

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1789

62nd Legislature
2011 Regular Session

Passed by the House April 14, 2011
Yeas 97 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 8, 2011
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1789** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1789

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By House Transportation (originally sponsored by Representatives Goodman, Pedersen, Roberts, and Miloscia)

READ FIRST TIME 02/25/11.

1 AN ACT Relating to accountability for persons driving under the
2 influence of alcohol or drugs; amending RCW 46.20.385, 46.61.502,
3 46.61.504, 46.61.500, 46.61.5249, 46.20.720, 46.61.5055, 10.05.140,
4 9.94A.533, 2.28.190, 46.61.5056, and 46.61.5152; reenacting and
5 amending RCW 46.61.5054; adding a new section to chapter 2.28 RCW;
6 adding a new section to chapter 10.01 RCW; prescribing penalties; and
7 providing an effective date.

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

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

11 (1)(a) Beginning January 1, 2009, any person licensed under this
12 chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504
13 or an equivalent local or out-of-state statute or ordinance, or a
14 violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), 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 receipt of the
18 prescribed fee and upon determining that the petitioner is eligible to
19 receive the license, may issue an ignition interlock driver's license.

1 (b) A person may apply for an ignition interlock driver's license
2 anytime, including immediately after receiving the notices under RCW
3 46.20.308 or after his or her license is suspended, revoked, or denied.
4 A person receiving an ignition interlock driver's license waives his or
5 her right to a hearing or appeal under RCW 46.20.308.

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

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

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

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

1 person operates. For the purposes of this subsection (1)(c)(iii), the
2 term "all vehicles" does not include vehicles that would be subject to
3 the employer exception under RCW 46.20.720(3).

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

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

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

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

36 (6)(a) Unless costs are waived by the ignition interlock company or
37 the person is indigent under RCW 10.101.010, the applicant shall pay
38 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) While the person is under the influence of or affected by
25 intoxicating liquor or any drug; or

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

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

32 (3) It is an affirmative defense to a violation of subsection
33 (1)(a) of this section which the defendant must prove by a
34 preponderance of the evidence that the defendant consumed a sufficient
35 quantity of alcohol after the time of driving and before the
36 administration of an analysis of the person's breath or blood to cause
37 the defendant's alcohol concentration to be 0.08 or more within two

1 hours after driving. The court shall not admit evidence of this
2 defense unless the defendant notifies the prosecution prior to the
3 omnibus or pretrial hearing in the case of the defendant's intent to
4 assert the affirmative defense.

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

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

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

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

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

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

22 (ii) Vehicular assault while under the influence of intoxicating
23 liquor or any drug, RCW 46.61.522(1)(b)((~~7-08~~));

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (i) Vehicular homicide while under the influence of intoxicating
38 liquor or any drug, RCW 46.61.520(1)(a)((7))i

1 (ii) Vehicular assault while under the influence of intoxicating
2 liquor or any drug, RCW 46.61.522(1)(b)(~~7-04~~);

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

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

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

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

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

16 (3)(a) Except as provided under (b) of this subsection, a person
17 convicted of reckless driving who has one or more prior offenses as
18 defined in RCW 46.61.5055(14) within seven years shall be required,
19 under RCW 46.20.720, to install an ignition interlock device on all
20 vehicles operated by the person if the conviction is the result of a
21 charge that was originally filed as a violation of RCW 46.61.502,
22 46.61.504, or an equivalent local ordinance.

23 (b) A person convicted of reckless driving shall be required, under
24 RCW 46.20.720, to install an ignition interlock device on all vehicles
25 operated by the person if the conviction is the result of a charge that
26 was originally filed as a violation of RCW 46.61.520 committed while
27 under the influence of intoxicating liquor or any drug or RCW 46.61.522
28 committed while under the influence of intoxicating liquor or any drug.

29 **Sec. 5.** RCW 46.61.5249 and 1997 c 66 s 4 are each amended to read
30 as follows:

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

1 (b) It is an affirmative defense to negligent driving in the first
2 degree by means of exhibiting the effects of having consumed an illegal
3 drug that must be proved by the defendant by a preponderance of the
4 evidence, that the driver has a valid prescription for the drug
5 consumed, and has been consuming it according to the prescription
6 directions and warnings.

