

E2SHB 3254 - S COMM AMD
By Committee on Transportation

ADOPTED AS AMENDED 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 account is created in the
25 state treasury. All receipts from the fee assessed under section 9(6)
26 of this act must be deposited into the account. Moneys in the account
27 may be spent only after appropriation. Expenditures from the account
28 may be used only for administering and operating the ignition interlock
29 device revolving account program.

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

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

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

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

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

27 (ii) A previous conviction under this section;

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

33 (iv) A conviction of RCW 46.20.410, relating to the violation of
34 restrictions of an occupational ((~~or~~)) driver's license, a temporary
35 restricted driver's license, or an ignition interlock driver's license;

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

1 (vi) A conviction of RCW 46.52.020, relating to duty in case of
2 injury to or death of a person or damage to an attended vehicle;
3 (vii) A conviction of RCW 46.61.024, relating to attempting to
4 elude pursuing police vehicles;
5 (viii) A conviction of RCW 46.61.500, relating to reckless driving;
6 (ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a
7 person under the influence of intoxicating liquor or drugs;
8 (x) A conviction of RCW 46.61.520, relating to vehicular homicide;
9 (xi) A conviction of RCW 46.61.522, relating to vehicular assault;
10 (xii) A conviction of RCW 46.61.527(4), relating to reckless
11 endangerment of roadway workers;
12 (xiii) A conviction of RCW 46.61.530, relating to racing of
13 vehicles on highways;
14 (xiv) A conviction of RCW 46.61.685, relating to leaving children
15 in an unattended vehicle with motor running;
16 (xv) A conviction of RCW 46.61.740, relating to theft of motor
17 vehicle fuel;
18 (xvi) A conviction of RCW 46.64.048, relating to attempting,
19 aiding, abetting, coercing, and committing crimes;
20 (xvii) An administrative action taken by the department under
21 chapter 46.20 RCW; or
22 (xviii) A conviction of a local law, ordinance, regulation, or
23 resolution of a political subdivision of this state, the federal
24 government, or any other state, of an offense substantially similar to
25 a violation included in this subsection.
26 (c) A person who violates this section when his or her driver's
27 license or driving privilege is, at the time of the violation,
28 suspended or revoked solely because (i) the person must furnish proof
29 of satisfactory progress in a required alcoholism or drug treatment
30 program, (ii) the person must furnish proof of financial responsibility
31 for the future as provided by chapter 46.29 RCW, (iii) the person has
32 failed to comply with the provisions of chapter 46.29 RCW relating to
33 uninsured accidents, (iv) the person has failed to respond to a notice
34 of traffic infraction, failed to appear at a requested hearing,
35 violated a written promise to appear in court, or has failed to comply
36 with the terms of a notice of traffic infraction or citation, as
37 provided in RCW 46.20.289, (v) the person has committed an offense in
38 another state that, if committed in this state, would not be grounds

1 for the suspension or revocation of the person's driver's license, (vi)
2 the person has been suspended or revoked by reason of one or more of
3 the items listed in (b) of this subsection, but was eligible to
4 reinstate his or her driver's license or driving privilege at the time
5 of the violation, or (vii) the person has received traffic citations or
6 notices of traffic infraction that have resulted in a suspension under
7 RCW 46.20.267 relating to intermediate drivers' licenses, or any
8 combination of (i) through (vii), is guilty of driving while license
9 suspended or revoked in the third degree, a misdemeanor.

10 (2) Upon receiving a record of conviction of any person or upon
11 receiving an order by any juvenile court or any duly authorized court
12 officer of the conviction of any juvenile under this section, the
13 department shall:

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

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

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

32 **Sec. 5.** RCW 46.20.380 and 2004 c 95 s 6 are each amended to read
33 as follows:

34 No person may file an application for an occupational ((~~or~~)
35 driver's license, a temporary restricted driver's license, or an
36 ignition interlock driver's license as provided in RCW 46.20.391 and
37 section 9 of this act unless he or she first pays to the director or

1 other person authorized to accept applications and fees for driver's
2 licenses a fee of one hundred dollars. The applicant shall receive
3 upon payment an official receipt for the payment of such fee. All such
4 fees shall be forwarded to the director who shall transmit such fees to
5 the state treasurer in the same manner as other driver's license fees.

