
HOUSE BILL 1648

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By Representatives Goodman, Miloscia, Rolfes, Lias, Seaquist, Van De Wege, Kenney, Hunt, Hasegawa, Kelley, Hudgins, Frockt, Springer, Appleton, Roberts, Billig, Green, Jacks, Clibborn, Moscoso, Fitzgibbon, and Maxwell

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1 AN ACT Relating to accountability for persons driving or being in
2 physical control of a vehicle while under the influence of intoxicating
3 liquor or any drug; amending RCW 46.20.385, 46.61.502, 46.61.504,
4 46.61.506, 46.61.500, 46.61.5249, 46.20.720, 46.61.5055, 10.05.140,
5 10.05.010, and 9.94A.533; and prescribing penalties.

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

7 **Sec. 1.** RCW 46.20.385 and 2010 c 269 s 1 are each amended to read
8 as follows:

9 (1)(a) Beginning January 1, 2009, any person licensed under this
10 chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504
11 or an equivalent local or out-of-state statute or ordinance, or a
12 violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), or who has had or
13 will have his or her license suspended, revoked, or denied under RCW
14 46.20.3101, may submit to the department an application for an ignition
15 interlock driver's license. The department, upon receipt of the
16 prescribed fee and upon determining that the petitioner is eligible to
17 receive the license, may issue an ignition interlock driver's license.

18 (b) A person may apply for an ignition interlock driver's license
19 anytime, including immediately after receiving the notices under RCW

1 46.20.308 or after his or her license is suspended, revoked, or denied.
2 A person receiving an ignition interlock driver's license waives his or
3 her right to a hearing or appeal under RCW 46.20.308.

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

7 (i) The department shall require the person to maintain the device
8 on all vehicles operated by the person and shall restrict the person to
9 operating only vehicles equipped with the device, for the remainder of
10 the period of suspension, revocation, or denial. The installation of
11 an ignition interlock device is not necessary on vehicles owned,
12 leased, or rented by a person's employer and on those vehicles whose
13 care and/or maintenance is the temporary responsibility of the
14 employer, and driven at the direction of a person's employer as a
15 requirement of employment during working hours. The person must
16 provide the department with a declaration pursuant to RCW 9A.72.085
17 from his or her employer stating that the person's employment requires
18 the person to operate a vehicle owned by the employer or other persons
19 during working hours.

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

28 (iii) The time period during which the person is licensed under
29 this section shall apply on a day-for-day basis toward satisfying the
30 period of time the ignition interlock device restriction is required
31 under RCW 46.20.720 and 46.61.5055. Beginning with incidents occurring
32 on or after the effective date of this section, when calculating the
33 period of time for the restriction under RCW 46.20.720(3), the
34 department must also give the person a day-for-day credit for the time
35 period, beginning from the date of the incident, during which the
36 person kept an ignition interlock device installed on all vehicles the
37 person operates. For the purposes of this subsection (1)(c)(iii), the

1 term "all vehicles" does not include vehicles that would be subject to
2 the employer exception under RCW 46.20.720(3).

3 (2) An applicant for an ignition interlock driver's license who
4 qualifies under subsection (1) of this section is eligible to receive
5 a license only if the applicant files satisfactory proof of financial
6 responsibility under chapter 46.29 RCW.

7 (3) Upon receipt of evidence that a holder of an ignition interlock
8 driver's license granted under this subsection no longer has a
9 functioning ignition interlock device installed on all vehicles
10 operated by the driver, the director shall give written notice by
11 first-class mail to the driver that the ignition interlock driver's
12 license shall be canceled. If at any time before the cancellation goes
13 into effect the driver submits evidence that a functioning ignition
14 interlock device has been installed on all vehicles operated by the
15 driver, the cancellation shall be stayed. If the cancellation becomes
16 effective, the driver may obtain, at no additional charge, a new
17 ignition interlock driver's license upon submittal of evidence that a
18 functioning ignition interlock device has been installed on all
19 vehicles operated by the driver.

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

23 (5) The director shall cancel an ignition interlock driver's
24 license after receiving notice that the holder thereof has been
25 convicted of operating a motor vehicle in violation of its
26 restrictions, no longer meets the eligibility requirements, or has been
27 convicted of or found to have committed a separate offense or any other
28 act or omission that under this chapter would warrant suspension or
29 revocation of a regular driver's license. The department must give
30 notice of the cancellation as provided under RCW 46.20.245. A person
31 whose ignition interlock driver's license has been canceled under this
32 section may reapply for a new ignition interlock driver's license if he
33 or she is otherwise qualified under this section and pays the fee
34 required under RCW 46.20.380.

35 (6)(a) Unless costs are waived by the ignition interlock company or
36 the person is indigent under RCW 10.101.010, the applicant shall pay
37 the cost of installing, removing, and leasing the ignition interlock

1 device and shall pay an additional fee of twenty dollars per month.
2 Payments shall be made directly to the ignition interlock company. The
3 company shall remit the additional twenty-dollar fee to the department.

4 (b) The department shall deposit the proceeds of the twenty-dollar
5 fee into the ignition interlock device revolving account. Expenditures
6 from the account may be used only to administer and operate the
7 ignition interlock device revolving account program. The department
8 shall adopt rules to provide monetary assistance according to greatest
9 need and when funds are available.

