonment and sixty days of electronic home monitoring may not be
14 suspended or deferred unless the court finds that the imposition of
15 this mandatory minimum sentence would impose a substantial risk to the
16 offender's physical or mental well-being. Whenever the mandatory
17 minimum sentence is suspended or deferred, the court shall state in
18 writing the reason for granting the suspension or deferral and the
19 facts upon which the suspension or deferral is based; and

20 (ii) By a fine of not less than five hundred dollars nor more than
21 five thousand dollars. Five hundred dollars of the fine may not be
22 suspended or deferred unless the court finds the offender to be
23 indigent; (~~and~~

24 ~~(iii) By a court ordered restriction under RCW 46.20.720;~~) or

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

29 (i) By imprisonment for not less than forty-five days nor more than
30 one year and ninety days of electronic home monitoring. The offender
31 shall pay for the cost of the electronic monitoring. The county or
32 municipality where the penalty is being imposed shall determine the
33 cost. The court may also require the offender's electronic home
34 monitoring device include an alcohol detection breathalyzer, and may
35 restrict the amount of alcohol the offender may consume during the time
36 the offender is on electronic home monitoring. Forty-five days of
37 imprisonment and ninety days of electronic home monitoring may not be
38 suspended or deferred unless the court finds that the imposition of

1 this mandatory minimum sentence would impose a substantial risk to the
2 offender's physical or mental well-being. Whenever the mandatory
3 minimum sentence is suspended or deferred, the court shall state in
4 writing the reason for granting the suspension or deferral and the
5 facts upon which the suspension or deferral is based; and

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

10 ~~(iii) By a court ordered restriction under RCW 46.20.720))~~).

11 (3) A person who is convicted of a violation of RCW 46.61.502 or
12 46.61.504 and who has two or more prior offenses within seven years
13 shall be punished as follows:

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

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

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

38 ~~(iii) By a court ordered restriction under RCW 46.20.720))~~; or

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

5 (i) By imprisonment for not less than one hundred twenty days nor
6 more than one year and one hundred fifty days of electronic home
7 monitoring. The offender shall pay for the cost of the electronic
8 monitoring. The county or municipality where the penalty is being
9 imposed shall determine the cost. The court may also require the
10 offender's electronic home monitoring device include an alcohol
11 detection breathalyzer, and may restrict the amount of alcohol the
12 offender may consume during the time the offender is on electronic home
13 monitoring. One hundred twenty days of imprisonment and one hundred
14 fifty days of electronic home monitoring may not be suspended or
15 deferred unless the court finds that the imposition of this mandatory
16 minimum sentence would impose a substantial risk to the offender's
17 physical or mental well-being. Whenever the mandatory minimum sentence
18 is suspended or deferred, the court shall state in writing the reason
19 for granting the suspension or deferral and the facts upon which the
20 suspension or deferral is based; and

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

25 ~~(iii) By a court ordered restriction under RCW 46.20.720)).~~

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

29 (a) In any case in which the installation and use of an interlock
30 or other device is not mandatory under RCW 46.20.720 or other law,
31 order the use of such a device for not less than sixty days following
32 the restoration of the person's license, permit, or nonresident driving
33 privileges; and

34 (b) In any case in which the installation and use of such a device
35 is otherwise mandatory, order the use of such a device for an
36 additional sixty days.

37 (5) In exercising its discretion in setting penalties within the

1 limits allowed by this section, the court shall particularly consider
2 the following:

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

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

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

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

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

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

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

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

22 (b) If the person's alcohol concentration was at least 0.15(~~(, or~~
23 ~~if by reason of the person's refusal to take a test offered under RCW~~
24 ~~46.20.308 there is no test result indicating the person's alcohol~~
25 ~~concentration))):~~

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

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

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

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

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

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

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

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

7 For purposes of this subsection (7), the department shall refer to
8 the driver's record maintained under RCW 46.52.120 when determining the
9 existence of prior offenses.

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

14 (9)(a) In addition to any nonsuspendable and nondeferrable jail
15 sentence required by this section, whenever the court imposes less than
16 one year in jail, the court shall also suspend but shall not defer a
17 period of confinement for a period not exceeding five years. The court
18 shall impose conditions of probation that include: (i) Not driving a
19 motor vehicle within this state without a valid license to drive and
20 proof of financial responsibility for the future; (ii) not driving a
21 motor vehicle within this state while having an alcohol concentration
22 of 0.08 or more within two hours after driving; and (iii) not refusing
23 to submit to a test of his or her breath or blood to determine alcohol
24 concentration upon request of a law enforcement officer who has
25 reasonable grounds to believe the person was driving or was in actual
26 physical control of a motor vehicle within this state while under the
27 influence of intoxicating liquor. The court may impose conditions of
28 probation that include nonrepetition, installation of an ignition
29 interlock (~~(or other biological or technical)~~) device on the
30 probationer's motor vehicle, alcohol or drug treatment, supervised
31 probation, or other conditions that may be appropriate. The sentence
32 may be imposed in whole or in part upon violation of a condition of
33 probation during the suspension period.