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

8 (2) For the purposes of this section:

9 (a) "Negligent" means the failure to exercise ordinary care, and is
10 the doing of some act that a reasonably careful person would not do
11 under the same or similar circumstances or the failure to do something
12 that a reasonably careful person would do under the same or similar
13 circumstances.

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

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

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

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

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

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

28 (d) "Illegal drug" means a controlled substance under chapter 69.50
29 RCW for which the driver does not have a valid prescription or that is
30 not being consumed in accordance with the prescription directions and
31 warnings, or a legend drug under chapter 69.41 RCW for which the driver
32 does not have a valid prescription or that is not being consumed in
33 accordance with the prescription directions and warnings.

34 (3) Any act prohibited by this section that also constitutes a
35 crime under any other law of this state may be the basis of prosecution
36 under such other law notwithstanding that it may also be the basis for
37 prosecution under this section.

1 (4) A person convicted of negligent driving in the first degree who
2 has one or more prior offenses as defined in RCW 46.61.5055(14) within
3 seven years shall be required, under RCW 46.20.720, to install an
4 ignition interlock device on all vehicles operated by the person.

5 **Sec. 6.** RCW 46.20.720 and 2010 c 269 s 3 are each amended to read
6 as follows:

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

16 (2) Under RCW 46.61.5055 and subject to the exceptions listed in
17 that statute, the court shall order any person convicted of a violation
18 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply
19 for an ignition interlock driver's license from the department under
20 RCW 46.20.385 and to have a functioning ignition interlock device
21 installed on all motor vehicles operated by the person. The court
22 shall order any person participating in a deferred prosecution program
23 under RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 or an
24 equivalent local ordinance to have a functioning ignition interlock
25 device installed on all motor vehicles operated by the person.

26 (3) The department shall require that, after any applicable period
27 of suspension, revocation, or denial of driving privileges, a person
28 may drive only a motor vehicle equipped with a functioning ignition
29 interlock device if the person is convicted of a violation of RCW
30 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute
31 or ordinance. The department shall require that a person may drive
32 only a motor vehicle equipped with a functioning ignition interlock
33 device if the person is convicted of a violation of RCW 46.61.5249 or
34 46.61.500 and is required under RCW 46.61.5249(4) or 46.61.500(3) (a)
35 or (b) to install an ignition interlock device on all vehicles operated
36 by the person.

1 The department may waive the requirement for the use of such a
2 device if it concludes that such devices are not reasonably available
3 in the local area. The installation of an ignition interlock device is
4 not necessary on vehicles owned, leased, or rented by a person's
5 employer and on those vehicles whose care and/or maintenance is the
6 temporary responsibility of the employer, and driven at the direction
7 of a person's employer as a requirement of employment during working
8 hours. The person must provide the department with a declaration
9 pursuant to RCW 9A.72.085 from his or her employer stating that the
10 person's employment requires the person to operate a vehicle owned by
11 the employer or other persons during 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. Subject to the provisions of
15 subsections (4) and (5) of this section, the period of time of the
16 restriction will be no less than:

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

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

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

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

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

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

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

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

1 **Sec. 7.** RCW 46.61.5055 and 2010 c 269 s 4 are each amended to read
2 as follows:

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

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

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

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

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

36 (i) By imprisonment for not less than two days nor more than one
37 year. Two consecutive days of the imprisonment may not be suspended or
38 deferred unless the court finds that the imposition of this mandatory

1 minimum sentence would impose a substantial risk to the offender's
2 physical or mental well-being. Whenever the mandatory minimum sentence
3 is suspended or deferred, the court shall state in writing the reason
4 for granting the suspension or deferral and the facts upon which the
5 suspension or deferral is based. In lieu of the mandatory minimum term
6 of imprisonment required under this subsection (1)(b)(i), the court may
7 order not less than thirty days of electronic home monitoring. The
8 offender shall pay the cost of electronic home monitoring. The county
9 or municipality in which the penalty is being imposed shall determine
10 the cost. The court may also require the offender's electronic home
11 monitoring device to include an alcohol detection breathalyzer, and the
12 court may restrict the amount of alcohol the offender may consume
13 during the time the offender is on electronic home monitoring; and