10 (7) The department shall adopt rules to implement ignition
11 interlock licensing. The department shall consult with the
12 administrative office of the courts, the state patrol, the Washington
13 association of sheriffs and police chiefs, ignition interlock
14 companies, and any other organization or entity the department deems
15 appropriate.

16 **Sec. 2.** RCW 46.61.502 and 2008 c 282 s 20 are each amended to read
17 as follows:

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

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

24 (b) The person has, within two hours after driving, a THC
25 concentration of eight or more nanograms per milliliter as shown by
26 analysis of the person's blood made under RCW 46.61.506; or

27 (c) While the person is under the influence of or affected by
28 intoxicating liquor or any drug; or

29 ((+e)) (d) While the person is under the combined influence of or
30 affected by intoxicating liquor and any drug.

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

35 (3) It is an affirmative defense to a violation of subsection
36 (1)(a) of this section which the defendant must prove by a
37 preponderance of the evidence that the defendant consumed a sufficient

1 quantity of alcohol after the time of driving and before the
2 administration of an analysis of the person's breath or blood to cause
3 the defendant's alcohol concentration to be 0.08 or more within two
4 hours after driving. The court shall not admit evidence of this
5 defense unless the defendant notifies the prosecution prior to the
6 omnibus or pretrial hearing in the case of the defendant's intent to
7 assert the affirmative defense.

8 (4)(a) Analyses of blood or breath samples obtained more than two
9 hours after the alleged driving may be used as evidence that within two
10 hours of the alleged driving, a person had an alcohol concentration of
11 0.08 or more in violation of subsection (1)(a) of this section, and in
12 any case in which the analysis shows an alcohol concentration above
13 0.00 may be used as evidence that a person was under the influence of
14 or affected by intoxicating liquor or any drug in violation of
15 subsection (1)((~~b~~ or)) (c) or (d) of this section.

16 (b) Analyses of blood samples that show a THC concentration of
17 above zero may be used as evidence that a person was under the
18 influence of or affected by a drug in violation of subsection (1)(c) or
19 (d) of this section. The presence of carboxy-THC in a person's blood
20 may not be used as evidence to establish a violation of subsection
21 (1)(b) of this section.

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

24 (6) It is a class C felony punishable under chapter 9.94A RCW, or
25 chapter 13.40 RCW if the person is a juvenile, if:

26 (a) The person has four or more prior offenses within ten years as
27 defined in RCW 46.61.5055; or

28 (b) The person has ever previously been convicted of:

29 (i) Vehicular homicide while under the influence of intoxicating
30 liquor or any drug, RCW 46.61.520(1)(a)((~~7~~));

31 (ii) Vehicular assault while under the influence of intoxicating
32 liquor or any drug, RCW 46.61.522(1)(b)((~~7~~ or));

33 (iii) An out-of-state offense comparable to the offense specified
34 in (b)(i) or (ii) of this subsection; or

35 (iv) A violation of this subsection (6) or RCW 46.61.504(6).

36 **Sec. 3.** RCW 46.61.504 and 2008 c 282 s 21 are each amended to read
37 as follows:

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

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

9 (b) The person has, within two hours after being in actual physical
10 control of a vehicle, a THC concentration of eight or more nanograms
11 per milliliter as shown by analysis of the person's blood made under
12 RCW 46.61.506; or

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

15 ((+e)) (d) While the person is under the combined influence of or
16 affected by intoxicating liquor and any drug.

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

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

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

1 used as evidence that a person was under the influence of or affected
2 by intoxicating liquor or any drug in violation of subsection (1)(~~(b)~~
3 ~~or~~) (c) or (d) of this section.

4 (b) Analyses of blood samples that show a THC concentration of
5 above zero may be used as evidence that a person was under the
6 influence of or affected by a drug in violation of subsection (1)(c) or
7 (d) of this section. The presence of carboxy-THC in a person's blood
8 may not be used as evidence to establish a violation of subsection
9 (1)(b) of this section.

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

12 (6) It is a class C felony punishable under chapter 9.94A RCW, or
13 chapter 13.40 RCW if the person is a juvenile, if:

14 (a) The person has four or more prior offenses within ten years as
15 defined in RCW 46.61.5055; or

16 (b) The person has ever previously been convicted of:

17 (i) Vehicular homicide while under the influence of intoxicating
18 liquor or any drug, RCW 46.61.520(1)(a)(~~7~~);

19 (ii) Vehicular assault while under the influence of intoxicating
20 liquor or any drug, RCW 46.61.522(1)(b)(~~7-07~~);

21 (iii) An out-of-state offense comparable to the offense specified
22 in (b)(i) or (ii) of this subsection; or

23 (iv) A violation of this subsection (6) or RCW 46.61.502(6).

24 **Sec. 4.** RCW 46.61.506 and 2010 c 53 s 1 are each amended to read
25 as follows:

26 (1) Upon the trial of any civil or criminal action or proceeding
27 arising out of acts alleged to have been committed by any person while
28 driving or in actual physical control of a vehicle while under the
29 influence of intoxicating liquor or any drug, if the person's alcohol
30 concentration is less than 0.08 or the person's THC concentration is
31 less than eight nanograms per milliliter, it is evidence that may be
32 considered with other competent evidence in determining whether the
33 person was under the influence of intoxicating liquor or any drug.

