

E2SHB 3254 - S COMM AMD  
By Committee on Judiciary

OUT OF ORDER 03/07/2008

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 46.04 RCW  
4 to read as follows:

5 "Ignition interlock driver's license" means a permit issued to a  
6 person by the department that allows the person to operate a  
7 noncommercial motor vehicle with an ignition interlock device while the  
8 person's regular driver's license is suspended, revoked, or denied.

9 **Sec. 2.** RCW 46.20.308 and 2005 c 314 s 307 and 2005 c 269 s 1 are  
10 each reenacted and amended to read as follows:

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

22 (2) The test or tests of breath shall be administered at the  
23 direction of a law enforcement officer having reasonable grounds to  
24 believe the person to have been driving or in actual physical control  
25 of a motor vehicle within this state while under the influence of  
26 intoxicating liquor or any drug or the person to have been driving or  
27 in actual physical control of a motor vehicle while having alcohol in  
28 a concentration in violation of RCW 46.61.503 in his or her system and  
29 being under the age of twenty-one. However, in those instances where

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

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

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

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

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

30 (3) Except as provided in this section, the test administered shall  
31 be of the breath only. If an individual is unconscious or is under  
32 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
33 or vehicular assault as provided in RCW 46.61.522, or if an individual  
34 is under arrest for the crime of driving while under the influence of  
35 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
36 results from an accident in which there has been serious bodily injury  
37 to another person, a breath or blood test may be administered without  
38 the consent of the individual so arrested.

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

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

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

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

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

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

33 (d) Serve notice in writing that the marked license or permit, if  
34 any, is a temporary license that is valid for sixty days from the date  
35 of arrest or from the date notice has been given in the event notice is  
36 given by the department following a blood test, or until the  
37 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~~) twenty days after the notice has been  
33 given, request in writing a formal hearing before the department. The  
34 person shall pay a fee of two hundred dollars as part of the request.  
35 If the request is mailed, it must be postmarked within (~~thirty~~)  
36 twenty days after receipt of the notification. Upon timely receipt of  
37 such a request for a formal hearing, including receipt of the required  
38 two hundred dollar fee, the department shall afford the person an

1 opportunity for a hearing. The department may waive the required two  
2 hundred dollar fee if the person is an indigent as defined in RCW  
3 10.101.010. Except as otherwise provided in this section, the hearing  
4 is subject to and shall be scheduled and conducted in accordance with  
5 RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the  
6 county of the arrest, except that all or part of the hearing may, at  
7 the discretion of the department, be conducted by telephone or other  
8 electronic means. The hearing shall be held within sixty days  
9 following the arrest or following the date notice has been given in the  
10 event notice is given by the department following a blood test, unless  
11 otherwise agreed to by the department and the person, in which case the  
12 action by the department shall be stayed, and any valid temporary  
13 license marked under subsection (6)(c) of this section extended, if the  
14 person is otherwise eligible for licensing. For the purposes of this  
15 section, the scope of the hearing shall cover the issues of whether a  
16 law enforcement officer had reasonable grounds to believe the person  
17 had 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)(a) 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, or notifies the department of  
24 licensing of the intent to seek such a deferred prosecution, then the  
25 license suspension or revocation shall be stayed pending entry of the  
26 deferred prosecution. The stay shall not be longer than one hundred  
27 fifty days after the date charges are filed, or two years after the  
28 date of the arrest, whichever time period is shorter. If the court  
29 stays the suspension, revocation, or denial, it may impose conditions  
30 on such stay. If the person is otherwise eligible for licensing, the  
31 department shall issue a temporary license, or extend any valid  
32 temporary license marked under subsection (6) of this section, for the  
33 period of the stay. If a deferred prosecution treatment plan is not  
34 recommended in the report made under RCW 10.05.050, or if treatment is  
35 rejected by the court, or if the person declines to accept an offered  
36 treatment plan, or if the person violates any condition imposed by the  
37 court, then the court shall immediately direct the department to cancel

1 the stay and any temporary marked license or extension of a temporary  
2 license issued under this subsection.

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

11 (c) The provisions of (b) of this subsection relating to a stay of  
12 a suspension, revocation, or denial and the cancellation of any  
13 suspension, revocation, or denial do not apply to the suspension,  
14 revocation, denial, or disqualification of a person's commercial  
15 driver's license or privilege to operate a commercial motor vehicle.

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

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.68 RCW  
23 to read as follows:

24 The ignition interlock device revolving fund is created in the  
25 custody of the state treasurer to assist in covering the monetary costs  
26 of installing, removing, and leasing an ignition interlock device for  
27 indigent people who are required under section 8 of this act and RCW  
28 46.61.5055 to install an ignition interlock device in all vehicles  
29 owned or operated by the person. The director, or his or her designee,  
30 is authorized to expend money from the ignition interlock device  
31 revolving fund. The account is subject to allotment procedures under  
32 chapter 43.88 RCW, but an appropriation is not required for  
33 expenditures.

34 **Sec. 4.** RCW 46.20.342 and 2004 c 95 s 5 are each amended to read  
35 as follows:

36 (1) It is unlawful for any person to drive a motor vehicle in this



1 state while that person is in a suspended or revoked status or when his  
2 or her privilege to drive is suspended or revoked in this or any other  
3 state. Any person who has a valid Washington driver's license is not  
4 guilty of a violation of this section.

5 (a) A person found to be an habitual offender under chapter 46.65  
6 RCW, who violates this section while an order of revocation issued  
7 under chapter 46.65 RCW prohibiting such operation is in effect, is  
8 guilty of driving while license suspended or revoked in the first  
9 degree, a gross misdemeanor. Upon the first such conviction, the  
10 person shall be punished by imprisonment for not less than ten days.  
11 Upon the second conviction, the person shall be punished by  
12 imprisonment for not less than ninety days. Upon the third or  
13 subsequent conviction, the person shall be punished by imprisonment for  
14 not less than one hundred eighty days. If the person is also convicted  
15 of the offense defined in RCW 46.61.502 or 46.61.504, when both  
16 convictions arise from the same event, the minimum sentence of  
17 confinement shall be not less than ninety days. The minimum sentence  
18 of confinement required shall not be suspended or deferred. A  
19 conviction under this subsection does not prevent a person from  
20 petitioning for reinstatement as provided by RCW 46.65.080.