6 **Sec. 6.** RCW 46.20.391 and 2004 c 95 s 7 are each amended to read
7 as follows:

8 (1)~~((a))~~ Any person licensed under this chapter who is convicted
9 of an offense relating to motor vehicles for which suspension or
10 revocation of the driver's license is mandatory, other than vehicular
11 homicide ~~((or))~~, vehicular assault, ~~((or who has had his or her license
12 suspended, revoked, or denied under RCW 46.20.3101))~~ driving while
13 under the influence of intoxicating liquor or any drug, or being in
14 actual physical control of a motor vehicle while under the influence of
15 intoxicating liquor or any drug, may submit to the department an
16 application for a temporary restricted driver's license. The
17 department, upon receipt of the prescribed fee and upon determining
18 that the petitioner is eligible to receive the license, may issue a
19 temporary restricted driver's license and may set definite restrictions
20 as provided in RCW 46.20.394. ~~((No person may petition for, and the
21 department shall not issue, a temporary restricted driver's license
22 that is effective during the first thirty days of any suspension or
23 revocation imposed for a violation of RCW 46.61.502 or 46.61.504 or,
24 for a suspension, revocation, or denial imposed under RCW 46.20.3101,
25 during the required minimum portion of the periods of suspension,
26 revocation, or denial established under (c) of this subsection.~~

27 ~~(b) An applicant under this subsection whose driver's license is
28 suspended or revoked for an alcohol related offense shall provide proof
29 to the satisfaction of the department that a functioning ignition
30 interlock device has been installed on a vehicle owned or operated by
31 the person.~~

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

36 ~~(ii) Subject to any periodic renewal requirements established by
37 the department pursuant to this section and subject to any applicable~~

1 ~~compliance requirements under this chapter or other law, a temporary~~
2 ~~restricted driver's license granted after a suspension or revocation~~
3 ~~under RCW 46.61.5055 or 46.20.3101 extends through the remaining~~
4 ~~portion of any concurrent or consecutive suspension or revocation that~~
5 ~~may be imposed as the result of administrative action and criminal~~
6 ~~conviction arising out of the same incident.~~

7 ~~(iii) The time period during which the person is licensed under~~
8 ~~this section shall apply on a day for day basis toward satisfying the~~
9 ~~period of time the ignition interlock device restriction is required~~
10 ~~under RCW 46.20.720 (1) and (2) (a), (b), and (c).~~

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

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

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

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

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

36 (a) Within seven years immediately preceding the date of the
37 offense that gave rise to the present conviction or incident, the

1 applicant has not committed vehicular homicide under RCW 46.61.520 or
2 vehicular assault under RCW 46.61.522; and

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

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

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

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

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

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

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

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

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

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

28 (d) Upon receipt of evidence that a holder of an occupational
29 driver's license granted under this subsection is no longer enrolled in
30 an apprenticeship or on-the-job training program, the director shall
31 give written notice by first-class mail to the driver that the
32 occupational driver's license shall be canceled. The effective date of
33 cancellation shall be fifteen days from the date of mailing the notice.
34 If at any time before the cancellation goes into effect the driver
35 submits evidence of continued enrollment in the program, the
36 cancellation shall be stayed. If the cancellation becomes effective,
37 the driver may obtain, at no additional charge, a new occupational

1 driver's license upon submittal of evidence of enrollment in another
2 program that meets the criteria set forth in this subsection; and

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

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

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

18 **Sec. 7.** RCW 46.20.400 and 2004 c 95 s 9 are each amended to read
19 as follows:

20 If an occupational (~~(or)~~) driver's license, a temporary restricted
21 driver's license, or an ignition interlock driver's license is issued
22 and is not revoked during the period for which issued the licensee may
23 obtain a new driver's license at the end of such period, but no new
24 driver's license may be issued to such person until he or she
25 surrenders his or her occupational (~~(or)~~) driver's license, temporary
26 restricted driver's license, or ignition interlock driver's license and
27 his or her copy of the order, and the director is satisfied that the
28 person complies with all other provisions of law relative to the
29 issuance of a driver's license.