34 (2)(a) The breath analysis shall be based upon grams of alcohol per
35 two hundred ten liters of breath.

36 (b) The blood analysis for THC shall be based upon nanograms per
37 milliliter of whole blood.

1 (c) The foregoing provisions of this section shall not be construed
2 as limiting the introduction of any other competent evidence bearing
3 upon the question whether the person was under the influence of
4 intoxicating liquor or any drug.

5 (3) Analysis of the person's blood or breath to be considered valid
6 under the provisions of this section or RCW 46.61.502 or 46.61.504
7 shall have been performed according to methods approved by the state
8 toxicologist and by an individual possessing a valid permit issued by
9 the state toxicologist for this purpose. The state toxicologist is
10 directed to approve satisfactory techniques or methods, to supervise
11 the examination of individuals to ascertain their qualifications and
12 competence to conduct such analyses, and to issue permits which shall
13 be subject to termination or revocation at the discretion of the state
14 toxicologist.

15 (4)(a) A breath test performed by any instrument approved by the
16 state toxicologist shall be admissible at trial or in an administrative
17 proceeding if the prosecution or department produces prima facie
18 evidence of the following:

19 (i) The person who performed the test was authorized to perform
20 such test by the state toxicologist;

21 (ii) The person being tested did not vomit or have anything to eat,
22 drink, or smoke for at least fifteen minutes prior to administration of
23 the test;

24 (iii) The person being tested did not have any foreign substances,
25 not to include dental work, fixed or removable, in his or her mouth at
26 the beginning of the fifteen-minute observation period;

27 (iv) Prior to the start of the test, the temperature of any liquid
28 simulator solution utilized as an external standard, as measured by a
29 thermometer approved of by the state toxicologist was thirty-four
30 degrees centigrade plus or minus 0.3 degrees centigrade;

31 (v) The internal standard test resulted in the message "verified";

32 (vi) The two breath samples agree to within plus or minus ten
33 percent of their mean to be determined by the method approved by the
34 state toxicologist;

35 (vii) The result of the test of the liquid simulator solution
36 external standard or dry gas external standard result did lie between
37 .072 to .088 inclusive; and

38 (viii) All blank tests gave results of .000.

1 (b) For purposes of this section, "prima facie evidence" is
2 evidence of sufficient circumstances that would support a logical and
3 reasonable inference of the facts sought to be proved. In assessing
4 whether there is sufficient evidence of the foundational facts, the
5 court or administrative tribunal is to assume the truth of the
6 prosecution's or department's evidence and all reasonable inferences
7 from it in a light most favorable to the prosecution or department.

8 (c) Nothing in this section shall be deemed to prevent the subject
9 of the test from challenging the reliability or accuracy of the test,
10 the reliability or functioning of the instrument, or any maintenance
11 procedures. Such challenges, however, shall not preclude the
12 admissibility of the test once the prosecution or department has made
13 a prima facie showing of the requirements contained in (a) of this
14 subsection. Instead, such challenges may be considered by the trier of
15 fact in determining what weight to give to the test result.

16 (5) When a blood test is administered under the provisions of RCW
17 46.20.308, the withdrawal of blood for the purpose of determining its
18 alcoholic or drug content may be performed only by a physician, a
19 registered nurse, a licensed practical nurse, a nursing assistant as
20 defined in chapter 18.88A RCW, a physician assistant as defined in
21 chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW,
22 an emergency medical technician as defined in chapter 18.73 RCW, a
23 health care assistant as defined in chapter 18.135 RCW, or any
24 technician trained in withdrawing blood. This limitation shall not
25 apply to the taking of breath specimens.

26 (6) The person tested may have a physician, or a qualified
27 technician, chemist, registered nurse, or other qualified person of his
28 or her own choosing administer one or more tests in addition to any
29 administered at the direction of a law enforcement officer. The test
30 will be admissible if the person establishes the general acceptability
31 of the testing technique or method. The failure or inability to obtain
32 an additional test by a person shall not preclude the admission of
33 evidence relating to the test or tests taken at the direction of a law
34 enforcement officer.

35 (7) Upon the request of the person who shall submit to a test or
36 tests at the request of a law enforcement officer, full information
37 concerning the test or tests shall be made available to him or her or
38 his or her attorney.

1 (8) The presence of carboxy-THC in a person's blood may not be used
2 as evidence to establish a violation of RCW 46.61.502(1)(b) or
3 46.61.504(1)(b).

4 **Sec. 5.** RCW 46.61.500 and 1990 c 291 s 1 are each amended to read
5 as follows:

6 (1) Any person who drives any vehicle in willful or wanton
7 disregard for the safety of persons or property is guilty of reckless
8 driving. Violation of the provisions of this section is a gross
9 misdemeanor punishable by imprisonment of not more than one year and by
10 a fine of not more than five thousand dollars.

11 (2) The license or permit to drive or any nonresident privilege of
12 any person convicted of reckless driving shall be suspended by the
13 department for not less than thirty days.