21 (b) A person who violates this section while an order of suspension  
22 or revocation prohibiting such operation is in effect and while the  
23 person is not eligible to reinstate his or her driver's license or  
24 driving privilege, other than for a suspension for the reasons  
25 described in (c) of this subsection, is guilty of driving while license  
26 suspended or revoked in the second degree, a gross misdemeanor. This  
27 subsection applies when a person's driver's license or driving  
28 privilege has been suspended or revoked by reason of:

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

31 (ii) A previous conviction under this section;

32 (iii) A notice received by the department from a court or diversion  
33 unit as provided by RCW 46.20.265, relating to a minor who has  
34 committed, or who has entered a diversion unit concerning an offense  
35 relating to alcohol, legend drugs, controlled substances, or imitation  
36 controlled substances;

37 (iv) A conviction of RCW 46.20.410, relating to the violation of

1 restrictions of an occupational ((~~or~~)) driver's license, a temporary  
2 restricted driver's license, or an ignition interlock driver's license;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (c) A person who violates this section when his or her driver's  
31 license or driving privilege is, at the time of the violation,  
32 suspended or revoked solely because (i) the person must furnish proof  
33 of satisfactory progress in a required alcoholism or drug treatment  
34 program, (ii) the person must furnish proof of financial responsibility  
35 for the future as provided by chapter 46.29 RCW, (iii) the person has  
36 failed to comply with the provisions of chapter 46.29 RCW relating to  
37 uninsured accidents, (iv) the person has failed to respond to a notice  
38 of traffic infraction, failed to appear at a requested hearing,

1 violated a written promise to appear in court, or has failed to comply  
2 with the terms of a notice of traffic infraction or citation, as  
3 provided in RCW 46.20.289, (v) the person has committed an offense in  
4 another state that, if committed in this state, would not be grounds  
5 for the suspension or revocation of the person's driver's license, (vi)  
6 the person has been suspended or revoked by reason of one or more of  
7 the items listed in (b) of this subsection, but was eligible to  
8 reinstate his or her driver's license or driving privilege at the time  
9 of the violation, or (vii) the person has received traffic citations or  
10 notices of traffic infraction that have resulted in a suspension under  
11 RCW 46.20.267 relating to intermediate drivers' licenses, or any  
12 combination of (i) through (vii), is guilty of driving while license  
13 suspended or revoked in the third degree, a misdemeanor.

14 (2) Upon receiving a record of conviction of any person or upon  
15 receiving an order by any juvenile court or any duly authorized court  
16 officer of the conviction of any juvenile under this section, the  
17 department shall:

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

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

30 (c) Not extend the period of suspension or revocation if the  
31 conviction was under subsection (1)(c) of this section. If the  
32 conviction was under subsection (1)(a) or (b) of this section and the  
33 court recommends against the extension and the convicted person has  
34 obtained a valid driver's license, the period of suspension or  
35 revocation shall not be extended.

36 **Sec. 5.** RCW 46.20.391 and 2004 c 95 s 7 are each amended to read  
37 as follows:



1 ~~this section shall apply on a day for day basis toward satisfying the~~  
2 ~~period of time the ignition interlock device restriction is required~~  
3 ~~under RCW 46.20.720 (1) and (2) (a), (b), and (c).~~

4 ~~(c) The department shall provide by rule the minimum portions of~~  
5 ~~the periods of suspension, revocation, or denial set forth in RCW~~  
6 ~~46.20.3101 after which a person may apply for a temporary restricted~~  
7 ~~driver's license under this section. In establishing the minimum~~  
8 ~~portions of the periods of suspension, revocation, or denial, the~~  
9 ~~department shall consider the requirements of federal law regarding~~  
10 ~~state eligibility for grants or other funding, and shall establish such~~  
11 ~~periods so as to ensure that the state will maintain its eligibility,~~  
12 ~~or establish eligibility, to obtain incentive grants or any other~~  
13 ~~federal funding.))~~

14 (2)(a) A person licensed under this chapter whose driver's license  
15 is suspended administratively due to failure to appear or pay a traffic  
16 ticket under RCW 46.20.289; a violation of the financial responsibility  
17 laws under chapter 46.29 RCW; or for multiple violations within a  
18 specified period of time under RCW 46.20.291, may apply to the  
19 department for an occupational driver's license.

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

23 (c) An occupational driver's license issued to an applicant  
24 described in (a) of this subsection shall be valid for the period of  
25 the suspension or revocation.

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

29 (a) Within seven years immediately preceding the date of the  
30 offense that gave rise to the present conviction or incident, the  
31 applicant has not committed vehicular homicide under RCW 46.61.520 or  
32 vehicular assault under RCW 46.61.522; and

33 (b) The applicant demonstrates that it is necessary for him or her  
34 to operate a motor vehicle because he or she:

35 (i) Is engaged in an occupation or trade that makes it essential  
36 that he or she operate a motor vehicle;

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

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

4 (iv) Is undergoing substance abuse treatment or is participating in  
5 meetings of a twelve-step group such as Alcoholics Anonymous that  
6 requires the petitioner to drive to or from the treatment or meetings;

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

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

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

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

18 (c) The applicant files satisfactory proof of financial  
19 responsibility under chapter 46.29 RCW; and

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

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

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

1 (5) The director shall cancel an occupational or temporary  
2 restricted driver's license upon receipt of notice that the holder  
3 thereof has been convicted of operating a motor vehicle in violation of  
4 its restrictions, or of a separate offense that under chapter 46.20 RCW  
5 would warrant suspension or revocation of a regular driver's license.  
6 The cancellation is effective as of the date of the conviction, and  
7 continues with the same force and effect as any suspension or  
8 revocation under this title.

9 **Sec. 6.** RCW 46.20.400 and 2004 c 95 s 9 are each amended to read  
10 as follows:

11 If an occupational (~~(or)~~) driver's license, a temporary restricted  
12 driver's license, or an ignition interlock driver's license is issued  
13 and is not revoked during the period for which issued the licensee may  
14 obtain a new driver's license at the end of such period, but no new  
15 driver's license may be issued to such person until he or she  
16 surrenders his or her occupational (~~(or)~~) driver's license, temporary  
17 restricted driver's license, or ignition interlock driver's license and  
18 his or her copy of the order, and the director is satisfied that the  
19 person complies with all other provisions of law relative to the  
20 issuance of a driver's license.

21 **Sec. 7.** RCW 46.20.410 and 2004 c 95 s 10 are each amended to read  
22 as follows:

23 Any person convicted for violation of any restriction of an  
24 occupational (~~(or)~~) driver's license, a temporary restricted driver's  
25 license, or an ignition interlock driver's license shall in addition to  
26 the immediate revocation of such license and any other penalties  
27 provided by law be fined not less than fifty nor more than two hundred  
28 dollars or imprisoned for not more than six months or both such fine  
29 and imprisonment.

30 NEW SECTION. **Sec. 8.** A new section is added to chapter 46.20 RCW  
31 to read as follows:

32 (1)(a) Beginning January 1, 2009, any person licensed under this  
33 chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504,  
34 other than vehicular homicide or vehicular assault, or who has had or  
35 will have his or her license suspended, revoked, or denied under RCW

1 46.20.3101, may submit to the department an application for an ignition  
2 interlock driver's license. The department, upon determining that the  
3 petitioner is eligible to receive the license, may issue an ignition  
4 interlock driver's license.

5 (b) A person may apply for an ignition interlock driver's license  
6 anytime, including immediately after receiving the notices under RCW  
7 46.20.308 or after his or her license is suspended, revoked, or denied.  
8 A person receiving an ignition interlock driver's license waives his or  
9 her right to a hearing or appeal under RCW 46.20.308.