30 **Sec. 8.** RCW 46.20.410 and 2004 c 95 s 10 are each amended to read
31 as follows:

32 Any person convicted for violation of any restriction of an
33 occupational (~~(or)~~) driver's license, a temporary restricted driver's
34 license, or an ignition interlock driver's license shall in addition to
35 the immediate revocation of such license and any other penalties

1 provided by law be fined not less than fifty nor more than two hundred
2 dollars or imprisoned for not more than six months or both such fine
3 and imprisonment.

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

6 (1)(a) Beginning January 1, 2009, any person licensed under this
7 chapter who is convicted of any offense involving the use, consumption,
8 or possession of alcohol while operating a motor vehicle in violation
9 of RCW 46.61.502 or 46.61.504, other than vehicular homicide or
10 vehicular assault, or who has had or will have his or her license
11 suspended, revoked, or denied under RCW 46.20.3101, may submit to the
12 department an application for an ignition interlock driver's license.
13 The department, upon receipt of the prescribed fee and upon determining
14 that the petitioner is eligible to receive the license, may issue an
15 ignition interlock driver's license.

16 (b) A person may apply for an ignition interlock driver's license
17 anytime, including immediately after receiving the notices under RCW
18 46.20.308 or after his or her license is suspended, revoked, or denied.
19 A person receiving an ignition interlock driver's license waives his or
20 her right to a hearing or appeal under RCW 46.20.308.

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

24 (i) The department shall require the person to maintain the device
25 on all vehicles operated by the person and shall restrict the person to
26 operating only vehicles equipped with the device, for the remainder of
27 the period of suspension, revocation, or denial. The installation of
28 an ignition interlock device is not necessary on vehicles owned by a
29 person's employer and driven as a requirement of employment during
30 working hours. The person must provide the department with a
31 declaration pursuant to RCW 9A.72.085 from his or her employer stating
32 that the person's employment requires the person to operate a vehicle
33 owned by the employer during working hours.

34 (ii) Subject to any periodic renewal requirements established by
35 the department under this section and subject to any applicable
36 compliance requirements under this chapter or other law, an ignition
37 interlock driver's license granted upon a suspension or revocation

1 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
2 portion of any concurrent or consecutive suspension or revocation that
3 may be imposed as the result of administrative action and criminal
4 conviction arising out of the same incident.

5 (iii) The time period during which the person is licensed under
6 this section shall apply on a day-for-day basis toward satisfying the
7 period of time the ignition interlock device restriction is required
8 under RCW 46.20.720 and 46.61.5055.

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

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

16 (b) The applicant files satisfactory proof of financial
17 responsibility under chapter 46.29 RCW.

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

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

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

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

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

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

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

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

25 (1) The ignition interlock device revolving account program is
26 created within the department to assist in covering the monetary costs
27 of installing, removing, and leasing an ignition interlock device, and
28 applicable licensing, for indigent persons who are required under
29 section 9 of this act and RCW 46.61.5055 to install an ignition
30 interlock device in all vehicles owned or operated by the person. For
31 purposes of this subsection, "indigent" has the same meaning as in RCW
32 10.101.010, as determined by the department.

33 (2) A pilot program is created within the ignition interlock device
34 revolving account program for the purpose of monitoring compliance by
35 persons required to use ignition interlock devices and by ignition
36 interlock companies and vendors.

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

6 (4) At a minimum, the compliance pilot program shall:

7 (a) Review the number of ignition interlock devices that are
8 required to be installed in the targeted county and the number of
9 ignition interlock devices actually installed;

10 (b) Work to identify those persons who are not complying with
11 ignition interlock requirements or are repeatedly violating ignition
12 interlock requirements; and

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

14 (5) As part of monitoring compliance, the Washington traffic safety
15 commission shall also track recidivism for violations of RCW 46.61.502
16 and 46.61.504 by persons required to have an ignition interlock
17 driver's license under section 9 of this act.