14 (3) A person convicted of reckless driving shall be required, under
15 RCW 46.20.720, to install an ignition interlock device on all vehicles
16 operated by the person if the conviction is the result of a charge that
17 was originally filed as a violation of RCW 46.61.502, 46.61.504, or
18 46.61.5249, or an equivalent local ordinance, or of RCW 46.61.520 or
19 46.61.522.

20 **Sec. 6.** RCW 46.61.5249 and 1997 c 66 s 4 are each amended to read
21 as follows:

22 (1)(a) A person is guilty of negligent driving in the first degree
23 if he or she operates a motor vehicle in a manner that is both
24 negligent and endangers or is likely to endanger any person or
25 property, and exhibits the effects of having consumed liquor or an
26 illegal drug.

27 (b) It is an affirmative defense to negligent driving in the first
28 degree by means of exhibiting the effects of having consumed an illegal
29 drug that must be proved by the defendant by a preponderance of the
30 evidence, that the driver has a valid prescription for the drug
31 consumed, and has been consuming it according to the prescription
32 directions and warnings.

33 (c) Negligent driving in the first degree is a misdemeanor.

34 (2) For the purposes of this section:

35 (a) "Negligent" means the failure to exercise ordinary care, and is
36 the doing of some act that a reasonably careful person would not do

1 under the same or similar circumstances or the failure to do something
2 that a reasonably careful person would do under the same or similar
3 circumstances.

4 (b) "Exhibiting the effects of having consumed liquor" means that
5 a person has the odor of liquor on his or her breath, or that by
6 speech, manner, appearance, behavior, lack of coordination, or
7 otherwise exhibits that he or she has consumed liquor, and either:

8 (i) Is in possession of or in close proximity to a container that
9 has or recently had liquor in it; or

10 (ii) Is shown by other evidence to have recently consumed liquor.

11 (c) "Exhibiting the effects of having consumed an illegal drug"
12 means that a person by speech, manner, appearance, behavior, lack of
13 coordination, or otherwise exhibits that he or she has consumed an
14 illegal drug and either:

15 (i) Is in possession of an illegal drug; or

16 (ii) Is shown by other evidence to have recently consumed an
17 illegal drug.

18 (d) "Illegal drug" means a controlled substance under chapter 69.50
19 RCW for which the driver does not have a valid prescription or that is
20 not being consumed in accordance with the prescription directions and
21 warnings, or a legend drug under chapter 69.41 RCW for which the driver
22 does not have a valid prescription or that is not being consumed in
23 accordance with the prescription directions and warnings.

24 (3) Any act prohibited by this section that also constitutes a
25 crime under any other law of this state may be the basis of prosecution
26 under such other law notwithstanding that it may also be the basis for
27 prosecution under this section.

28 (4) A person convicted of negligent driving in the first degree
29 shall be required, under RCW 46.20.720, to install an ignition
30 interlock device on all vehicles operated by the person.

31 **Sec. 7.** RCW 46.20.720 and 2010 c 269 s 3 are each amended to read
32 as follows:

33 (1) The court may order that after a period of suspension,
34 revocation, or denial of driving privileges, and for up to as long as
35 the court has jurisdiction, any person convicted of any offense
36 involving the use, consumption, or possession of alcohol while
37 operating a motor vehicle may drive only a motor vehicle equipped with

1 a functioning ignition interlock. The court shall establish a specific
2 calibration setting at which the interlock will prevent the vehicle
3 from being started. The court shall also establish the period of time
4 for which interlock use will be required.

5 (2) Under RCW 46.61.5055 and subject to the exceptions listed in
6 that statute, the court shall order any person convicted of a violation
7 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply
8 for an ignition interlock driver's license from the department under
9 RCW 46.20.385 and to have a functioning ignition interlock device
10 installed on all motor vehicles operated by the person. The court
11 shall order any person participating in a deferred prosecution program
12 under RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 or an
13 equivalent local ordinance to have a functioning ignition interlock
14 device installed on all motor vehicles operated by the person.

15 (3) The department shall require that, after any applicable period
16 of suspension, revocation, or denial of driving privileges, a person
17 may drive only a motor vehicle equipped with a functioning ignition
18 interlock device if the person is convicted of a violation of RCW
19 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute
20 or ordinance. The department shall require that a person may drive
21 only a motor vehicle equipped with a functioning ignition interlock
22 device if the person is convicted of a violation of RCW 46.61.5249 or
23 if the person is convicted of a violation of RCW 46.61.500 and the
24 conviction is the result of a charge that was originally filed as a
25 violation of RCW 46.61.502, 46.61.504, or 46.61.5249, or an equivalent
26 local ordinance, or of RCW 46.61.520 or 46.61.522.

27 The department may waive the requirement for the use of such a
28 device if it concludes that such devices are not reasonably available
29 in the local area. The installation of an ignition interlock device is
30 not necessary on vehicles owned, leased, or rented by a person's
31 employer and on those vehicles whose care and/or maintenance is the
32 temporary responsibility of the employer, and driven at the direction
33 of a person's employer as a requirement of employment during working
34 hours. The person must provide the department with a declaration
35 pursuant to RCW 9A.72.085 from his or her employer stating that the
36 person's employment requires the person to operate a vehicle owned by
37 the employer or other persons during working hours.