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

13 (i) The department shall require the person to maintain the device  
14 on all vehicles operated by the person and shall restrict the person to  
15 operating only vehicles equipped with the device, for the remainder of  
16 the period of suspension, revocation, or denial. The installation of  
17 an ignition interlock device is not necessary on vehicles owned by a  
18 person's employer and driven as a requirement of employment during  
19 working hours. The person must provide the department with a  
20 declaration pursuant to RCW 9A.72.085 from his or her employer stating  
21 that the person's employment requires the person to operate a vehicle  
22 owned by the employer during working hours.

23 (ii) Subject to any periodic renewal requirements established by  
24 the department under this section and subject to any applicable  
25 compliance requirements under this chapter or other law, an ignition  
26 interlock driver's license granted upon 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 and 46.61.5055.

35 (2) An applicant for an ignition interlock driver's license who  
36 qualifies under subsection (1) of this section is eligible to receive  
37 a license only if:



1 (a) Within seven years immediately preceding the date of the  
2 offense that gave rise to the present conviction or incident, the  
3 applicant has not committed vehicular homicide under RCW 46.61.520 or  
4 vehicular assault under RCW 46.61.522;

5 (b) The applicant has completed or agreed to complete an alcohol  
6 and drug assessment under section 14 of this act. If the applicant has  
7 not completed an alcohol and drug assessment at the time he or she is  
8 applying for an ignition interlock driver's license, the applicant must  
9 submit to the department proof of a completed assessment within thirty  
10 days of receiving an ignition interlock driver's license; and

11 (c) The applicant files satisfactory proof of financial  
12 responsibility under chapter 46.29 RCW.

13 (3) Upon receipt of evidence that a holder of an ignition interlock  
14 driver's license granted under this subsection no longer has a  
15 functioning ignition interlock device installed on all vehicles  
16 operated by the driver, or if the driver has not completed an alcohol  
17 and drug assessment within thirty days of receiving an ignition  
18 interlock driver's license, the director shall give written notice by  
19 first-class mail to the driver that the ignition interlock driver's  
20 license shall be canceled. The effective date of cancellation shall be  
21 fifteen days from the date of mailing the notice. If at any time  
22 before the cancellation goes into effect the driver submits evidence  
23 that a functioning ignition interlock device has been installed on all  
24 vehicles operated by the driver, or evidence that the driver has  
25 completed an alcohol and drug assessment, the cancellation shall be  
26 stayed. If the cancellation becomes effective, the driver may obtain  
27 a new ignition interlock driver's license upon submittal of evidence  
28 that a functioning ignition interlock device has been installed on all  
29 vehicles operated by the driver or upon submittal of evidence that the  
30 driver has completed an alcohol and drug assessment.

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

34 (5) The director shall cancel an ignition interlock driver's  
35 license upon receipt of notice that the holder thereof has been  
36 convicted of operating a motor vehicle in violation of its  
37 restrictions, or of a separate offense that under this chapter would  
38 warrant suspension or revocation of a regular driver's license. The

1 cancellation is effective as of the date of the conviction, and  
2 continues with the same force and effect as any suspension or  
3 revocation under this title.

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

10 NEW SECTION. **Sec. 9.** A new section is added to chapter 46.20 RCW  
11 to read as follows:

12 (1) A pilot program is created for the purpose of monitoring  
13 compliance by persons required to use ignition interlock devices and by  
14 ignition interlock companies and vendors.

15 (2) The department, the state patrol, and the Washington traffic  
16 safety commission shall coordinate to establish a compliance pilot  
17 program that will target at least one county from eastern Washington  
18 and one county from western Washington, as determined by the  
19 department, state patrol, and Washington traffic safety commission.

20 (3) At a minimum, the compliance pilot program shall:

21 (a) Review the number of ignition interlock devices that are  
22 required to be installed in the targeted county and the number of  
23 ignition interlock devices actually installed;

24 (b) Work to identify those persons who are not complying with  
25 ignition interlock requirements or are repeatedly violating ignition  
26 interlock requirements; and

27 (c) Identify ways to track compliance and reduce noncompliance.

28 (4) As part of monitoring compliance, the Washington traffic safety  
29 commission shall also track recidivism for violations of RCW 46.61.502  
30 and 46.61.504 by persons required to have an ignition interlock  
31 driver's license under section 8 of this act.

32 **Sec. 10.** RCW 46.63.020 and 2005 c 431 s 2, 2005 c 323 s 3, and  
33 2005 c 183 s 10 are each reenacted and amended to read as follows:

34 Failure to perform any act required or the performance of any act  
35 prohibited by this title or an equivalent administrative regulation or  
36 local law, ordinance, regulation, or resolution relating to traffic

1 including parking, standing, stopping, and pedestrian offenses, is  
2 designated as a traffic infraction and may not be classified as a  
3 criminal offense, except for an offense contained in the following  
4 provisions of this title or a violation of an equivalent administrative  
5 regulation or local law, ordinance, regulation, or resolution:

6 (1) RCW 46.09.120(2) relating to the operation of a nonhighway  
7 vehicle while under the influence of intoxicating liquor or a  
8 controlled substance;

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

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

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

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

17 (6) RCW 46.16.010 relating to the nonpayment of taxes and fees by  
18 failure to register a vehicle and falsifying residency when registering  
19 a motor vehicle;

20 (7) RCW 46.16.011 relating to permitting unauthorized persons to  
21 drive;

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

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

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

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

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

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

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

36 (15) RCW 46.20.410 relating to the violation of restrictions of an  
37 occupational (~~(or)~~) driver's license, temporary restricted driver's  
38 license, or ignition interlock driver's license;

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

4 (17) RCW 46.20.750 relating to (~~assisting another person to start~~  
5 ~~a vehicle equipped with~~) circumventing an ignition interlock device;

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

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

8 (20) RCW 46.30.040 relating to providing false evidence of  
9 financial responsibility;

10 (21) RCW 46.37.435 relating to wrongful installation of  
11 sunscreening material;

12 (22) RCW 46.37.650 relating to the sale, resale, distribution, or  
13 installation of a previously deployed air bag;

14 (23) RCW 46.37.671 through 46.37.675 relating to signal preemption  
15 devices;

16 (24) RCW 46.44.180 relating to operation of mobile home pilot  
17 vehicles;

18 ~~((+24))~~ (25) RCW 46.48.175 relating to the transportation of  
19 dangerous articles;

20 ~~((+25))~~ (26) RCW 46.52.010 relating to duty on striking an  
21 unattended car or other property;

22 ~~((+26))~~ (27) RCW 46.52.020 relating to duty in case of injury to  
23 or death of a person or damage to an attended vehicle;

24 ~~((+27))~~ (28) RCW 46.52.090 relating to reports by repairmen,  
25 storagemen, and appraisers;

26 ~~((+28))~~ (29) RCW 46.52.130 relating to confidentiality of the  
27 driving record to be furnished to an insurance company, an employer,  
28 and an alcohol/drug assessment or treatment agency;

29 ~~((+29))~~ (30) RCW 46.55.020 relating to engaging in the activities  
30 of a registered tow truck operator without a registration certificate;