18 **Sec. 11.** RCW 46.63.020 and 2005 c 431 s 2, 2005 c 323 s 3, and
19 2005 c 183 s 10 are each reenacted and amended to read as follows:

20 Failure to perform any act required or the performance of any act
21 prohibited by this title or an equivalent administrative regulation or
22 local law, ordinance, regulation, or resolution relating to traffic
23 including parking, standing, stopping, and pedestrian offenses, is
24 designated as a traffic infraction and may not be classified as a
25 criminal offense, except for an offense contained in the following
26 provisions of this title or a violation of an equivalent administrative
27 regulation or local law, ordinance, regulation, or resolution:

28 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
29 vehicle while under the influence of intoxicating liquor or a
30 controlled substance;

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

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

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

36 (5) Chapter 46.12 RCW relating to certificates of ownership and

1 registration and markings indicating that a vehicle has been destroyed
2 or declared a total loss;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (20) RCW 46.30.040 relating to providing false evidence of
33 financial responsibility;

34 (21) RCW 46.37.435 relating to wrongful installation of
35 sunscreening material;

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

1 (23) RCW 46.37.671 through 46.37.675 relating to signal preemption
2 devices;
3 (24) RCW 46.44.180 relating to operation of mobile home pilot
4 vehicles;
5 (~~(24)~~) (25) RCW 46.48.175 relating to the transportation of
6 dangerous articles;
7 (~~(25)~~) (26) RCW 46.52.010 relating to duty on striking an
8 unattended car or other property;
9 (~~(26)~~) (27) RCW 46.52.020 relating to duty in case of injury to
10 or death of a person or damage to an attended vehicle;
11 (~~(27)~~) (28) RCW 46.52.090 relating to reports by repairmen,
12 storagemen, and appraisers;
13 (~~(28)~~) (29) RCW 46.52.130 relating to confidentiality of the
14 driving record to be furnished to an insurance company, an employer,
15 and an alcohol/drug assessment or treatment agency;
16 (~~(29)~~) (30) RCW 46.55.020 relating to engaging in the activities
17 of a registered tow truck operator without a registration certificate;
18 (~~(30)~~) (31) RCW 46.55.035 relating to prohibited practices by tow
19 truck operators;
20 (~~(31)~~) (32) RCW 46.55.300 relating to vehicle immobilization;
21 (33) RCW 46.61.015 relating to obedience to police officers,
22 flaggers, or firefighters;
23 (~~(32)~~) (34) RCW 46.61.020 relating to refusal to give information
24 to or cooperate with an officer;
25 (~~(33)~~) (35) RCW 46.61.022 relating to failure to stop and give
26 identification to an officer;
27 (~~(34)~~) (36) RCW 46.61.024 relating to attempting to elude
28 pursuing police vehicles;
29 (~~(35)~~) (37) RCW 46.61.500 relating to reckless driving;
30 (~~(36)~~) (38) RCW 46.61.502 and 46.61.504 relating to persons under
31 the influence of intoxicating liquor or drugs;
32 (~~(37)~~) (39) RCW 46.61.503 relating to a person under age twenty-
33 one driving a motor vehicle after consuming alcohol;
34 (~~(38)~~) (40) RCW 46.61.520 relating to vehicular homicide by motor
35 vehicle;
36 (~~(39)~~) (41) RCW 46.61.522 relating to vehicular assault;
37 (~~(40)~~) (42) RCW 46.61.5249 relating to first degree negligent
38 driving;

1 ~~((41))~~ (43) RCW 46.61.527(4) relating to reckless endangerment of
2 roadway workers;

3 ~~((42))~~ (44) RCW 46.61.530 relating to racing of vehicles on
4 highways;

5 ~~((43))~~ (45) RCW 46.61.655(7) (a) and (b) relating to failure to
6 secure a load;

7 ~~((44))~~ (46) RCW 46.61.685 relating to leaving children in an
8 unattended vehicle with the motor running;

9 ~~((45))~~ (47) RCW 46.61.740 relating to theft of motor vehicle
10 fuel;

11 ~~((46) RCW 46.37.671 through 46.37.675 relating to signal~~
12 ~~preemption devices;~~