1 The ignition interlock device shall be calibrated to prevent the
2 motor vehicle from being started when the breath sample provided has an
3 alcohol concentration of 0.025 or more. Subject to the provisions of
4 subsections (4) and (5) of this section, the period of time of the
5 restriction will be no less than:

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

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

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

12 (4) A restriction imposed under subsection (3) of this section
13 shall remain in effect until the department receives a declaration from
14 the person's ignition interlock device vendor, in a form provided or
15 approved by the department, certifying that there have been none of the
16 following incidents in the four consecutive months prior to the date of
17 release:

18 (a) An attempt to start the vehicle with a breath alcohol
19 concentration of 0.04 or more;

20 (b) Failure to take or pass any required retest; or

21 (c) Failure of the person to appear at the ignition interlock
22 device vendor when required for maintenance, repair, calibration,
23 monitoring, inspection, or replacement of the device.

24 (5) For a person required to install an ignition interlock device
25 pursuant to RCW 46.61.5249(4) or 46.61.500(3), the period of time of
26 the restriction shall be for six months and shall be subject to
27 subsection (4) of this section.

28 **Sec. 8.** RCW 46.61.5055 and 2010 c 269 s 4 are each amended to read
29 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
36 take a test offered pursuant to RCW 46.20.308 there is no test result
37 indicating the person's alcohol concentration:

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

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

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

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

1 monitoring device to include an alcohol detection breathalyzer, and the
2 court may restrict the amount of alcohol the offender may consume
3 during the time the offender is on electronic home monitoring; and

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

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

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

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

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

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

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

24 (a) In the case of a person whose alcohol concentration was less
25 than 0.15, or for whom for reasons other than the person's refusal to
26 take a 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 ninety days nor more than one
29 year and one hundred twenty days of electronic home monitoring. The
30 offender shall pay for the cost of the electronic monitoring. The
31 county or municipality where the penalty is being imposed shall
32 determine the cost. The court may also require the offender's
33 electronic home monitoring device include an alcohol detection
34 breathalyzer, and may restrict the amount of alcohol the offender may
35 consume during the time the offender is on electronic home monitoring.
36 Ninety days of imprisonment and one hundred twenty days of electronic
37 home monitoring may not be suspended or deferred unless the court finds
38 that the imposition of this mandatory minimum sentence would impose a

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

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

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

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

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

34 (4) A person who is convicted of a violation of RCW 46.61.502 or
35 46.61.504 shall be punished under chapter 9.94A RCW if:

36 (a) The person has four or more prior offenses within ten years; or

37 (b) The person has ever previously been convicted of:

1 (i) A violation of RCW 46.61.520 committed while under the
2 influence of intoxicating liquor or any drug;

3 (ii) A violation of RCW 46.61.522 committed while under the
4 influence of intoxicating liquor or any drug; (~~(or)~~)

5 (iii) An out-of-state offense comparable to the offense specified
6 in (b)(i) or (ii) of this subsection; or

7 (iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

8 (5)(a) The court shall require any person convicted of a violation
9 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply
10 for an ignition interlock driver's license from the department and to
11 have a functioning ignition interlock device installed on all motor
12 vehicles operated by the person.

13 (b) The installation of an ignition interlock device is not
14 necessary on vehicles owned, leased, or rented by a person's employer
15 and on those vehicles whose care and/or maintenance is the temporary
16 responsibility of the employer, and driven at the direction of a
17 person's employer as a requirement of employment during working hours.
18 The person must provide the department with a declaration pursuant to
19 RCW 9A.72.085 from his or her employer stating that the person's
20 employment requires the person to operate a vehicle owned by the
21 employer or other persons during working hours.

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

25 (d) The court may waive the requirement that a person apply for an
26 ignition interlock driver's license if the court makes a specific
27 finding in writing that:

28 (i) The person lives out-of-state and the devices are not
29 reasonably available in the person's local area;

30 (ii) The person does not operate a vehicle; or

31 (iii) The person is not eligible to receive an ignition interlock
32 driver's license under RCW 46.20.385 because the person is not a
33 resident of Washington, is a habitual traffic offender, has already
34 applied for or is already in possession of an ignition interlock
35 driver's license, has never had a driver's license, has been certified
36 under chapter 74.20A RCW as noncompliant with a child support order, or
37 is subject to any other condition or circumstance that makes the person
38 ineligible to obtain an ignition interlock driver's license.

1 (e) If a court finds that a person is not eligible to receive an
2 ignition interlock driver's license under this section, the court is
3 not required to make any further subsequent inquiry or determination as
4 to the person's eligibility.

5 (f) If the court orders that a person refrain from consuming any
6 alcohol and requires the person to apply for an ignition interlock
7 driver's license, and the person states that he or she does not operate
8 a motor vehicle or the person is ineligible to obtain an ignition
9 interlock driver's license, the court shall order the person to submit
10 to alcohol monitoring through an alcohol detection breathalyzer device,
11 transdermal sensor device, or other technology designed to detect
12 alcohol in a person's system. Alcohol monitoring ordered under this
13 subsection must be for the period of the mandatory license suspension
14 or revocation. The person shall pay for the cost of the monitoring.
15 The county or municipality where the penalty is being imposed shall
16 determine the cost.

