
SUBSTITUTE HOUSE BILL 3254

State of Washington 60th Legislature 2008 Regular Session

By House Judiciary (originally sponsored by Representatives Goodman, Pedersen, Simpson, Morrell, Green, Kelley, Kagi, and Roberts)

READ FIRST TIME 02/05/08.

1 AN ACT Relating to accountability for persons driving under the
2 influence of intoxicating liquor or drugs; amending RCW 46.20.342,
3 46.20.391, 46.20.400, 46.20.410, 46.20.720, 46.20.740, and 46.61.5055;
4 reenacting and amending RCW 46.20.308 and 46.63.020; adding a new
5 section to chapter 46.04 RCW; adding a new section to chapter 46.68
6 RCW; adding new sections to chapter 46.20 RCW; and providing an
7 effective date.

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

9 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.04 RCW
10 to read as follows:

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

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

17 (1) Any person who operates a motor vehicle within this state is
18 deemed to have given consent, subject to the provisions of RCW

1 46.61.506, to a test or tests of his or her breath or blood for the
2 purpose of determining the alcohol concentration or presence of any
3 drug in his or her breath or blood if arrested for any offense where,
4 at the time of the arrest, the arresting officer has reasonable grounds
5 to believe the person had been driving or was in actual physical
6 control of a motor vehicle while under the influence of intoxicating
7 liquor or any drug or was in violation of RCW 46.61.503. Neither
8 consent nor this section precludes a police officer from obtaining a
9 search warrant for a person's breath or blood.

10 (2) The test or tests of breath shall be administered at the
11 direction of a law enforcement officer having reasonable grounds to
12 believe the person to have been driving or in actual physical control
13 of a motor vehicle within this state while under the influence of
14 intoxicating liquor or any drug or the person to have been driving or
15 in actual physical control of a motor vehicle while having alcohol in
16 a concentration in violation of RCW 46.61.503 in his or her system and
17 being under the age of twenty-one. However, in those instances where
18 the person is incapable due to physical injury, physical incapacity, or
19 other physical limitation, of providing a breath sample or where the
20 person is being treated in a hospital, clinic, doctor's office,
21 emergency medical vehicle, ambulance, or other similar facility or
22 where the officer has reasonable grounds to believe that the person is
23 under the influence of a drug, a blood test shall be administered by a
24 qualified person as provided in RCW 46.61.506(5). The officer shall
25 inform the person of his or her right to refuse the breath or blood
26 test, and of his or her right to have additional tests administered by
27 any qualified person of his or her choosing as provided in RCW
28 46.61.506. The officer shall warn the driver, in substantially the
29 following language, that:

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

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

35 (c) If the driver submits to the test and the test is administered,
36 the driver's license, permit, or privilege to drive will be suspended,
37 revoked, or denied for at least ninety days if the driver is age
38 twenty-one or over and the test indicates the alcohol concentration of

1 the driver's breath or blood is 0.08 or more, or if the driver is under
2 age twenty-one and the test indicates the alcohol concentration of the
3 driver's breath or blood is 0.02 or more, or if the driver is under age
4 twenty-one and the driver is in violation of RCW 46.61.502 or
5 46.61.504; and

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

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

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

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

29 (6) If, after arrest and after the other applicable conditions and
30 requirements of this section have been satisfied, a test or tests of
31 the person's blood or breath is administered and the test results
32 indicate that the alcohol concentration of the person's breath or blood
33 is 0.08 or more if the person is age twenty-one or over, or 0.02 or
34 more if the person is under the age of twenty-one, or the person
35 refuses to submit to a test, the arresting officer or other law
36 enforcement officer at whose direction any test has been given, or the
37 department, where applicable, if the arrest results in a test of the
38 person's blood, shall:

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

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

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

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

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

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

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

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

37 (7) The department of licensing, upon the receipt of a sworn report
38 or report under a declaration authorized by RCW 9A.72.085 under

1 subsection (6)(e) of this section, shall suspend, revoke, or deny the
2 person's license, permit, or privilege to drive or any nonresident
3 operating privilege, as provided in RCW 46.20.3101, such suspension,
4 revocation, or denial to be effective beginning sixty days from the
5 date of arrest or from the date notice has been given in the event
6 notice is given by the department following a blood test, or when
7 sustained at a hearing pursuant to subsection (8) of this section,
8 whichever occurs first.