13 ~~(47))~~ (48) RCW 46.64.010 relating to unlawful cancellation of or
14 attempt to cancel a traffic citation;

15 ~~((48))~~ (49) RCW 46.64.048 relating to attempting, aiding,
16 abetting, coercing, and committing crimes;

17 ~~((49))~~ (50) Chapter 46.65 RCW relating to habitual traffic
18 offenders;

19 ~~((50))~~ (51) RCW 46.68.010 relating to false statements made to
20 obtain a refund;

21 ~~((51))~~ (52) Chapter 46.70 RCW relating to unfair motor vehicle
22 business practices, except where that chapter provides for the
23 assessment of monetary penalties of a civil nature;

24 ~~((52))~~ (53) Chapter 46.72 RCW relating to the transportation of
25 passengers in for hire vehicles;

26 ~~((53))~~ (54) RCW 46.72A.060 relating to limousine carrier
27 insurance;

28 ~~((54))~~ (55) RCW 46.72A.070 relating to operation of a limousine
29 without a vehicle certificate;

30 ~~((55))~~ (56) RCW 46.72A.080 relating to false advertising by a
31 limousine carrier;

32 ~~((56))~~ (57) Chapter 46.80 RCW relating to motor vehicle wreckers;

33 ~~((57))~~ (58) Chapter 46.82 RCW relating to driver's training
34 schools;

35 ~~((58))~~ (59) RCW 46.87.260 relating to alteration or forgery of a
36 cab card, letter of authority, or other temporary authority issued
37 under chapter 46.87 RCW;

1 (~~(59)~~) (60) RCW 46.87.290 relating to operation of an
2 unregistered or unlicensed vehicle under chapter 46.87 RCW.

3 **Sec. 12.** RCW 46.20.720 and 2004 c 95 s 11 are each amended to read
4 as follows:

5 (1) The court may order that after a period of suspension,
6 revocation, or denial of driving privileges, and for up to as long as
7 the court has jurisdiction, any person convicted of any offense
8 involving the use, consumption, or possession of alcohol while
9 operating a motor vehicle may drive only a motor vehicle equipped with
10 a functioning ignition interlock. The court shall establish a specific
11 calibration setting at which the interlock will prevent the vehicle
12 from being started. The court shall also establish the period of time
13 for which interlock use will be required.

14 (2) Under RCW 46.61.5055, the court shall order any person
15 convicted of an alcohol-related violation of RCW 46.61.502 or 46.61.504
16 or an equivalent local ordinance to apply for an ignition interlock
17 driver's license from the department under section 9 of this act and to
18 have a functioning ignition interlock device installed on all motor
19 vehicles operated by the person.

20 (3) The department shall require that, after any applicable period
21 of suspension, revocation, or denial of driving privileges, a person
22 may drive only a motor vehicle equipped with a functioning ignition
23 interlock device if the person is convicted of an alcohol-related
24 violation of RCW 46.61.502 or 46.61.504 or an equivalent local
25 ordinance.

26 The department may waive the requirement for the use of such a
27 device if it concludes that such devices are not reasonably available
28 in the local area. The device is not necessary on vehicles owned by a
29 person's employer and driven as a requirement of employment during
30 working hours. The person must provide the department with a
31 declaration pursuant to RCW 9A.72.085 from his or her employer stating
32 that the person's employment requires the person to operate a vehicle
33 owned by the employer during working hours.

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

- 1 (a) For a person who has not previously been restricted under this
2 section, a period of one year;
- 3 (b) For a person who has previously been restricted under (a) of
4 this subsection, a period of five years;
- 5 (c) For a person who has previously been restricted under (b) of
6 this subsection, a period of ten years.