17 (g) The period of time for which ignition interlock use (~~or~~
18 ~~alcohol monitoring~~) is required will be as follows:

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

21 (ii) For a person who has previously been restricted under (g)(i)
22 of this subsection, a period of five years;

23 (iii) For a person who has previously been restricted under (g)(ii)
24 of this subsection, a period of ten years.

25 (h) Beginning with incidents occurring on or after the effective
26 date of this section, when calculating the period of time for the
27 restriction under RCW 46.20.720(3), the department must also give the
28 person a day-for-day credit for the time period, beginning from the
29 date of the incident, during which the person kept an ignition
30 interlock device installed on all vehicles the person operates. For
31 the purposes of this subsection (5)(h), the term "all vehicles" does
32 not include vehicles that would be subject to the employer exception
33 under RCW 46.20.720(3).

34 (6) If a person who is convicted of a violation of RCW 46.61.502 or
35 46.61.504 committed the offense while a passenger under the age of
36 sixteen was in the vehicle, the court shall:

37 (a) In any case in which the installation and use of an interlock
38 or other device is not mandatory under RCW 46.20.720 or other law,

1 order the use of such a device for not less than sixty days following
2 the restoration of the person's license, permit, or nonresident driving
3 privileges; and

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

7 (7) In exercising its discretion in setting penalties within the
8 limits allowed by this section, the court shall particularly consider
9 the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (b) For each violation of mandatory conditions of probation under

1 (a)(i), (ii), or (iii) of this subsection, the court shall order the
2 convicted person to be confined for thirty days, which shall not be
3 suspended or deferred.

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

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

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

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

19 (c) The court determines that there is reason to believe that the
20 offender would violate the conditions of the electronic home monitoring
21 penalty.

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

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

34 (13) An offender serving a sentence under this section, whether or
35 not a mandatory minimum term has expired, may be granted an
36 extraordinary medical placement by the jail administrator subject to
37 the standards and limitations set forth in RCW 9.94A.728(3).

38 (14) For purposes of this section and RCW 46.61.502 and 46.61.504:

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

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

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

6 (iii) A conviction for a violation of RCW 46.61.520 committed while
7 under the influence of intoxicating liquor or any drug, or a conviction
8 for a violation of RCW 46.61.520 committed in a reckless manner or with
9 the disregard for the safety of others if the conviction is the result
10 of a charge that was originally filed as a violation of RCW 46.61.520
11 committed while under the influence of intoxicating liquor or any drug;

12 (iv) A conviction for a violation of RCW 46.61.522 committed while
13 under the influence of intoxicating liquor or any drug, or a conviction
14 for a violation of RCW 46.61.522 committed in a reckless manner or with
15 the disregard for the safety of others if the conviction is the result
16 of a charge that was originally filed as a violation of RCW 46.61.522
17 committed while under the influence of intoxicating liquor or any drug;

18 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
19 9A.36.050 or an equivalent local ordinance, if the conviction is the
20 result of a charge that was originally filed as a violation of RCW
21 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
22 46.61.520 or 46.61.522;

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

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

29 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
30 prosecution for a violation of RCW 46.61.5249, or an equivalent local
31 ordinance, if the charge under which the deferred prosecution was
32 granted was originally filed as a violation of RCW 46.61.502 or
33 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
34 46.61.522;

35 If a deferred prosecution is revoked based on a subsequent
36 conviction for an offense listed in this subsection (14)(a), the
37 subsequent conviction shall not be treated as a prior offense of the
38 revoked deferred prosecution for the purposes of sentencing;

1 (b) "Within seven years" means that the arrest for a prior offense
2 occurred within seven years before or after the arrest for the current
3 offense; and

4 (c) "Within ten years" means that the arrest for a prior offense
5 occurred within ten years before or after the arrest for the current
6 offense.

7 **Sec. 9.** RCW 10.05.140 and 2004 c 95 s 1 are each amended to read
8 as follows:

9 As a condition of granting a deferred prosecution petition, the
10 court shall order that the petitioner shall not operate a motor vehicle
11 upon the public highways without a valid operator's license and proof
12 of liability insurance. The amount of liability insurance shall be
13 established by the court at not less than that established by RCW
14 46.29.490. As a condition of granting a deferred prosecution petition
15 on any alcohol-dependency based case, the court shall also order the
16 installation of an ignition interlock under RCW 46.20.720. The
17 required periods of use of the interlock shall be not less than the
18 periods provided for in RCW 46.20.720(~~((+2+))~~)(3) (a), (b), and (c). As
19 a condition of granting a deferred prosecution petition, the court may
20 order the petitioner to make restitution and to pay costs as defined in
21 RCW 10.01.160. To help ensure continued sobriety and reduce the
22 likelihood of reoffense, the court may order reasonable conditions
23 during the period of the deferred prosecution including, but not
24 limited to, attendance at self-help recovery support groups for
25 alcoholism or drugs, complete abstinence from alcohol and all
26 nonprescribed mind-altering drugs, periodic urinalysis or breath
27 analysis, and maintaining law-abiding behavior. The court may
28 terminate the deferred prosecution program upon violation of the
29 deferred prosecution order.