34 (b) For each violation of mandatory conditions of probation under
35 (a)(i) ~~((and))~~, (ii), or ~~((a)(i) and))~~ (iii) of this subsection, the
36 court shall order the convicted person to be confined for thirty days,
37 which shall not be suspended or deferred.

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

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

13 (a) The offender does not have a dwelling, telephone service, or
14 any other necessity to operate an electronic home monitoring system;

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

16 (c) The court determines that there is reason to believe that the
17 offender would violate the conditions of the electronic home monitoring
18 penalty.

19 Whenever the mandatory minimum term of electronic home monitoring
20 is waived, the court shall state in writing the reason for granting the
21 waiver and the facts upon which the waiver is based, and shall impose
22 an alternative sentence with similar punitive consequences. The
23 alternative sentence may include, but is not limited to, additional
24 jail time, work crew, or work camp.

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

31 (11) An offender serving a sentence under this section, whether or
32 not a mandatory minimum term has expired, may be granted an
33 extraordinary medical placement by the jail administrator subject to
34 the standards and limitations set forth in RCW 9.94A.728(4).

35 (12) For purposes of this section:

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

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

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

3 (iii) A conviction for a violation of RCW 46.61.520 committed while
4 under the influence of intoxicating liquor or any drug;

5 (iv) A conviction for a violation of RCW 46.61.522 committed while
6 under the influence of intoxicating liquor or any drug;

7 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
8 9A.36.050 or an equivalent local ordinance, if the conviction is the
9 result of a charge that was originally filed as a violation of RCW
10 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
11 46.61.520 or 46.61.522;

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

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

18 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
19 prosecution for a violation of RCW 46.61.5249, or an equivalent local
20 ordinance, if the charge under which the deferred prosecution was
21 granted was originally filed as a violation of RCW 46.61.502 or
22 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
23 46.61.522; and

24 (b) "Within seven years" means that the arrest for a prior offense
25 occurred within seven years of the arrest for the current offense.

26 **Sec. 14.** RCW 46.63.020 and 2003 c 33 s 4 are each amended to read
27 as follows:

28 Failure to perform any act required or the performance of any act
29 prohibited by this title or an equivalent administrative regulation or
30 local law, ordinance, regulation, or resolution relating to traffic
31 including parking, standing, stopping, and pedestrian offenses, is
32 designated as a traffic infraction and may not be classified as a
33 criminal offense, except for an offense contained in the following
34 provisions of this title or a violation of an equivalent administrative
35 regulation or local law, ordinance, regulation, or resolution:

36 (1) RCW 46.09.120(2) relating to the operation of a nonhighway

1 vehicle while under the influence of intoxicating liquor or a
2 controlled substance;

3 (2) RCW 46.09.130 relating to operation of nonhighway vehicles;

4 (3) RCW 46.10.090(2) relating to the operation of a snowmobile
5 while under the influence of intoxicating liquor or narcotics or habit-
6 forming drugs or in a manner endangering the person of another;

7 (4) RCW 46.10.130 relating to the operation of snowmobiles;

8 (5) Chapter 46.12 RCW relating to certificates of ownership and
9 registration and markings indicating that a vehicle has been destroyed
10 or declared a total loss;

11 (6) RCW 46.16.010 relating to initial registration of motor
12 vehicles;

13 (7) RCW 46.16.011 relating to permitting unauthorized persons to
14 drive;

15 (8) RCW 46.16.160 relating to vehicle trip permits;

16 (9) RCW 46.16.381(2) relating to knowingly providing false
17 information in conjunction with an application for a special placard or
18 license plate for disabled persons' parking;

19 (10) RCW 46.20.005 relating to driving without a valid driver's
20 license;

21 (11) RCW 46.20.091 relating to false statements regarding a
22 driver's license or instruction permit;

23 (12) RCW 46.20.0921 relating to the unlawful possession and use of
24 a driver's license;

25 (13) RCW 46.20.342 relating to driving with a suspended or revoked
26 license or status;

27 (14) RCW 46.20.345 relating to the operation of a motor vehicle
28 with a suspended or revoked license;

29 (15) RCW 46.20.410 relating to the violation of restrictions of an
30 occupational or temporary restricted driver's license;

31 (16) RCW 46.20.740 relating to operation of a motor vehicle without
32 an ignition interlock device in violation of a license notation that
33 the device is required;

34 (17) RCW 46.20.750 relating to assisting another person to start a
35 vehicle equipped with an ignition interlock device;

36 (18) RCW 46.25.170 relating to commercial driver's licenses;

37 (19) Chapter 46.29 RCW relating to financial responsibility;