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

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

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

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

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

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

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

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

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

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

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

3 The ignition interlock device revolving fund is created in the
4 custody of the state treasurer to assist in covering the monetary costs
5 of installing, removing, and leasing an ignition interlock device for
6 indigent people who are required under section 8 of this act and RCW
7 46.61.5055 to install an ignition interlock device in all vehicles
8 owned or operated by the person. The director, or his or her designee,
9 is authorized to expend money from the ignition interlock device
10 revolving fund. The account is subject to allotment procedures under
11 chapter 43.88 RCW, but an appropriation is not required for
12 expenditures.

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

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

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

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

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

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

9 (ii) A previous conviction under this section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (~~b~~) An applicant under this subsection whose driver's license is
35 suspended or revoked for an alcohol-related offense shall provide proof
36 to the satisfaction of the department that a functioning ignition

1 ~~interlock device has been installed on a vehicle owned or operated by~~
2 ~~the person.~~

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

7 ~~(ii) Subject to any periodic renewal requirements established by~~
8 ~~the department pursuant to this section and subject to any applicable~~
9 ~~compliance requirements under this chapter or other law, a temporary~~
10 ~~restricted driver's license granted after a suspension or revocation~~
11 ~~under RCW 46.61.5055 or 46.20.3101 extends through the remaining~~
12 ~~portion of any concurrent or consecutive suspension or revocation that~~
13 ~~may be imposed as the result of administrative action and criminal~~
14 ~~conviction arising out of the same incident.~~

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

19 ~~(c) The department shall provide by rule the minimum portions of~~
20 ~~the periods of suspension, revocation, or denial set forth in RCW~~
21 ~~46.20.3101 after which a person may apply for a temporary restricted~~
22 ~~driver's license under this section. In establishing the minimum~~
23 ~~portions of the periods of suspension, revocation, or denial, the~~
24 ~~department shall consider the requirements of federal law regarding~~
25 ~~state eligibility for grants or other funding, and shall establish such~~
26 ~~periods so as to ensure that the state will maintain its eligibility,~~
27 ~~or establish eligibility, to obtain incentive grants or any other~~
28 ~~federal funding.))~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (d) Upon receipt of evidence that a holder of an occupational
37 driver's license granted under this subsection is no longer enrolled in
38 an apprenticeship or on-the-job training program, the director shall

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

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

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

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

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

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

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

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

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

12 (1)(a) Beginning January 1, 2009, any person licensed under this
13 chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504,
14 other than vehicular homicide or vehicular assault, or who has had or
15 will have his or her license suspended, revoked, or denied under RCW
16 46.20.3101, may submit to the department an application for an ignition
17 interlock driver's license. The department, upon determining that the
18 petitioner is eligible to receive the license, may issue an ignition
19 interlock driver's license.

20 (b) A person may apply for an ignition interlock driver's license
21 anytime, including immediately after receiving the notices under RCW
22 46.20.308 or after his or her license is suspended, revoked, or denied.
23 A person receiving an ignition interlock driver's license waives his or
24 her right to a hearing or appeal under RCW 46.20.308.

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

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

1 (ii) Subject to any periodic renewal requirements established by
2 the department under this section and subject to any applicable
3 compliance requirements under this chapter or other law, an ignition
4 interlock driver's license granted upon a suspension or revocation
5 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
6 portion of any concurrent or consecutive suspension or revocation that
7 may be imposed as the result of administrative action and criminal
8 conviction arising out of the same incident.

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

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

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

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

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

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

1 (5) The director shall cancel an ignition interlock driver's
2 license upon receipt of notice that the holder thereof has been
3 convicted of operating a motor vehicle in violation of its
4 restrictions, or of a separate offense that under this chapter would
5 warrant suspension or revocation of a regular driver's license. The
6 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 (6) The department shall adopt rules to implement ignition
10 interlock licensing. The department shall consult with the
11 administrative office of the courts, the state patrol, the Washington
12 association of sheriffs and police chiefs, ignition interlock
13 companies, and any other organization or entity the department deems
14 appropriate.

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

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

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

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

26 (a) Review the number of ignition interlock devices that are
27 required to be installed in the targeted county and the number of
28 ignition interlock devices actually installed;

29 (b) Work to identify those persons who are not complying with
30 ignition interlock requirements or are repeatedly violating ignition
31 interlock requirements; and

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

33 (4) As part of monitoring compliance, the Washington traffic safety
34 commission shall also track recidivism for violations of RCW 46.61.502
35 and 46.61.504 by persons required to have an ignition interlock license
36 under section 8 of this act.