7 **Sec. 13.** RCW 46.20.740 and 2004 c 95 s 12 are each amended to read
8 as follows:

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

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

28 **Sec. 14.** RCW 46.61.5055 and 2007 c 474 s 1 are each amended to
29 read as follows:

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

34 (a) In the case of a person whose alcohol concentration was less
35 than 0.15, or for whom for reasons other than the person's refusal to

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

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

20 (ii) By a fine of not less than three hundred fifty dollars nor
21 more than five thousand dollars. Three hundred fifty dollars of the
22 fine may not be suspended or deferred unless the court finds the
23 offender to be 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 two days nor more than one
29 year. Two consecutive days of the imprisonment may not be suspended or
30 deferred unless the court finds that the imposition of this mandatory
31 minimum sentence would impose a substantial risk to the offender's
32 physical or mental well-being. Whenever the mandatory minimum sentence
33 is suspended or deferred, the court shall state in writing the reason
34 for granting the suspension or deferral and the facts upon which the
35 suspension or deferral is based. In lieu of the mandatory minimum term
36 of imprisonment required under this subsection (1)(b)(i), the court may
37 order not less than thirty days of electronic home monitoring. The
38 offender shall pay the cost of electronic home monitoring. The county

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

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

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

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

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

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

1 least 0.15, or for whom by reason of the person's refusal to take a
2 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 forty-five days nor more than
5 one year and ninety days of electronic home monitoring. The offender
6 shall pay for the cost of the electronic monitoring. The county or
7 municipality where the penalty is being imposed shall determine the
8 cost. The court may also require the offender's electronic home
9 monitoring device include an alcohol detection breathalyzer, and may
10 restrict the amount of alcohol the offender may consume during the time
11 the offender is on electronic home monitoring. Forty-five days of
12 imprisonment and ninety days of electronic home monitoring may not be
13 suspended or deferred unless the court finds that the imposition of
14 this mandatory minimum sentence would impose a substantial risk to the
15 offender's physical or mental well-being. Whenever the mandatory
16 minimum sentence is suspended or deferred, the court shall state in
17 writing the reason for granting the suspension or deferral and the
18 facts upon which the suspension or deferral is based; and

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

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

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

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

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

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

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

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

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

37 (4) A person who is convicted of a violation of RCW 46.61.502 or
38 46.61.504 and who has four or more prior offenses within ten years, or

1 who has ever previously been convicted of a violation of RCW 46.61.520
2 committed while under the influence of intoxicating liquor or any drug
3 or RCW 46.61.522 committed while under the influence of intoxicating
4 liquor or any drug, shall be punished in accordance with chapter 9.94A
5 RCW.

6 (5)(a) The court shall require any person convicted of an
7 alcohol-related violation of RCW 46.61.502 or 46.61.504 to apply for an
8 ignition interlock driver's license from the department under section
9 9 of this act and to have a functioning ignition interlock device
10 installed on all motor vehicles operated by the person.

11 (b) The installation of an ignition interlock device is not
12 necessary on vehicles owned by a person's employer and driven as a
13 requirement of employment during working hours. The person must
14 provide the department with a declaration pursuant to RCW 9A.72.085
15 from his or her employer stating that the person's employment requires
16 the person to operate a vehicle owned by the employer during working
17 hours.

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

21 (d) The court may waive the requirement that a person obtain an
22 ignition interlock driver's license and operate only vehicles equipped
23 with a functioning ignition interlock device if the court makes a
24 specific finding in writing that the devices are not reasonably
25 available in the local area, that the person does not operate a
26 vehicle, or the person is not eligible to receive an ignition interlock
27 driver's license under section 9 of this act.

28 (e) When the requirement that a person obtain an ignition interlock
29 driver's license and operate only vehicles equipped with a functioning
30 ignition interlock device is waived by the court, the court shall order
31 the person to submit to alcohol monitoring through an alcohol detection
32 breathalyzer device, transdermal sensor device, or other technology
33 designed to detect alcohol in a person's system. The person shall pay
34 for the cost of the monitoring. The county or municipality where the
35 penalty is being imposed shall determine the cost.

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

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

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

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

7 (6) If a person who is convicted of a violation of RCW 46.61.502 or
8 46.61.504 committed the offense while a passenger under the age of
9 sixteen was in the vehicle, the court shall:

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

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

18 ~~((+6+))~~ (7) In exercising its discretion in setting penalties
19 within the limits allowed by this section, the court shall particularly
20 consider the following:

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

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

25 ~~((+7+))~~ (8) An offender punishable under this section is subject to
26 the alcohol assessment and treatment provisions of RCW 46.61.5056.