- 1 (20) RCW 46.30.040 relating to providing false evidence of
2 financial responsibility;
- 3 (21) RCW 46.37.435 relating to wrongful installation of
4 sunscreening material;
- 5 (22) RCW 46.37.650 relating to the sale, resale, distribution, or
6 installation of a previously deployed air bag;
- 7 (23) RCW 46.44.180 relating to operation of mobile home pilot
8 vehicles;
- 9 (24) RCW 46.48.175 relating to the transportation of dangerous
10 articles;
- 11 (25) RCW 46.52.010 relating to duty on striking an unattended car
12 or other property;
- 13 (26) RCW 46.52.020 relating to duty in case of injury to or death
14 of a person or damage to an attended vehicle;
- 15 (27) RCW 46.52.090 relating to reports by repairmen, storagemen,
16 and appraisers;
- 17 (28) RCW 46.52.130 relating to confidentiality of the driving
18 record to be furnished to an insurance company, an employer, and an
19 alcohol/drug assessment or treatment agency;
- 20 (29) RCW 46.55.020 relating to engaging in the activities of a
21 registered tow truck operator without a registration certificate;
- 22 (30) RCW 46.55.035 relating to prohibited practices by tow truck
23 operators;
- 24 (31) RCW 46.61.015 relating to obedience to police officers,
25 flaggers, or fire fighters;
- 26 (32) RCW 46.61.020 relating to refusal to give information to or
27 cooperate with an officer;
- 28 (33) RCW 46.61.022 relating to failure to stop and give
29 identification to an officer;
- 30 (34) RCW 46.61.024 relating to attempting to elude pursuing police
31 vehicles;
- 32 (35) RCW 46.61.500 relating to reckless driving;
- 33 (36) RCW 46.61.502 and 46.61.504 relating to persons under the
34 influence of intoxicating liquor or drugs;
- 35 (37) RCW 46.61.503 relating to a person under age twenty-one
36 driving a motor vehicle after consuming alcohol;
- 37 (38) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
- 38 (39) RCW 46.61.522 relating to vehicular assault;

- 1 (40) RCW 46.61.5249 relating to first degree negligent driving;
2 (41) RCW 46.61.527(4) relating to reckless endangerment of roadway
3 workers;
4 (42) RCW 46.61.530 relating to racing of vehicles on highways;
5 (43) RCW 46.61.685 relating to leaving children in an unattended
6 vehicle with the motor running;
7 (44) RCW 46.61.740 relating to theft of motor vehicle fuel;
8 (45) RCW 46.64.010 relating to unlawful cancellation of or attempt
9 to cancel a traffic citation;
10 (46) RCW 46.64.048 relating to attempting, aiding, abetting,
11 coercing, and committing crimes;
12 (47) Chapter 46.65 RCW relating to habitual traffic offenders;
13 (48) RCW 46.68.010 relating to false statements made to obtain a
14 refund;
15 (49) Chapter 46.70 RCW relating to unfair motor vehicle business
16 practices, except where that chapter provides for the assessment of
17 monetary penalties of a civil nature;
18 (50) Chapter 46.72 RCW relating to the transportation of passengers
19 in for hire vehicles;
20 (51) RCW 46.72A.060 relating to limousine carrier insurance;
21 (52) RCW 46.72A.070 relating to operation of a limousine without a
22 vehicle certificate;
23 (53) RCW 46.72A.080 relating to false advertising by a limousine
24 carrier;
25 (54) Chapter 46.80 RCW relating to motor vehicle wreckers;
26 (55) Chapter 46.82 RCW relating to driver's training schools;
27 (56) RCW 46.87.260 relating to alteration or forgery of a cab card,
28 letter of authority, or other temporary authority issued under chapter
29 46.87 RCW;
30 (57) RCW 46.87.290 relating to operation of an unregistered or
31 unlicensed vehicle under chapter 46.87 RCW.

32 **Sec. 15.** RCW 46.68.041 and 1998 c 212 s 3 are each amended to read
33 as follows:

34 (1) Except as provided in subsection (2) of this section, the
35 department shall forward all funds accruing under the provisions of
36 chapter 46.20 RCW together with a proper identifying, detailed report

1 to the state treasurer who shall deposit such moneys to the credit of
2 the highway safety fund.

3 (2) Sixty-three percent of each fee collected by the department
4 under RCW 46.20.311 (1)((~~b~~)) (e)(ii), (2)(b)(ii), and (3)(b) shall be
5 deposited in the impaired driving safety account.

6 **Sec. 16.** RCW 46.68.260 and 1998 c 212 s 2 are each amended to read
7 as follows:

8 The impaired driving safety account is created in the custody of
9 the state treasurer. All receipts from fees collected under RCW
10 46.20.311 (1)((~~b~~)) (e)(ii), (2)(b)(ii), and (3)(b) shall be deposited
11 according to RCW 46.68.041. Expenditures from this account may be used
12 only to fund projects to reduce impaired driving and to provide funding
13 to local governments for costs associated with enforcing laws relating
14 to driving and boating while under the influence of intoxicating liquor
15 or any drug. The account is subject to allotment procedures under
16 chapter 43.88 RCW. Moneys in the account may be spent only after
17 appropriation.

18 NEW SECTION. **Sec. 17.** Section 2 of this act takes effect if
19 section 2 of Substitute House Bill No. 3055 is enacted into law.

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