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

3 Failure to perform any act required or the performance of any act
4 prohibited by this title or an equivalent administrative regulation or
5 local law, ordinance, regulation, or resolution relating to traffic
6 including parking, standing, stopping, and pedestrian offenses, is
7 designated as a traffic infraction and may not be classified as a
8 criminal offense, except for an offense contained in the following
9 provisions of this title or a violation of an equivalent administrative
10 regulation or local law, ordinance, regulation, or resolution:

11 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
12 vehicle while under the influence of intoxicating liquor or a
13 controlled substance;

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (14) RCW 46.20.345 relating to the operation of a motor vehicle
2 with a suspended or revoked license;
- 3 (15) RCW 46.20.410 relating to the violation of restrictions of an
4 occupational (~~(or)~~) driver's license, temporary restricted driver's
5 license, or ignition interlock driver's license;
- 6 (16) RCW 46.20.740 relating to operation of a motor vehicle without
7 an ignition interlock device in violation of a license notation that
8 the device is required;
- 9 (17) RCW 46.20.750 relating to (~~(assisting another person to start~~
10 ~~a vehicle equipped with)~~) circumventing an ignition interlock device;
- 11 (18) RCW 46.25.170 relating to commercial driver's licenses;
- 12 (19) Chapter 46.29 RCW relating to financial responsibility;
- 13 (20) RCW 46.30.040 relating to providing false evidence of
14 financial responsibility;
- 15 (21) RCW 46.37.435 relating to wrongful installation of
16 sunscreening material;
- 17 (22) RCW 46.37.650 relating to the sale, resale, distribution, or
18 installation of a previously deployed air bag;
- 19 (23) RCW 46.37.671 through 46.37.675 relating to signal preemption
20 devices;
- 21 (24) RCW 46.44.180 relating to operation of mobile home pilot
22 vehicles;
- 23 (~~(+24)~~) (25) RCW 46.48.175 relating to the transportation of
24 dangerous articles;
- 25 (~~(+25)~~) (26) RCW 46.52.010 relating to duty on striking an
26 unattended car or other property;
- 27 (~~(+26)~~) (27) RCW 46.52.020 relating to duty in case of injury to
28 or death of a person or damage to an attended vehicle;
- 29 (~~(+27)~~) (28) RCW 46.52.090 relating to reports by repairmen,
30 storagemen, and appraisers;
- 31 (~~(+28)~~) (29) RCW 46.52.130 relating to confidentiality of the
32 driving record to be furnished to an insurance company, an employer,
33 and an alcohol/drug assessment or treatment agency;
- 34 (~~(+29)~~) (30) RCW 46.55.020 relating to engaging in the activities
35 of a registered tow truck operator without a registration certificate;
- 36 (~~(+30)~~) (31) RCW 46.55.035 relating to prohibited practices by tow
37 truck operators;
- 38 (~~(+31)~~) (32) RCW 46.55.300 relating to vehicle immobilization;

1 (33) RCW 46.61.015 relating to obedience to police officers,
2 flaggers, or firefighters;
3 ~~((+32+))~~ (34) RCW 46.61.020 relating to refusal to give information
4 to or cooperate with an officer;
5 ~~((+33+))~~ (35) RCW 46.61.022 relating to failure to stop and give
6 identification to an officer;
7 ~~((+34+))~~ (36) RCW 46.61.024 relating to attempting to elude
8 pursuing police vehicles;
9 ~~((+35+))~~ (37) RCW 46.61.500 relating to reckless driving;
10 ~~((+36+))~~ (38) RCW 46.61.502 and 46.61.504 relating to persons under
11 the influence of intoxicating liquor or drugs;
12 ~~((+37+))~~ (39) RCW 46.61.503 relating to a person under age twenty-
13 one driving a motor vehicle after consuming alcohol;
14 ~~((+38+))~~ (40) RCW 46.61.520 relating to vehicular homicide by motor
15 vehicle;
16 ~~((+39+))~~ (41) RCW 46.61.522 relating to vehicular assault;
17 ~~((+40+))~~ (42) RCW 46.61.5249 relating to first degree negligent
18 driving;
19 ~~((+41+))~~ (43) RCW 46.61.527(4) relating to reckless endangerment of
20 roadway workers;
21 ~~((+42+))~~ (44) RCW 46.61.530 relating to racing of vehicles on
22 highways;
23 ~~((+43+))~~ (45) RCW 46.61.655(7) (a) and (b) relating to failure to
24 secure a load;
25 ~~((+44+))~~ (46) RCW 46.61.685 relating to leaving children in an
26 unattended vehicle with the motor running;
27 ~~((+45+))~~ (47) RCW 46.61.740 relating to theft of motor vehicle
28 fuel;
29 ~~((+46+))~~ ~~RCW 46.37.671 through 46.37.675 relating to signal~~
30 ~~preemption devices;~~
31 ~~(+47+))~~ (48) RCW 46.64.010 relating to unlawful cancellation of or
32 attempt to cancel a traffic citation;
33 ~~((+48+))~~ (49) RCW 46.64.048 relating to attempting, aiding,
34 abetting, coercing, and committing crimes;
35 ~~((+49+))~~ (50) Chapter 46.65 RCW relating to habitual traffic
36 offenders;
37 ~~((+50+))~~ (51) RCW 46.68.010 relating to false statements made to
38 obtain a refund;