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

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

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

1 minimum sentence is suspended or deferred, the court shall state in
2 writing the reason for granting the suspension or deferral and the
3 facts upon which the suspension or deferral is based; 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; or

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

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

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

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

35 (a) In the case of a person whose alcohol concentration was less
36 than 0.15, or for whom for reasons other than the person's refusal to
37 take a 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 ninety days nor more than one
2 year and one hundred twenty days of electronic home monitoring. The
3 offender shall pay for the cost of the electronic monitoring. The
4 county or municipality where the penalty is being imposed shall
5 determine the cost. The court may also require the offender's
6 electronic home monitoring device include an alcohol detection
7 breathalyzer, and may restrict the amount of alcohol the offender may
8 consume during the time the offender is on electronic home monitoring.
9 Ninety days of imprisonment and one hundred twenty days of electronic
10 home monitoring may not be suspended or deferred unless the court finds
11 that the imposition of this mandatory minimum sentence would impose a
12 substantial risk to the offender's physical or mental well-being.
13 Whenever the mandatory minimum sentence is suspended or deferred, the
14 court shall state in writing the reason for granting the suspension or
15 deferral and the facts upon which the suspension or deferral is based;
16 and

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

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

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

1 is suspended or deferred, the court shall state in writing the reason
2 for granting the suspension or deferral and the facts upon which the
3 suspension or deferral is based; and

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

8 (4) A person who is convicted of a violation of RCW 46.61.502 or
9 46.61.504 shall be punished under chapter 9.94A RCW if:

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

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

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

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

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

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

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

24 (b) The installation of an ignition interlock device is not
25 necessary on vehicles owned, leased, or rented by a person's employer
26 and on those vehicles whose care and/or maintenance is the temporary
27 responsibility of the employer, and driven at the direction of a
28 person's employer as a requirement of employment during working hours.
29 The person must provide the department with a declaration pursuant to
30 RCW 9A.72.085 from his or her employer stating that the person's
31 employment requires the person to operate a vehicle owned by the
32 employer or other persons during working 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 apply for an
37 ignition interlock driver's license if the court makes a specific
38 finding in writing that:

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

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

4 (iii) The person is not eligible to receive an ignition interlock
5 driver's license under RCW 46.20.385 because the person is not a
6 resident of Washington, is a habitual traffic offender, has already
7 applied for or is already in possession of an ignition interlock
8 driver's license, has never had a driver's license, has been certified
9 under chapter 74.20A RCW as noncompliant with a child support order, or
10 is subject to any other condition or circumstance that makes the person
11 ineligible to obtain an ignition interlock driver's license.

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

16 (f) If the court orders that a person refrain from consuming any
17 alcohol and requires the person to apply for an ignition interlock
18 driver's license, and the person states that he or she does not operate
19 a motor vehicle or the person is ineligible to obtain an ignition
20 interlock driver's license, the court shall order the person to submit
21 to alcohol monitoring through an alcohol detection breathalyzer device,
22 transdermal sensor device, or other technology designed to detect
23 alcohol in a person's system. Alcohol monitoring ordered under this
24 subsection must be for the period of the mandatory license suspension
25 or revocation. The person shall pay for the cost of the monitoring.
26 The county or municipality where the penalty is being imposed shall
27 determine the cost.

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

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

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

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

36 (h) Beginning with incidents occurring on or after the effective
37 date of this section, when calculating the period of time for the
38 restriction under RCW 46.20.720(3), the department must also give the

1 person a day-for-day credit for the time period, beginning from the
2 date of the incident, during which the person kept an ignition
3 interlock device installed on all vehicles the person operates. For
4 the purposes of this subsection (5)(h), the term "all vehicles" does
5 not include vehicles that would be subject to the employer exception
6 under RCW 46.20.720(3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (11)(a) In addition to any nonsuspendable and nondeferrable jail
31 sentence required by this section, whenever the court imposes less than
32 one year in jail, the court shall also suspend but shall not defer a
33 period of confinement for a period not exceeding five years. The court
34 shall impose conditions of probation that include: (i) Not driving a
35 motor vehicle within this state without a valid license to drive and
36 proof of financial responsibility for the future; (ii) not driving a
37 motor vehicle within this state while having an alcohol concentration
38 of 0.08 or more within two hours after driving; and (iii) not refusing