31 ~~((+30))~~ (31) RCW 46.55.035 relating to prohibited practices by tow  
32 truck operators;

33 ~~((+31))~~ (32) RCW 46.55.300 relating to vehicle immobilization;

34 (33) RCW 46.61.015 relating to obedience to police officers,  
35 flaggers, or firefighters;

36 ~~((+32))~~ (34) RCW 46.61.020 relating to refusal to give information  
37 to or cooperate with an officer;

1        ~~((33))~~ (35) RCW 46.61.022 relating to failure to stop and give  
2 identification to an officer;

3        ~~((34))~~ (36) RCW 46.61.024 relating to attempting to elude  
4 pursuing police vehicles;

5        ~~((35))~~ (37) RCW 46.61.500 relating to reckless driving;

6        ~~((36))~~ (38) RCW 46.61.502 and 46.61.504 relating to persons under  
7 the influence of intoxicating liquor or drugs;

8        ~~((37))~~ (39) RCW 46.61.503 relating to a person under age twenty-  
9 one driving a motor vehicle after consuming alcohol;

10       ~~((38))~~ (40) RCW 46.61.520 relating to vehicular homicide by motor  
11 vehicle;

12       ~~((39))~~ (41) RCW 46.61.522 relating to vehicular assault;

13       ~~((40))~~ (42) RCW 46.61.5249 relating to first degree negligent  
14 driving;

15       ~~((41))~~ (43) RCW 46.61.527(4) relating to reckless endangerment of  
16 roadway workers;

17       ~~((42))~~ (44) RCW 46.61.530 relating to racing of vehicles on  
18 highways;

19       ~~((43))~~ (45) RCW 46.61.655(7) (a) and (b) relating to failure to  
20 secure a load;

21       ~~((44))~~ (46) RCW 46.61.685 relating to leaving children in an  
22 unattended vehicle with the motor running;

23       ~~((45))~~ (47) RCW 46.61.740 relating to theft of motor vehicle  
24 fuel;

25       ~~((46))~~ ~~RCW 46.37.671 through 46.37.675 relating to signal~~  
26 ~~preemption devices;~~

27       ~~(47))~~ (48) RCW 46.64.010 relating to unlawful cancellation of or  
28 attempt to cancel a traffic citation;

29       ~~((48))~~ (49) RCW 46.64.048 relating to attempting, aiding,  
30 abetting, coercing, and committing crimes;

31       ~~((49))~~ (50) Chapter 46.65 RCW relating to habitual traffic  
32 offenders;

33       ~~((50))~~ (51) RCW 46.68.010 relating to false statements made to  
34 obtain a refund;

35       ~~((51))~~ (52) Chapter 46.70 RCW relating to unfair motor vehicle  
36 business practices, except where that chapter provides for the  
37 assessment of monetary penalties of a civil nature;



1 interlock device if the person is convicted of an alcohol-related  
2 violation of RCW 46.61.502 or 46.61.504 or an equivalent local  
3 ordinance.

4 The department may waive the requirement for the use of such a  
5 device if it concludes that such devices are not reasonably available  
6 in the local area. The device is not necessary on vehicles owned by a  
7 person's employer and driven as a requirement of employment during  
8 working hours.

9 The ignition interlock device shall be calibrated to prevent the  
10 motor vehicle from being started when the breath sample provided has an  
11 alcohol concentration of 0.025 or more. The period of time of the  
12 restriction will be as follows:

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

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

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

19 **Sec. 12.** RCW 46.20.740 and 2004 c 95 s 12 are each amended to read  
20 as follows:

21 (1) The department shall attach or imprint a notation on the  
22 driving record of any person restricted under RCW 46.20.720 or  
23 46.61.5055 stating that the person may operate only a motor vehicle  
24 equipped with a functioning ignition interlock device. The department  
25 shall determine the person's eligibility for licensing based upon  
26 written verification by a company doing business in the state that it  
27 has installed the required device on a vehicle owned or operated by the  
28 person seeking reinstatement. If, based upon notification from the  
29 interlock provider or otherwise, the department determines that an  
30 ignition interlock required under this section is no longer installed  
31 or functioning as required, the department shall suspend the person's  
32 license or privilege to drive. Whenever the license or driving  
33 privilege of any person is suspended or revoked as a result of  
34 noncompliance with an ignition interlock requirement, the suspension  
35 shall remain in effect until the person provides notice issued by a  
36 company doing business in the state that a vehicle owned or operated by  
37 the person is equipped with a functioning ignition interlock device.

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

3 **Sec. 13.** RCW 46.61.5055 and 2007 c 474 s 1 are each amended to  
4 read as follows:

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

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

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

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

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



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

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

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

25 (a) In the case of a person whose alcohol concentration was less  
26 than 0.15, or for whom for reasons other than the person's refusal to  
27 take a 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 thirty days nor more than one  
30 year and sixty days of electronic home monitoring. The offender shall  
31 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. Thirty days of  
37 imprisonment and sixty 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 five hundred dollars nor more than  
7 five thousand dollars. Five hundred dollars of the fine may not be  
8 suspended or deferred unless the court finds the offender to be  
9 indigent; or

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

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

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

33 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
34 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
35 and who has two or three prior offenses within seven years shall be  
36 punished as follows:

37 (a) In the case of a person whose alcohol concentration was less

1 than 0.15, or for whom for reasons other than the person's refusal to  
2 take a test offered pursuant to RCW 46.20.308 there is no test result  
3 indicating the person's alcohol concentration:

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

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

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

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

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

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

10 (4) A person who is convicted of a violation of RCW 46.61.502 or  
11 46.61.504 (~~and who~~) shall be punished under chapter 9.94A RCW if:  
12 (a) The person has four or more prior offenses within ten years(~~7~~);  
13 or (~~who~~) (b) the person has ever previously been convicted of: (i)  
14 A violation of RCW 46.61.520 committed while under the influence of  
15 intoxicating liquor or any drug (~~or~~); (ii) a violation of RCW  
16 46.61.522 committed while under the influence of intoxicating liquor or  
17 any drug(~~, shall be punished in accordance with chapter 9.94A RCW~~);  
18 or (iii) an out-of-state offense comparable to the offense specified in  
19 (b)(i) or (ii) of this subsection.

20 (5)(a) The court shall order any person convicted of an  
21 alcohol-related violation of RCW 46.61.502 or 46.61.504 to apply for an  
22 ignition interlock driver's license from the department under section  
23 8 of this act and to have a functioning ignition interlock device  
24 installed on all motor vehicles operated by the person.

25 (b) The installation of an ignition interlock device is not  
26 necessary on vehicles owned by a person's employer and driven as a  
27 requirement of employment during working hours. The person must  
28 provide the department with a declaration pursuant to RCW 9A.72.085  
29 from his or her employer stating that the person's employment requires  
30 the person to operate a vehicle owned by the employer during working  
31 hours.