1 (~~(+51+)~~) (52) Chapter 46.70 RCW relating to unfair motor vehicle
2 business practices, except where that chapter provides for the
3 assessment of monetary penalties of a civil nature;

4 (~~(+52+)~~) (53) Chapter 46.72 RCW relating to the transportation of
5 passengers in for hire vehicles;

6 (~~(+53+)~~) (54) RCW 46.72A.060 relating to limousine carrier
7 insurance;

8 (~~(+54+)~~) (55) RCW 46.72A.070 relating to operation of a limousine
9 without a vehicle certificate;

10 (~~(+55+)~~) (56) RCW 46.72A.080 relating to false advertising by a
11 limousine carrier;

12 (~~(+56+)~~) (57) Chapter 46.80 RCW relating to motor vehicle wreckers;

13 (~~(+57+)~~) (58) Chapter 46.82 RCW relating to driver's training
14 schools;

15 (~~(+58+)~~) (59) RCW 46.87.260 relating to alteration or forgery of a
16 cab card, letter of authority, or other temporary authority issued
17 under chapter 46.87 RCW;

18 (~~(+59+)~~) (60) RCW 46.87.290 relating to operation of an
19 unregistered or unlicensed vehicle under chapter 46.87 RCW.

20 **Sec. 11.** RCW 46.20.720 and 2004 c 95 s 11 are each amended to read
21 as follows:

22 (1) The court may order that after a period of suspension,
23 revocation, or denial of driving privileges, and for up to as long as
24 the court has jurisdiction, any person convicted of any offense
25 involving the use, consumption, or possession of alcohol while
26 operating a motor vehicle may drive only a motor vehicle equipped with
27 a functioning ignition interlock. The court shall establish a specific
28 calibration setting at which the interlock will prevent the vehicle
29 from being started. The court shall also establish the period of time
30 for which interlock use will be required.

31 (2) Under RCW 46.61.5055, the court shall order any person
32 convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent
33 local ordinance to apply for an ignition interlock driver's license
34 from the department under section 8 of this act and to have a
35 functioning ignition interlock device installed on all motor vehicles
36 operated by the person.

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

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

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

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

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

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

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

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

1 shall remain in effect until the person provides notice issued by a
2 company doing business in the state that a vehicle owned or operated by
3 the person is equipped with a functioning ignition interlock device.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (b) In the case of a person whose alcohol concentration was at
15 least 0.15, or for whom by reason of the person's refusal to take a
16 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 forty-five days nor more than
19 one year and ninety days of electronic home monitoring. The offender
20 shall 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. Forty-five days of
26 imprisonment and ninety 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 seven hundred fifty dollars nor
34 more than five thousand dollars. Seven hundred fifty dollars of the
35 fine may not be suspended or deferred unless the court finds the
36 offender to be indigent.

37 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a

1 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
2 and who has two or three prior offenses within seven years shall be
3 punished as follows:

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

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

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

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

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

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

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

14 (4) A person who is convicted of a violation of RCW 46.61.502 or
15 46.61.504 and who has four or more prior offenses within ten years, or
16 who has ever previously been convicted of a violation of RCW 46.61.520
17 committed while under the influence of intoxicating liquor or any drug
18 or RCW 46.61.522 committed while under the influence of intoxicating
19 liquor or any drug, shall be punished in accordance with chapter 9.94A
20 RCW.

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

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

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

36 (d) The court may waive the requirement that a person obtain an
37 ignition interlock driver's license and operate only vehicles equipped
38 with a functioning ignition interlock device if the court makes a

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

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

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

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

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

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

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

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

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

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

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

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

37 ~~((+7))~~ (8) An offender punishable under this section is subject to
38 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.** Sections 2, 4 through 7, and 10 through 13
21 of this act take effect January 1, 2009.

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