1 to submit to a test of his or her breath or blood to determine alcohol
2 concentration upon request of a law enforcement officer who has
3 reasonable grounds to believe the person was driving or was in actual
4 physical control of a motor vehicle within this state while under the
5 influence of intoxicating liquor. The court may impose conditions of
6 probation that include nonrepetition, installation of an ignition
7 interlock device on the probationer's motor vehicle, alcohol or drug
8 treatment, supervised probation, or other conditions that may be
9 appropriate. The sentence may be imposed in whole or in part upon
10 violation of a condition of probation during the suspension period.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (iii) A conviction for a violation of RCW 46.61.520 committed while
18 under the influence of intoxicating liquor or any drug, or a conviction
19 for a violation of RCW 46.61.520 committed in a reckless manner or with
20 the disregard for the safety of others if the conviction is the result
21 of a charge that was originally filed as a violation of RCW 46.61.520
22 committed while under the influence of intoxicating liquor or any drug;

23 (iv) A conviction for a violation of RCW 46.61.522 committed while
24 under the influence of intoxicating liquor or any drug, or a conviction
25 for a violation of RCW 46.61.522 committed in a reckless manner or with
26 the disregard for the safety of others if the conviction is the result
27 of a charge that was originally filed as a violation of RCW 46.61.522
28 committed while under the influence of intoxicating liquor or any drug;

29 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
30 9A.36.050 or an equivalent local ordinance, if the conviction is the
31 result of a charge that was originally filed as a violation of RCW
32 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
33 46.61.520 or 46.61.522;

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

37 (vii) A deferred prosecution under chapter 10.05 RCW granted in a

1 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
2 equivalent local ordinance; or

3 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
4 prosecution for a violation of RCW 46.61.5249, or an equivalent local
5 ordinance, if the charge under which the deferred prosecution was
6 granted was originally filed as a violation of RCW 46.61.502 or
7 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
8 46.61.522;

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

13 (b) "Within seven years" means that the arrest for a prior offense
14 occurred within seven years before or after the arrest for the current
15 offense; and

16 (c) "Within ten years" means that the arrest for a prior offense
17 occurred within ten years before or after the arrest for the current
18 offense.

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

21 As a condition of granting a deferred prosecution petition, the
22 court shall order that the petitioner shall not operate a motor vehicle
23 upon the public highways without a valid operator's license and proof
24 of liability insurance. The amount of liability insurance shall be
25 established by the court at not less than that established by RCW
26 46.29.490. As a condition of granting a deferred prosecution petition
27 on any alcohol-dependency based case, the court shall also order the
28 installation of an ignition interlock under RCW 46.20.720. The
29 required periods of use of the interlock shall be not less than the
30 periods provided for in RCW 46.20.720(~~((+2+))~~)(3) (a), (b), and (c). As
31 a condition of granting a deferred prosecution petition, the court may
32 order the petitioner to make restitution and to pay costs as defined in
33 RCW 10.01.160. To help ensure continued sobriety and reduce the
34 likelihood of reoffense, the court may order reasonable conditions
35 during the period of the deferred prosecution including, but not
36 limited to, attendance at self-help recovery support groups for
37 alcoholism or drugs, complete abstinence from alcohol and all

1 nonprescribed mind-altering drugs, periodic urinalysis or breath
2 analysis, and maintaining law-abiding behavior. The court may
3 terminate the deferred prosecution program upon violation of the
4 deferred prosecution order.

5 **Sec. 9.** RCW 9.94A.533 and 2009 c 141 s 2 are each amended to read
6 as follows:

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

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

15 (3) The following additional times shall be added to the standard
16 sentence range for felony crimes committed after July 23, 1995, if the
17 offender or an accomplice was armed with a firearm as defined in RCW
18 9.41.010 and the offender is being sentenced for one of the crimes
19 listed in this subsection as eligible for any firearm enhancements
20 based on the classification of the completed felony crime. If the
21 offender is being sentenced for more than one offense, the firearm
22 enhancement or enhancements must be added to the total period of
23 confinement for all offenses, regardless of which underlying offense is
24 subject to a firearm enhancement. If the offender or an accomplice was
25 armed with a firearm as defined in RCW 9.41.010 and the offender is
26 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
27 commit one of the crimes listed in this subsection as eligible for any
28 firearm enhancements, the following additional times shall be added to
29 the standard sentence range determined under subsection (2) of this
30 section based on the felony crime of conviction as classified under RCW
31 9A.28.020:

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

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

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

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

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

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

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

31 (4) The following additional times shall be added to the standard
32 sentence range for felony crimes committed after July 23, 1995, if the
33 offender or an accomplice was armed with a deadly weapon other than a
34 firearm as defined in RCW 9.41.010 and the offender is being sentenced
35 for one of the crimes listed in this subsection as eligible for any
36 deadly weapon enhancements based on the classification of the completed
37 felony crime. If the offender is being sentenced for more than one
38 offense, the deadly weapon enhancement or enhancements must be added to

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

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

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

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

20 (d) If the offender is being sentenced under (a), (b), and/or (c)
21 of this subsection for any deadly weapon enhancements and the offender
22 has previously been sentenced for any deadly weapon enhancements after
23 July 23, 1995, under (a), (b), and/or (c) of this subsection or
24 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
25 weapon enhancements under this subsection shall be twice the amount of
26 the enhancement listed;

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

35 (f) The deadly weapon enhancements in this section shall apply to
36 all felony crimes except the following: Possession of a machine gun,
37 possessing a stolen firearm, drive-by shooting, theft of a firearm,

1 unlawful possession of a firearm in the first and second degree, and
2 use of a machine gun in a felony;

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

10 (5) The following additional times shall be added to the standard
11 sentence range if the offender or an accomplice committed the offense
12 while in a county jail or state correctional facility and the offender
13 is being sentenced for one of the crimes listed in this subsection. If
14 the offender or an accomplice committed one of the crimes listed in
15 this subsection while in a county jail or state correctional facility,
16 and the offender is being sentenced for an anticipatory offense under
17 chapter 9A.28 RCW to commit one of the crimes listed in this
18 subsection, the following additional times shall be added to the
19 standard sentence range determined under subsection (2) of this
20 section:

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

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

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

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

29 (6) An additional twenty-four months shall be added to the standard
30 sentence range for any ranked offense involving a violation of chapter
31 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
32 (~~9.94A.605~~) 9.94A.827. All enhancements under this subsection shall
33 run consecutively to all other sentencing provisions, for all offenses
34 sentenced under this chapter.

35 (7) An additional two years shall be added to the standard sentence
36 range for vehicular homicide committed while under the influence of
37 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
38 prior offense as defined in RCW 46.61.5055. All enhancements under

1 this subsection shall be mandatory, shall be served in total
2 confinement, and shall run consecutively to all other sentencing
3 provisions.

4 (8)(a) The following additional times shall be added to the
5 standard sentence range for felony crimes committed on or after July 1,
6 2006, if the offense was committed with sexual motivation, as that term
7 is defined in RCW 9.94A.030. If the offender is being sentenced for
8 more than one offense, the sexual motivation enhancement must be added
9 to the total period of total confinement for all offenses, regardless
10 of which underlying offense is subject to a sexual motivation
11 enhancement. If the offender committed the offense with sexual
12 motivation and the offender is being sentenced for an anticipatory
13 offense under chapter 9A.28 RCW, the following additional times shall
14 be added to the standard sentence range determined under subsection (2)
15 of this section based on the felony crime of conviction as classified
16 under RCW 9A.28.020:

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

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

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

25 (iv) If the offender is being sentenced for any sexual motivation
26 enhancements under (i), (ii), and/or (iii) of this subsection and the
27 offender has previously been sentenced for any sexual motivation
28 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
29 this subsection, all sexual motivation enhancements under this
30 subsection shall be twice the amount of the enhancement listed;

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

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

3 (d) If the standard sentence range under this subsection exceeds
4 the statutory maximum sentence for the offense, the statutory maximum
5 sentence shall be the presumptive sentence unless the offender is a
6 persistent offender. If the addition of a sexual motivation
7 enhancement increases the sentence so that it would exceed the
8 statutory maximum for the offense, the portion of the sentence
9 representing the enhancement may not be reduced;

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

13 (f) Nothing in this subsection prevents a sentencing court from
14 imposing a sentence outside the standard sentence range pursuant to RCW
15 9.94A.535.