27 ~~((+8+))~~ (9) The license, permit, or nonresident privilege of a
28 person convicted of driving or being in physical control of a motor
29 vehicle while under the influence of intoxicating liquor or drugs must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (~~((+9))~~) (10) After expiration of any period of suspension,
27 revocation, or denial of the offender's license, permit, or privilege
28 to drive required by this section, the department shall place the
29 offender's driving privilege in probationary status pursuant to RCW
30 46.20.355.

31 (~~((+10))~~) (11)(a) In addition to any nonsuspendable and
32 nondeferrable jail sentence required by this section, whenever the
33 court imposes less than one year in jail, the court shall also suspend
34 but shall not defer a period of confinement for a period not exceeding
35 five years. The court shall impose conditions of probation that
36 include: (i) Not driving a motor vehicle within this state without a
37 valid license to drive and proof of financial responsibility for the
38 future; (ii) not driving a motor vehicle within this state while having

1 an alcohol concentration of 0.08 or more within two hours after
2 driving; and (iii) not refusing to submit to a test of his or her
3 breath or blood to determine alcohol concentration upon request of a
4 law enforcement officer who has reasonable grounds to believe the
5 person was driving or was in actual physical control of a motor vehicle
6 within this state while under the influence of intoxicating liquor.
7 The court may impose conditions of probation that include
8 nonrepetition, installation of an ignition interlock device on the
9 probationer's motor vehicle, alcohol or drug treatment, supervised
10 probation, or other conditions that may be appropriate. The sentence
11 may be imposed in whole or in part upon violation of a condition of
12 probation during the suspension period.

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

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

27 ~~((11))~~ (12) A court may waive the electronic home monitoring
28 requirements of this chapter when:

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

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

32 (c) The court determines that there is reason to believe that the
33 offender would violate the conditions of the electronic home monitoring
34 penalty.

35 Whenever the mandatory minimum term of electronic home monitoring
36 is waived, the court shall state in writing the reason for granting the
37 waiver and the facts upon which the waiver is based, and shall impose

1 an alternative sentence with similar punitive consequences. The
2 alternative sentence may include, but is not limited to, additional
3 jail time, work crew, or work camp.

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

10 ~~((12))~~ (13) An offender serving a sentence under this section,
11 whether or not a mandatory minimum term has expired, may be granted an
12 extraordinary medical placement by the jail administrator subject to
13 the standards and limitations set forth in RCW 9.94A.728(4).

14 ~~((13))~~ (14) For purposes of this section and RCW 46.61.502 and
15 46.61.504:

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

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

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

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

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

25 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
26 9A.36.050 or an equivalent local ordinance, if the conviction is the
27 result of a charge that was originally filed as a violation of RCW
28 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
29 46.61.520 or 46.61.522;

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

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

36 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
37 prosecution for a violation of RCW 46.61.5249, or an equivalent local
38 ordinance, if the charge under which the deferred prosecution was

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

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

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

8 NEW SECTION. **Sec. 15.** If specific funding for the purposes of
9 this act, referencing this act by bill or chapter number, is not
10 provided by June 30, 2008, in the omnibus transportation appropriations
11 act, this act is null and void.

12 NEW SECTION. **Sec. 16.** Sections 2, 4 through 8, and 11 through 14
13 of this act take effect January 1, 2009."

E2SHB 3254 - S COMM AMD
By Committee on Transportation

ADOPTED AS AMENDED 03/07/2008

14 On page 1, line 2 of the title, after "drugs;" strike the remainder
15 of the title and insert "amending RCW 46.20.342, 46.20.380, 46.20.391,
16 46.20.400, 46.20.410, 46.20.720, 46.20.740, and 46.61.5055; reenacting
17 and amending RCW 46.20.308 and 46.63.020; adding a new section to
18 chapter 46.04 RCW; adding a new section to chapter 46.68 RCW; adding
19 new sections to chapter 46.20 RCW; creating a new section; and
20 providing an effective date."

--- END ---