30 **Sec. 10.** RCW 10.05.010 and 2008 c 282 s 15 are each amended to
31 read as follows:

32 (1) In a court of limited jurisdiction a person charged with a
33 misdemeanor or gross misdemeanor may petition the court to be
34 considered for a deferred prosecution program. The petition shall be
35 filed with the court at least seven days before the date set for trial
36 but, upon a written motion and affidavit establishing good cause for

1 the delay and failure to comply with this section, the court may waive
2 this requirement subject to the defendant's reimbursement to the court
3 of the witness fees and expenses due for subpoenaed witnesses who have
4 appeared on the date set for trial.

5 (2)(a) A person charged with a traffic infraction, misdemeanor, or
6 gross misdemeanor under Title 46 RCW shall not be eligible for a
7 deferred prosecution program unless the court makes specific findings
8 pursuant to RCW 10.05.020 or section 18 of this act. Except as
9 provided in (b) of this subsection, such person shall not be eligible
10 for a deferred prosecution program more than once; and cannot receive
11 a deferred prosecution under both RCW 10.05.020 and section 18 of this
12 act. Separate offenses committed more than seven days apart may not be
13 consolidated in a single program.

14 (b) A person charged with a violation of RCW 46.61.502, 46.61.504,
15 46.61.5249, or an equivalent local ordinance, or a violation of RCW
16 46.61.500 or an equivalent local ordinance if the offense involved the
17 use of alcohol or drugs, shall not be eligible for a deferred
18 prosecution program more than twice.

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

24 **Sec. 11.** RCW 9.94A.533 and 2009 c 141 s 2 are each amended to read
25 as follows:

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

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

34 (3) The following additional times shall be added to the standard
35 sentence range for felony crimes committed after July 23, 1995, if the
36 offender or an accomplice was armed with a firearm as defined in RCW
37 9.41.010 and the offender is being sentenced for one of the crimes

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

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

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

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

23 (d) If the offender is being sentenced for any firearm enhancements
24 under (a), (b), and/or (c) of this subsection and the offender has
25 previously been sentenced for any deadly weapon enhancements after July
26 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
27 (4)(a), (b), and/or (c) of this section, or both, all firearm
28 enhancements under this subsection shall be twice the amount of the
29 enhancement listed;

30 (e) Notwithstanding any other provision of law, all firearm
31 enhancements under this section are mandatory, shall be served in total
32 confinement, and shall run consecutively to all other sentencing
33 provisions, including other firearm or deadly weapon enhancements, for
34 all offenses sentenced under this chapter. However, whether or not a
35 mandatory minimum term has expired, an offender serving a sentence
36 under this subsection may be granted an extraordinary medical placement
37 when authorized under RCW 9.94A.728(~~(+4)~~)(3);

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

6 (g) If the standard sentence range under this section exceeds the
7 statutory maximum sentence for the offense, the statutory maximum
8 sentence shall be the presumptive sentence unless the offender is a
9 persistent offender. If the addition of a firearm enhancement
10 increases the sentence so that it would exceed the statutory maximum
11 for the offense, the portion of the sentence representing the
12 enhancement may not be reduced.

13 (4) The following additional times shall be added to the standard
14 sentence range for felony crimes committed after July 23, 1995, if the
15 offender or an accomplice was armed with a deadly weapon other than a
16 firearm as defined in RCW 9.41.010 and the offender is being sentenced
17 for one of the crimes listed in this subsection as eligible for any
18 deadly weapon enhancements based on the classification of the completed
19 felony crime. If the offender is being sentenced for more than one
20 offense, the deadly weapon enhancement or enhancements must be added to
21 the total period of confinement for all offenses, regardless of which
22 underlying offense is subject to a deadly weapon enhancement. If the
23 offender or an accomplice was armed with a deadly weapon other than a
24 firearm as defined in RCW 9.41.010 and the offender is being sentenced
25 for an anticipatory offense under chapter 9A.28 RCW to commit one of
26 the crimes listed in this subsection as eligible for any deadly weapon
27 enhancements, the following additional times shall be added to the
28 standard sentence range determined under subsection (2) of this section
29 based on the felony crime of conviction as classified under RCW
30 9A.28.020:

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

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

37 (c) Six months for any felony defined under any law as a class C

1 felony or with a statutory maximum sentence of five years, or both, and
2 not covered under (f) of this subsection;

3 (d) If the offender is being sentenced under (a), (b), and/or (c)
4 of this subsection for any deadly weapon enhancements and the offender
5 has previously been sentenced for any deadly weapon enhancements after
6 July 23, 1995, under (a), (b), and/or (c) of this subsection or
7 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
8 weapon enhancements under this subsection shall be twice the amount of
9 the enhancement listed;

10 (e) Notwithstanding any other provision of law, all deadly weapon
11 enhancements under this section are mandatory, shall be served in total
12 confinement, and shall run consecutively to all other sentencing
13 provisions, including other firearm or deadly weapon enhancements, for
14 all offenses sentenced under this chapter. However, whether or not a
15 mandatory minimum term has expired, an offender serving a sentence
16 under this subsection may be granted an extraordinary medical placement
17 when authorized under RCW 9.94A.728(~~(+4)~~)(3);

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

23 (g) If the standard sentence range under this section exceeds the
24 statutory maximum sentence for the offense, the statutory maximum
25 sentence shall be the presumptive sentence unless the offender is a
26 persistent offender. If the addition of a deadly weapon enhancement
27 increases the sentence so that it would exceed the statutory maximum
28 for the offense, the portion of the sentence representing the
29 enhancement may not be reduced.