16 (9) An additional one-year enhancement shall be added to the
17 standard sentence range for the felony crimes of RCW 9A.44.073,
18 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
19 or after July 22, 2007, if the offender engaged, agreed, or offered to
20 engage the victim in the sexual conduct in return for a fee. If the
21 offender is being sentenced for more than one offense, the one-year
22 enhancement must be added to the total period of total confinement for
23 all offenses, regardless of which underlying offense is subject to the
24 enhancement. If the offender is being sentenced for an anticipatory
25 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
26 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
27 solicited another, or conspired to engage, agree, or offer to engage
28 the victim in the sexual conduct in return for a fee, an additional
29 one-year enhancement shall be added to the standard sentence range
30 determined under subsection (2) of this section. For purposes of this
31 subsection, "sexual conduct" means sexual intercourse or sexual
32 contact, both as defined in chapter 9A.44 RCW.

33 (10)(a) For a person age eighteen or older convicted of any
34 criminal street gang-related felony offense for which the person
35 compensated, threatened, or solicited a minor in order to involve the
36 minor in the commission of the felony offense, the standard sentence
37 range is determined by locating the sentencing grid sentence range
38 defined by the appropriate offender score and the seriousness level of

1 the completed crime, and multiplying the range by one hundred twenty-
2 five percent. If the standard sentence range under this subsection
3 exceeds the statutory maximum sentence for the offense, the statutory
4 maximum sentence is the presumptive sentence unless the offender is a
5 persistent offender.

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

9 (c) The increased penalty specified in (a) of this subsection is
10 unavailable in the event that the prosecution gives notice that it will
11 seek an exceptional sentence based on an aggravating factor under RCW
12 9.94A.535.

13 (11) An additional twelve months and one day shall be added to the
14 standard sentence range for a conviction of attempting to elude a
15 police vehicle as defined by RCW 46.61.024, if the conviction included
16 a finding by special allegation of endangering one or more persons
17 under RCW 9.94A.834.

18 (12) An additional twelve months shall be added to the standard
19 sentence range for an offense that is also a violation of RCW
20 9.94A.831.

21 NEW SECTION. **Sec. 10.** A new section is added to chapter 2.28 RCW
22 to read as follows:

23 (1) Counties may establish and operate DUI courts.

24 (2) For the purposes of this section, "DUI court" means a court
25 that has special calendars or dockets designed to achieve a reduction
26 in recidivism of impaired driving among nonviolent, alcohol abusing
27 offenders, whether adult or juvenile, by increasing their likelihood
28 for successful rehabilitation through early, continuous, and intense
29 judicially supervised treatment; mandatory periodic testing for alcohol
30 use and, if applicable, drug use; and the use of appropriate sanctions
31 and other rehabilitation services.

32 (3)(a) Any jurisdiction that seeks a state appropriation to fund a
33 DUI court program must first:

34 (i) Exhaust all federal funding that is available to support the
35 operations of its DUI court and associated services; and

36 (ii) Match, on a dollar-for-dollar basis, state moneys allocated
37 for DUI court programs with local cash or in-kind resources. Moneys

1 allocated by the state must be used to supplement, not supplant, other
2 federal, state, and local funds for DUI court operations and associated
3 services. However, until June 30, 2014, no match is required for state
4 moneys expended for the administrative and overhead costs associated
5 with the operation of a DUI court established as of January 1, 2011.

6 (b) Any county that establishes a DUI court pursuant to this
7 section shall establish minimum requirements for the participation of
8 offenders in the program. The DUI court may adopt local requirements
9 that are more stringent than the minimum. The minimum requirements
10 are:

11 (i) The offender would benefit from alcohol treatment;

12 (ii) The offender has not previously been convicted of a serious
13 violent offense or sex offense as defined in RCW 9.94A.030, vehicular
14 homicide under RCW 46.61.520, vehicular assault under RCW 46.61.522, or
15 an equivalent out-of-state offense; and

16 (iii) Without regard to whether proof of any of these elements is
17 required to convict, the offender is not currently charged with or
18 convicted of an offense:

19 (A) That is a sex offense;

20 (B) That is a serious violent offense;

21 (C) That is vehicular homicide or vehicular assault;

22 (D) During which the defendant used a firearm; or

23 (E) During which the defendant caused substantial or great bodily
24 harm or death to another person.