32 (c) An ignition interlock device imposed under this section shall  
33 be calibrated to prevent a motor vehicle from being started when the  
34 breath sample provided has an alcohol concentration of 0.025 or more.

35 (d) The court may waive the requirement that a person obtain an  
36 ignition interlock driver's license and operate only vehicles equipped  
37 with a functioning ignition interlock device if the court makes a  
38 specific finding in writing that the devices are not reasonably

1 available in the local area, that the person does not operate a  
2 vehicle, or the person is not eligible to receive an ignition interlock  
3 driver's license under section 8 of this act.

4 (e) When the requirement that a person obtain an ignition interlock  
5 driver's license and operate only vehicles equipped with a functioning  
6 ignition interlock device is waived by the court, the court shall order  
7 the person to submit to alcohol monitoring through an alcohol detection  
8 breathalyzer device, transdermal sensor device, or other technology  
9 designed to detect alcohol in a person's system.

10 (f) The period of time for which ignition interlock use or alcohol  
11 monitoring is required will be as follows:

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

14 (ii) For a person who has previously been restricted under (f)(i)  
15 of this subsection, a period of five years;

16 (iii) For a person who has previously been restricted under (f)(ii)  
17 of this subsection, a period of ten years.

18 (6) If a person who is convicted of a violation of RCW 46.61.502 or  
19 46.61.504 committed the offense while a passenger under the age of  
20 sixteen was in the vehicle, the court shall:

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

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

29 ~~((+6+))~~ (7) In exercising its discretion in setting penalties  
30 within the limits allowed by this section, the court shall particularly  
31 consider the following:

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

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

36 ~~((+7+))~~ (8) An offender punishable under this section is subject to  
37 the alcohol assessment and treatment provisions of RCW 46.61.5056.

1       (~~(8)~~) (9) The license, permit, or nonresident privilege of a  
2 person convicted of driving or being in physical control of a motor  
3 vehicle while under the influence of intoxicating liquor or drugs must:

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

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

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

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

14       (b) If the person's alcohol concentration was at least 0.15:

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

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

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

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

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

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

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

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

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

37       (~~(9)~~) (10) After expiration of any period of suspension,  
38 revocation, or denial of the offender's license, permit, or privilege

1 to drive required by this section, the department shall place the  
2 offender's driving privilege in probationary status pursuant to RCW  
3 46.20.355.

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

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

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

1       (~~(11)~~) (12) A court may waive the electronic home monitoring  
2 requirements of this chapter when:

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

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

6       (c) The court determines that there is reason to believe that the  
7 offender would violate the conditions of the electronic home monitoring  
8 penalty.

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

15       Whenever the combination of jail time and electronic home  
16 monitoring or alternative sentence would exceed three hundred sixty-  
17 five days, the offender shall serve the jail portion of the sentence  
18 first, and the electronic home monitoring or alternative portion of the  
19 sentence shall be reduced so that the combination does not exceed three  
20 hundred sixty-five days.

21       (~~(12)~~) (13) An offender serving a sentence under this section,  
22 whether or not a mandatory minimum term has expired, may be granted an  
23 extraordinary medical placement by the jail administrator subject to  
24 the standards and limitations set forth in RCW 9.94A.728(4).

25       (~~(13)~~) (14) For purposes of this section and RCW 46.61.502 and  
26 46.61.504:

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

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

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

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

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

36       (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
37 9A.36.050 or an equivalent local ordinance, if the conviction is the



1 result of a charge that was originally filed as a violation of RCW  
2 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
3 46.61.520 or 46.61.522;

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

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

10 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
11 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
12 ordinance, if the charge under which the deferred prosecution was  
13 granted was originally filed as a violation of RCW 46.61.502 or  
14 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
15 46.61.522;

16 (b) "Within seven years" means that the arrest for a prior offense  
17 occurred within seven years of the arrest for the current offense; and

18 (c) "Within ten years" means that the arrest for a prior offense  
19 occurred within ten years of the arrest for the current offense.

20 NEW SECTION. **Sec. 14.** A new section is added to chapter 46.20 RCW  
21 to read as follows:

22 A person applying for an ignition interlock driver's license under  
23 section 8 of this act or petitioning for a deferred prosecution under  
24 RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 shall  
25 undergo an alcohol and drug assessment prepared by an alcoholism agency  
26 approved by the department of social and health services or a qualified  
27 probation department approved by the department of social and health  
28 services.

29 **Sec. 15.** RCW 46.61.502 and 2006 c 73 s 1 are each amended to read  
30 as follows:

31 (1) A person is guilty of driving while under the influence of  
32 intoxicating liquor or any drug if the person drives a vehicle within  
33 this state:

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

1 (b) While the person is under the influence of or affected by  
2 intoxicating liquor or any drug; or

3 (c) While the person is under the combined influence of or affected  
4 by intoxicating liquor and any drug.

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

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

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

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

29 (6) It is a class C felony punishable under chapter 9.94A RCW, or  
30 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has  
31 four or more prior offenses within ten years as defined in RCW  
32 46.61.5055; or (b) the person has ever previously been convicted of (i)  
33 vehicular homicide while under the influence of intoxicating liquor or  
34 any drug, RCW 46.61.520(1)(a), ~~((or))~~ (ii) vehicular assault while  
35 under the influence of intoxicating liquor or any drug, RCW  
36 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the  
37 offense specified in (b)(i) or (ii) of this subsection.

1       **Sec. 16.** RCW 46.61.504 and 2006 c 73 s 2 are each amended to read  
2 as follows:

3       (1) A person is guilty of being in actual physical control of a  
4 motor vehicle while under the influence of intoxicating liquor or any  
5 drug if the person has actual physical control of a vehicle within this  
6 state:

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

11       (b) While the person is under the influence of or affected by  
12 intoxicating liquor or any drug; or

13       (c) While the person is under the combined influence of or affected  
14 by intoxicating liquor and any drug.

15       (2) The fact that a person charged with a violation of this section  
16 is or has been entitled to use a drug under the laws of this state does  
17 not constitute a defense against any charge of violating this section.  
18 No person may be convicted under this section if, prior to being  
19 pursued by a law enforcement officer, the person has moved the vehicle  
20 safely off the roadway.

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

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

1 by intoxicating liquor or any drug in violation of subsection (1)(b) or  
2 (c) of this section.

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

5 (6) It is a class C felony punishable under chapter 9.94A RCW, or  
6 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has  
7 four or more prior offenses within ten years as defined in RCW  
8 46.61.5055; or (b) the person has ever previously been convicted of (i)  
9 vehicular homicide while under the influence of intoxicating liquor or  
10 any drug, RCW 46.61.520(1)(a), ~~((or))~~ (ii) vehicular assault while  
11 under the influence of intoxicating liquor or any drug, RCW  
12 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the  
13 offense specified in (b)(i) or (ii) of this subsection.