30 (5) The following additional times shall be added to the standard
31 sentence range if the offender or an accomplice committed the offense
32 while in a county jail or state correctional facility and the offender
33 is being sentenced for one of the crimes listed in this subsection. If
34 the offender or an accomplice committed one of the crimes listed in
35 this subsection while in a county jail or state correctional facility,
36 and the offender is being sentenced for an anticipatory offense under
37 chapter 9A.28 RCW to commit one of the crimes listed in this

1 subsection, the following additional times shall be added to the
2 standard sentence range determined under subsection (2) of this
3 section:

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

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

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

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

12 (6) An additional twenty-four months shall be added to the standard
13 sentence range for any ranked offense involving a violation of chapter
14 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
15 (~~9.94A.605~~) 9.94A.827. All enhancements under this subsection shall
16 run consecutively to all other sentencing provisions, for all offenses
17 sentenced under this chapter.

18 (7) An additional two years shall be added to the standard sentence
19 range for vehicular homicide committed while under the influence of
20 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
21 prior offense as defined in RCW 46.61.5055. All enhancements under
22 this subsection shall be mandatory, shall be served in total
23 confinement, and shall run consecutively to all other sentencing
24 provisions.

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

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

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

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

9 (iv) If the offender is being sentenced for any sexual motivation
10 enhancements under (i), (ii), and/or (iii) of this subsection and the
11 offender has previously been sentenced for any sexual motivation
12 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
13 this subsection, all sexual motivation enhancements under this
14 subsection shall be twice the amount of the enhancement listed;

15 (b) Notwithstanding any other provision of law, all sexual
16 motivation enhancements under this subsection are mandatory, shall be
17 served in total confinement, and shall run consecutively to all other
18 sentencing provisions, including other sexual motivation enhancements,
19 for all offenses sentenced under this chapter. However, whether or not
20 a mandatory minimum term has expired, an offender serving a sentence
21 under this subsection may be granted an extraordinary medical placement
22 when authorized under RCW 9.94A.728(~~(+4)~~)(3);

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

25 (d) If the standard sentence range under this subsection exceeds
26 the statutory maximum sentence for the offense, the statutory maximum
27 sentence shall be the presumptive sentence unless the offender is a
28 persistent offender. If the addition of a sexual motivation
29 enhancement increases the sentence so that it would exceed the
30 statutory maximum for the offense, the portion of the sentence
31 representing the enhancement may not be reduced;

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

35 (f) Nothing in this subsection prevents a sentencing court from
36 imposing a sentence outside the standard sentence range pursuant to RCW
37 9.94A.535.

1 (9) An additional one-year enhancement shall be added to the
2 standard sentence range for the felony crimes of RCW 9A.44.073,
3 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
4 or after July 22, 2007, if the offender engaged, agreed, or offered to
5 engage the victim in the sexual conduct in return for a fee. If the
6 offender is being sentenced for more than one offense, the one-year
7 enhancement must be added to the total period of total confinement for
8 all offenses, regardless of which underlying offense is subject to the
9 enhancement. If the offender is being sentenced for an anticipatory
10 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
11 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
12 solicited another, or conspired to engage, agree, or offer to engage
13 the victim in the sexual conduct in return for a fee, an additional
14 one-year enhancement shall be added to the standard sentence range
15 determined under subsection (2) of this section. For purposes of this
16 subsection, "sexual conduct" means sexual intercourse or sexual
17 contact, both as defined in chapter 9A.44 RCW.

18 (10)(a) For a person age eighteen or older convicted of any
19 criminal street gang-related felony offense for which the person
20 compensated, threatened, or solicited a minor in order to involve the
21 minor in the commission of the felony offense, the standard sentence
22 range is determined by locating the sentencing grid sentence range
23 defined by the appropriate offender score and the seriousness level of
24 the completed crime, and multiplying the range by one hundred twenty-
25 five percent. If the standard sentence range under this subsection
26 exceeds the statutory maximum sentence for the offense, the statutory
27 maximum sentence is the presumptive sentence unless the offender is a
28 persistent offender.

29 (b) This subsection does not apply to any criminal street gang-
30 related felony offense for which involving a minor in the commission of
31 the felony offense is an element of the offense.

32 (c) The increased penalty specified in (a) of this subsection is
33 unavailable in the event that the prosecution gives notice that it will
34 seek an exceptional sentence based on an aggravating factor under RCW
35 9.94A.535.

36 (11) An additional twelve months and one day shall be added to the
37 standard sentence range for a conviction of attempting to elude a

1 police vehicle as defined by RCW 46.61.024, if the conviction included
2 a finding by special allegation of endangering one or more persons
3 under RCW 9.94A.834.

4 (12) An additional twelve months shall be added to the standard
5 sentence range for an offense that is also a violation of RCW
6 9.94A.831.

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