25 **Sec. 11.** RCW 2.28.190 and 2005 c 504 s 502 are each amended to
26 read as follows:

27 Any county that has established a DUI court, drug court, and a
28 mental health court under this chapter may combine the functions of
29 (~~both~~) these courts into a single therapeutic court.

30 **Sec. 12.** RCW 46.61.5054 and 1995 c 398 s 15 and 1995 c 332 s 13
31 are each reenacted and amended to read as follows:

32 (1)(a) In addition to penalties set forth in RCW 46.61.5051 through
33 46.61.5053 until September 1, 1995, and RCW 46.61.5055 thereafter, a
34 (~~one~~) two hundred (~~twenty-five~~) dollar fee shall be assessed to a
35 person who is either convicted, sentenced to a lesser charge, or given
36 deferred prosecution, as a result of an arrest for violating RCW

1 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the
2 purpose of funding the Washington state toxicology laboratory and the
3 Washington state patrol for grants and activities to increase the
4 conviction rate and decrease the incidence of persons driving under the
5 influence of alcohol or drugs.

6 (b) Upon a verified petition by the person assessed the fee, the
7 court may suspend payment of all or part of the fee if it finds that
8 the person does not have the ability to pay.

9 (c) When a minor has been adjudicated a juvenile offender for an
10 offense which, if committed by an adult, would constitute a violation
11 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall
12 assess the ((one)) two hundred ((~~twenty-five~~)) dollar fee under (a) of
13 this subsection. Upon a verified petition by a minor assessed the fee,
14 the court may suspend payment of all or part of the fee if it finds
15 that the minor does not have the ability to pay the fee.

16 (2) The fee assessed under subsection (1) of this section shall be
17 collected by the clerk of the court and, subject to subsection (4) of
18 this section, one hundred seventy-five dollars of the fee must be
19 distributed as follows:

20 (a) Forty percent shall be subject to distribution under RCW
21 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

22 (b) The remainder of the fee shall be forwarded to the state
23 treasurer who shall, through June 30, 1997, deposit: Fifty percent in
24 the death investigations' account to be used solely for funding the
25 state toxicology laboratory blood or breath testing programs; and fifty
26 percent in the state patrol highway account to be used solely for
27 funding activities to increase the conviction rate and decrease the
28 incidence of persons driving under the influence of alcohol or drugs.
29 Effective July 1, 1997, the remainder of the fee shall be forwarded to
30 the state treasurer who shall deposit: Fifteen percent in the death
31 investigations' account to be used solely for funding the state
32 toxicology laboratory blood or breath testing programs; and eighty-five
33 percent in the state patrol highway account to be used solely for
34 funding activities to increase the conviction rate and decrease the
35 incidence of persons driving under the influence of alcohol or drugs.

36 (3) Twenty-five dollars of the fee assessed under subsection (1) of
37 this section must be distributed to the highway safety account to be
38 used solely for funding Washington traffic safety commission grants to

1 reduce statewide collisions caused by persons driving under the
2 influence of alcohol or drugs. Grants awarded under this subsection
3 may be for projects that encourage collaboration with other community,
4 governmental, and private organizations, and that utilize innovative
5 approaches based on best practices or proven strategies supported by
6 research or rigorous evaluation. Grants recipients may include, for
7 example:

8 (a) DUI courts; and

9 (b) Jurisdictions implementing the victim impact panel registries
10 under RCW 46.61.5152 and section 15 of this act.

11 (4) If the court has suspended payment of part of the fee pursuant
12 to subsection (1)(b) or (c) of this section, amounts collected shall be
13 distributed proportionately.

14 (5) This section applies to any offense committed on or after July
15 1, 1993.

16 **Sec. 13.** RCW 46.61.5056 and 1995 c 332 s 14 are each amended to
17 read as follows:

18 (1) A person subject to alcohol assessment and treatment under RCW
19 46.61.5055 shall be required by the court to complete a course in an
20 alcohol information school approved by the department of social and
21 health services or to complete more intensive treatment in a program
22 approved by the department of social and health services, as determined
23 by the court. The court shall notify the department of licensing
24 whenever it orders a person to complete a course or treatment program
25 under this section.