14 **Sec. 17.** RCW 9.94A.533 and 2007 c 368 s 9 are each amended to read  
15 as follows:

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

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

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

1 the standard sentence range determined under subsection (2) of this  
2 section based on the felony crime of conviction as classified under RCW  
3 9A.28.020:

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

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

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

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

20 (e) Notwithstanding any other provision of law, all firearm  
21 enhancements under this section are mandatory, shall be served in total  
22 confinement, and shall run consecutively to all other sentencing  
23 provisions, including other firearm or deadly weapon enhancements, for  
24 all offenses sentenced under this chapter. However, whether or not a  
25 mandatory minimum term has expired, an offender serving a sentence  
26 under this subsection may be granted an extraordinary medical placement  
27 when authorized under RCW 9.94A.728(4);

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

33 (g) If the standard sentence range under this section exceeds the  
34 statutory maximum sentence for the offense, the statutory maximum  
35 sentence shall be the presumptive sentence unless the offender is a  
36 persistent offender. If the addition of a firearm enhancement  
37 increases the sentence so that it would exceed the statutory maximum

1 for the offense, the portion of the sentence representing the  
2 enhancement may not be reduced.

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

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

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

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

30 (d) If the offender is being sentenced under (a), (b), and/or (c)  
31 of this subsection for any deadly weapon enhancements and the offender  
32 has previously been sentenced for any deadly weapon enhancements after  
33 July 23, 1995, under (a), (b), and/or (c) of this subsection or  
34 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly  
35 weapon enhancements under this subsection shall be twice the amount of  
36 the enhancement listed;

37 (e) Notwithstanding any other provision of law, all deadly weapon  
38 enhancements under this section are mandatory, shall be served in total

1 confinement, and shall run consecutively to all other sentencing  
2 provisions, including other firearm or deadly weapon enhancements, for  
3 all offenses sentenced under this chapter. However, whether or not a  
4 mandatory minimum term has expired, an offender serving a sentence  
5 under this subsection may be granted an extraordinary medical placement  
6 when authorized under RCW 9.94A.728(4);

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

12 (g) If the standard sentence range under this section exceeds the  
13 statutory maximum sentence for the offense, the statutory maximum  
14 sentence shall be the presumptive sentence unless the offender is a  
15 persistent offender. If the addition of a deadly weapon enhancement  
16 increases the sentence so that it would exceed the statutory maximum  
17 for the offense, the portion of the sentence representing the  
18 enhancement may not be reduced.

19 (5) The following additional times shall be added to the standard  
20 sentence range if the offender or an accomplice committed the offense  
21 while in a county jail or state correctional facility and the offender  
22 is being sentenced for one of the crimes listed in this subsection. If  
23 the offender or an accomplice committed one of the crimes listed in  
24 this subsection while in a county jail or state correctional facility,  
25 and the offender is being sentenced for an anticipatory offense under  
26 chapter 9A.28 RCW to commit one of the crimes listed in this  
27 subsection, the following additional times shall be added to the  
28 standard sentence range determined under subsection (2) of this  
29 section:

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

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

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

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

1 (6) An additional twenty-four months shall be added to the standard  
2 sentence range for any ranked offense involving a violation of chapter  
3 69.50 RCW if the offense was also a violation of RCW 69.50.435 or  
4 9.94A.605. All enhancements under this subsection shall run  
5 consecutively to all other sentencing provisions, for all offenses  
6 sentenced under this chapter.

7 (7) An additional two years shall be added to the standard sentence  
8 range for vehicular homicide committed while under the influence of  
9 intoxicating liquor or any drug as defined by RCW 46.61.502 for each  
10 prior offense as defined in RCW 46.61.5055. This enhancement is  
11 mandatory, shall be served in total confinement, and shall run  
12 consecutively to all other sentencing provisions, including other  
13 enhancements, for all offenses sentenced under this chapter. However,  
14 whether or not a mandatory minimum term has expired, an offender  
15 -serving a sentence under this subsection may be granted an  
16 extraordinary medical placement when authorized under RCW 9.94A.728(4).

17 (8)(a) The following additional times shall be added to the  
18 standard sentence range for felony crimes committed on or after July 1,  
19 2006, if the offense was committed with sexual motivation, as that term  
20 is defined in RCW 9.94A.030. If the offender is being sentenced for  
21 more than one offense, the sexual motivation enhancement must be added  
22 to the total period of total confinement for all offenses, regardless  
23 of which underlying offense is subject to a sexual motivation  
24 enhancement. If the offender committed the offense with sexual  
25 motivation and the offender is being sentenced for an anticipatory  
26 offense under chapter 9A.28 RCW, the following additional times shall  
27 be added to the standard sentence range determined under subsection (2)  
28 of this section based on the felony crime of conviction as classified  
29 under RCW 9A.28.020:

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

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

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



1 (iv) If the offender is being sentenced for any sexual motivation  
2 enhancements under (i), (ii), and/or (iii) of this subsection and the  
3 offender has previously been sentenced for any sexual motivation  
4 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of  
5 this subsection, all sexual motivation enhancements under this  
6 subsection shall be twice the amount of the enhancement listed;

7 (b) Notwithstanding any other provision of law, all sexual  
8 motivation enhancements under this subsection are mandatory, shall be  
9 served in total confinement, and shall run consecutively to all other  
10 sentencing provisions, including other sexual motivation enhancements,  
11 for all offenses sentenced under this chapter. However, whether or not  
12 a mandatory minimum term has expired, an offender serving a sentence  
13 under this subsection may be granted an extraordinary medical placement  
14 when authorized under RCW 9.94A.728(4);

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

17 (d) If the standard sentence range under this subsection exceeds  
18 the statutory maximum sentence for the offense, the statutory maximum  
19 sentence shall be the presumptive sentence unless the offender is a  
20 persistent offender. If the addition of a sexual motivation  
21 enhancement increases the sentence so that it would exceed the  
22 statutory maximum for the offense, the portion of the sentence  
23 representing the enhancement may not be reduced;

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

27 (f) Nothing in this subsection prevents a sentencing court from  
28 imposing a sentence outside the standard sentence range pursuant to RCW  
29 9.94A.535.

30 (9) An additional one-year enhancement shall be added to the  
31 standard sentence range for the felony crimes of RCW 9A.44.073,  
32 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
33 or after July 22, 2007, if the offender engaged, agreed, or offered to  
34 engage the victim in the sexual conduct in return for a fee. If the  
35 offender is being sentenced for more than one offense, the one-year  
36 enhancement must be added to the total period of total confinement for  
37 all offenses, regardless of which underlying offense is subject to the  
38 enhancement. If the offender is being sentenced for an anticipatory

1 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,  
2 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,  
3 solicited another, or conspired to engage, agree, or offer to engage  
4 the victim in (~~(the)~~) the sexual conduct in return for a fee, an  
5 additional one-year enhancement shall be added to the standard sentence  
6 range determined under subsection (2) of this section. For purposes of  
7 this subsection, "sexual conduct" means sexual intercourse or sexual  
8 contact, both as defined in chapter 9A.44 RCW.

9 **Sec. 18.** RCW 9.94A.728 and 2007 c 483 s 304 are each amended to  
10 read as follows:

11 No person serving a sentence imposed pursuant to this chapter and  
12 committed to the custody of the department shall leave the confines of  
13 the correctional facility or be released prior to the expiration of the  
14 sentence except as follows:

15 (1) Except as otherwise provided for in subsection (2) of this  
16 section, the term of the sentence of an offender committed to a  
17 correctional facility operated by the department may be reduced by  
18 earned release time in accordance with procedures that shall be  
19 developed and promulgated by the correctional agency having  
20 jurisdiction in which the offender is confined. The earned release  
21 time shall be for good behavior and good performance, as determined by  
22 the correctional agency having jurisdiction. The correctional agency  
23 shall not credit the offender with earned release credits in advance of  
24 the offender actually earning the credits. Any program established  
25 pursuant to this section shall allow an offender to earn early release  
26 credits for presentence incarceration. If an offender is transferred  
27 from a county jail to the department, the administrator of a county  
28 jail facility shall certify to the department the amount of time spent  
29 in custody at the facility and the amount of earned release time. An  
30 offender who has been convicted of a felony committed after July 23,  
31 1995, that involves any applicable deadly weapon enhancements under RCW  
32 9.94A.533 (3) or (4), or both, shall not receive any good time credits  
33 or earned release time for that portion of his or her sentence that  
34 results from any deadly weapon enhancements. An offender convicted of  
35 vehicular homicide committed while under the influence of intoxicating  
36 liquor or any drug that involves a sentence enhancement under RCW

1 9.94A.533(7) may not receive any earned early release time for the  
2 portion of his or her sentence that results from the enhancement.

3 (a) In the case of an offender convicted of a serious violent  
4 offense, or a sex offense that is a class A felony, committed on or  
5 after July 1, 1990, and before July 1, 2003, the aggregate earned  
6 release time may not exceed fifteen percent of the sentence. In the  
7 case of an offender convicted of a serious violent offense, or a sex  
8 offense that is a class A felony, committed on or after July 1, 2003,  
9 the aggregate earned release time may not exceed ten percent of the  
10 sentence.

11 (b)(i) In the case of an offender who qualifies under (b)(ii) of  
12 this subsection, the aggregate earned release time may not exceed fifty  
13 percent of the sentence.

14 (ii) An offender is qualified to earn up to fifty percent of  
15 aggregate earned release time under this subsection (1)(b) if he or  
16 she:

17 (A) Is classified in one of the two lowest risk categories under  
18 (b)(iii) of this subsection;

19 (B) Is not confined pursuant to a sentence for:

20 (I) A sex offense;

21 (II) A violent offense;

22 (III) A crime against persons as defined in RCW 9.94A.411;

23 (IV) A felony that is domestic violence as defined in RCW  
24 10.99.020;

25 (V) A violation of RCW 9A.52.025 (residential burglary);

26 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
27 violate, RCW 69.50.401 by manufacture or delivery or possession with  
28 intent to deliver methamphetamine; or

29 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
30 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

31 (C) Has no prior conviction for:

32 (I) A sex offense;

33 (II) A violent offense;

34 (III) A crime against persons as defined in RCW 9.94A.411;

35 (IV) A felony that is domestic violence as defined in RCW  
36 10.99.020;

37 (V) A violation of RCW 9A.52.025 (residential burglary);

1 (VI) A violation of, or an attempt, solicitation, or conspiracy to  
2 violate, RCW 69.50.401 by manufacture or delivery or possession with  
3 intent to deliver methamphetamine; or

4 (VII) A violation of, or an attempt, solicitation, or conspiracy to  
5 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

6 (D) Participates in programming or activities as directed by the  
7 offender's individual reentry plan as provided under RCW 72.09.270 to  
8 the extent that such programming or activities are made available by  
9 the department; and

10 (E) Has not committed a new felony after July 22, 2007, while under  
11 community supervision, community placement, or community custody.

12 (iii) For purposes of determining an offender's eligibility under  
13 this subsection (1)(b), the department shall perform a risk assessment  
14 of every offender committed to a correctional facility operated by the  
15 department who has no current or prior conviction for a sex offense, a  
16 violent offense, a crime against persons as defined in RCW 9.94A.411,  
17 a felony that is domestic violence as defined in RCW 10.99.020, a  
18 violation of RCW 9A.52.025 (residential burglary), a violation of, or  
19 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by  
20 manufacture or delivery or possession with intent to deliver  
21 methamphetamine, or a violation of, or an attempt, solicitation, or  
22 conspiracy to violate, RCW 69.50.406 (delivery of a controlled  
23 substance to a minor). The department must classify each assessed  
24 offender in one of four risk categories between highest and lowest  
25 risk.

26 (iv) The department shall recalculate the earned release time and  
27 reschedule the expected release dates for each qualified offender under  
28 this subsection (1)(b).

29 (v) This subsection (1)(b) applies retroactively to eligible  
30 offenders serving terms of total confinement in a state correctional  
31 facility as of July 1, 2003.

32 (vi) This subsection (1)(b) does not apply to offenders convicted  
33 after July 1, 2010.

34 (c) In no other case shall the aggregate earned release time exceed  
35 one-third of the total sentence;

36 (2)(a) A person convicted of a sex offense or an offense  
37 categorized as a serious violent offense, assault in the second degree,  
38 vehicular homicide, vehicular assault, assault of a child in the second

1 degree, any crime against persons where it is determined in accordance  
2 with RCW 9.94A.602 that the offender or an accomplice was armed with a  
3 deadly weapon at the time of commission, or any felony offense under  
4 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become  
5 eligible, in accordance with a program developed by the department, for  
6 transfer to community custody status in lieu of earned release time  
7 pursuant to subsection (1) of this section;

8 (b) A person convicted of a sex offense, a violent offense, any  
9 crime against persons under RCW 9.94A.411(2), or a felony offense under  
10 chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, may  
11 become eligible, in accordance with a program developed by the  
12 department, for transfer to community custody status in lieu of earned  
13 release time pursuant to subsection (1) of this section;

14 (c) The department shall, as a part of its program for release to  
15 the community in lieu of earned release, require the offender to  
16 propose a release plan that includes an approved residence and living  
17 arrangement. All offenders with community placement or community  
18 custody terms eligible for release to community custody status in lieu  
19 of earned release shall provide an approved residence and living  
20 arrangement prior to release to the community;

21 (d) The department may deny transfer to community custody status in  
22 lieu of earned release time pursuant to subsection (1) of this section  
23 if the department determines an offender's release plan, including  
24 proposed residence location and living arrangements, may violate the  
25 conditions of the sentence or conditions of supervision, place the  
26 offender at risk to violate the conditions of the sentence, place the  
27 offender at risk to reoffend, or present a risk to victim safety or  
28 community safety. The department's authority under this section is  
29 independent of any court-ordered condition of sentence or statutory  
30 provision regarding conditions for community custody or community  
31 placement;

32 (e) If the department denies transfer to community custody status  
33 in lieu of earned early release pursuant to (d) of this subsection, the  
34 department may transfer an offender to partial confinement in lieu of  
35 earned early release up to three months. The three months in partial  
36 confinement is in addition to that portion of the offender's term of  
37 confinement that may be served in partial confinement as provided in  
38 this section;

1 (f) An offender serving a term of confinement imposed under RCW  
2 9.94A.670(4)(a) is not eligible for earned release credits under this  
3 section;

4 (3) An offender may leave a correctional facility pursuant to an  
5 authorized furlough or leave of absence. In addition, offenders may  
6 leave a correctional facility when in the custody of a corrections  
7 officer or officers;

8 (4)(a) The secretary may authorize an extraordinary medical  
9 placement for an offender when all of the following conditions exist:

10 (i) The offender has a medical condition that is serious enough to  
11 require costly care or treatment;

12 (ii) The offender poses a low risk to the community because he or  
13 she is physically incapacitated due to age or the medical condition;  
14 and

15 (iii) Granting the extraordinary medical placement will result in  
16 a cost savings to the state.

17 (b) An offender sentenced to death or to life imprisonment without  
18 the possibility of release or parole is not eligible for an  
19 extraordinary medical placement.

20 (c) The secretary shall require electronic monitoring for all  
21 offenders in extraordinary medical placement unless the electronic  
22 monitoring equipment interferes with the function of the offender's  
23 medical equipment or results in the loss of funding for the offender's  
24 medical care. The secretary shall specify who shall provide the  
25 monitoring services and the terms under which the monitoring shall be  
26 performed.

27 (d) The secretary may revoke an extraordinary medical placement  
28 under this subsection at any time;

29 (5) The governor, upon recommendation from the clemency and pardons  
30 board, may grant an extraordinary release for reasons of serious health  
31 problems, senility, advanced age, extraordinary meritorious acts, or  
32 other extraordinary circumstances;

33 (6) No more than the final six months of the offender's term of  
34 confinement may be served in partial confinement designed to aid the  
35 offender in finding work and reestablishing himself or herself in the  
36 community. This is in addition to that period of earned early release  
37 time that may be exchanged for partial confinement pursuant to  
38 subsection (2)(e) of this section;

1 (7) The governor may pardon any offender;

2 (8) The department may release an offender from confinement any  
3 time within ten days before a release date calculated under this  
4 section; and

5 (9) An offender may leave a correctional facility prior to  
6 completion of his or her sentence if the sentence has been reduced as  
7 provided in RCW 9.94A.870.

8 Notwithstanding any other provisions of this section, an offender  
9 sentenced for a felony crime listed in RCW 9.94A.540 as subject to a  
10 mandatory minimum sentence of total confinement shall not be released  
11 from total confinement before the completion of the listed mandatory  
12 minimum sentence for that felony crime of conviction unless allowed  
13 under RCW 9.94A.540, however persistent offenders are not eligible for  
14 extraordinary medical placement.

15 NEW SECTION. **Sec. 19.** Sections 17 and 18 of this act apply  
16 prospectively only and not retroactively. Those provisions apply only  
17 to convictions occurring on or after the effective date of this  
18 section.

19 **Sec. 20.** RCW 10.05.010 and 2002 c 219 s 6 are each amended to read  
20 as follows:

21 (1) In a court of limited jurisdiction a person charged with a  
22 misdemeanor or gross misdemeanor may petition the court to be  
23 considered for a deferred prosecution program. The petition shall be  
24 filed with the court at least seven days before the date set for trial  
25 but, upon a written motion and affidavit establishing good cause for  
26 the delay and failure to comply with this section, the court may waive  
27 this requirement subject to the defendant's reimbursement to the court  
28 of the witness fees and expenses due for subpoenaed witnesses who have  
29 appeared on the date set for trial.

30 (2) A person charged with a traffic infraction, misdemeanor, or  
31 gross misdemeanor under Title 46 RCW shall not be eligible for a  
32 deferred prosecution program unless the court makes specific findings  
33 pursuant to RCW 10.05.020 or section 21 of this act. Such person shall  
34 not be eligible for a deferred prosecution program more than once.  
35 Separate offenses committed more than seven days apart may not be  
36 consolidated in a single program.

1 (3) A person charged with a misdemeanor or a gross misdemeanor  
2 under chapter 9A.42 RCW shall not be eligible for a deferred  
3 prosecution program unless the court makes specific findings pursuant  
4 to RCW 10.05.020. Such person shall not be eligible for a deferred  
5 prosecution program more than once.

6 NEW SECTION. **Sec. 21.** A new section is added to chapter 10.05 RCW  
7 to read as follows:

8 (1) A person charged with a misdemeanor or gross misdemeanor under  
9 RCW 46.61.502 or 46.61.504 who has had no prior offenses as defined in  
10 RCW 46.61.5055 and has been assessed pursuant to subsection (3) of this  
11 section shall be eligible for a one-time deferred prosecution program.

12 (2) Before entering an order deferring prosecution under this  
13 section, the court shall make a specific finding that the petitioner  
14 has no prior offenses as defined in RCW 46.61.5055 and has been  
15 assessed by a certified chemical dependency counselor and a licensed  
16 mental health professional, and found not to need treatment for  
17 alcoholism, drug addiction, or mental problems. As a condition of  
18 granting a deferral prosecution petition, the court shall order the  
19 petitioner to satisfy the conditions in RCW 10.05.140 and shall order  
20 the petitioner to apply for an ignition interlock driver's license from  
21 the department of licensing and have a functioning ignition interlock  
22 device installed on all motor vehicles operated by the person. The  
23 required period of use of the interlock shall be one year. The court  
24 may order supervision of the petitioner during the period of deferral  
25 pursuant to RCW 10.05.170.

26 (3) A petitioner seeking a deferral of prosecution under this  
27 section shall undergo an assessment by a certified chemical dependency  
28 counselor and a licensed mental health professional to determine  
29 whether the petitioner is or is not in need of treatment for  
30 alcoholism, drug addiction, or mental problems.

31 NEW SECTION. **Sec. 22.** Sections 2, 4 through 7, and 10 through 13  
32 of this act take effect January 1, 2009.

33 NEW SECTION. **Sec. 23.** If specific funding for the purposes of  
34 this act, referencing this act by bill or chapter number, is not



1 provided by June 30, 2008, in the omnibus appropriations act, this act  
2 is null and void."

**E2SHB 3254** - S COMM AMD  
By Committee on Judiciary

**OUT OF ORDER 03/07/2008**

3 On page 1, line 2, of the title, after "drugs;" strike the  
4 remainder of the title and insert "amending RCW 46.20.342, 46.20.391,  
5 46.20.400, 46.20.410, 46.20.720, 46.20.740, 46.61.5055, 46.61.502,  
6 46.61.504, 9.94A.533, 9.94A.728, and 10.05.010; reenacting and amending  
7 RCW 46.20.308 and 46.63.020; adding a new section to chapter 46.04 RCW;  
8 adding a new section to chapter 46.68 RCW; adding new sections to  
9 chapter 46.20 RCW; adding a new section to chapter 10.05 RCW; creating  
10 new sections; prescribing penalties; and providing an effective date."

--- END ---