26 (2) A diagnostic evaluation and treatment recommendation shall be
27 prepared under the direction of the court by an alcoholism agency
28 approved by the department of social and health services or a qualified
29 probation department approved by the department of social and health
30 services. A copy of the report shall be forwarded to the court and the
31 department of licensing. Based on the diagnostic evaluation, the court
32 shall determine whether the person shall be required to complete a
33 course in an alcohol information school approved by the department of
34 social and health services or more intensive treatment in a program
35 approved by the department of social and health services.

36 (3) Standards for approval for alcohol treatment programs shall be

1 prescribed by the department of social and health services. The
2 department of social and health services shall periodically review the
3 costs of alcohol information schools and treatment programs.

4 (4) Any agency that provides treatment ordered under RCW
5 46.61.5055, shall immediately report to the appropriate probation
6 department where applicable, otherwise to the court, and to the
7 department of licensing any noncompliance by a person with the
8 conditions of his or her ordered treatment. The court shall notify the
9 department of licensing and the department of social and health
10 services of any failure by an agency to so report noncompliance. Any
11 agency with knowledge of noncompliance that fails to so report shall be
12 fined two hundred fifty dollars by the department of social and health
13 services. Upon three such failures by an agency within one year, the
14 department of social and health services shall revoke the agency's
15 approval under this section.

16 (5) The department of licensing and the department of social and
17 health services may adopt such rules as are necessary to carry out this
18 section.

19 **Sec. 14.** RCW 46.61.5152 and 2006 c 73 s 17 are each amended to
20 read as follows:

21 In addition to penalties that may be imposed under RCW 46.61.5055,
22 the court may require a person who is convicted of a nonfelony
23 violation of RCW 46.61.502 or 46.61.504 or who enters a deferred
24 prosecution program under RCW 10.05.020 based on a nonfelony violation
25 of RCW 46.61.502 or 46.61.504, to attend an educational program, such
26 as a victim impact panel, focusing on the emotional, physical, and
27 financial suffering of victims who were injured by persons convicted of
28 driving while under the influence of intoxicants. The victim impact
29 panel program must meet the minimum standards established under section
30 15 of this act.

31 NEW SECTION. **Sec. 15.** A new section is added to chapter 10.01 RCW
32 to read as follows:

33 (1) The Washington traffic safety commission may develop and
34 maintain a registry of qualified victim impact panels. When imposing
35 a requirement that an offender attend a victim impact panel under RCW
36 46.61.5152, the court may refer the offender to a victim impact panel

1 that is listed in the registry. The Washington traffic safety
2 commission may consult with victim impact panel organizations to
3 develop and maintain a registry.

4 (2) To be listed on the registry, the victim impact panel must meet
5 the following minimum standards:

6 (a) The victim impact panel must address the effects of driving
7 while impaired on individuals and families and address alternatives to
8 drinking and driving and drug use and driving;

9 (b) The victim impact panel should strive to have at least two
10 different speakers, one of whom is a victim survivor of an impaired
11 driving crash, to present their stories in person. A victim survivor
12 may be the panel facilitator. The victim impact panel should be a
13 minimum of sixty minutes of presentation, not including registration
14 and administration time.

15 (c) The victim impact panel shall have policies and procedures to
16 recruit, screen, train, and provide feedback and ongoing support to the
17 panelists. The panel shall take reasonable steps to verify the
18 authenticity of each panelist's story;

19 (d) The victim impact panel shall charge a reasonable fee to all
20 persons required to attend, unless otherwise ordered by the court;

21 (e) The victim impact panel shall have a policy to prohibit
22 admittance of anyone under the influence of alcohol or drugs, or anyone
23 whose actions or behavior are otherwise inappropriate. The victim
24 impact panel may institute additional admission requirements;

25 (f) The victim impact panel shall maintain attendance records for
26 at least five years;

27 (g) The victim impact panel shall make reasonable efforts to use a
28 facility that meets standards established by the Americans with
29 disabilities act;

30 (h) The victim impact panel may provide referral information to
31 other community services; and

32 (i) The victim impact panel shall have a designated facilitator who
33 is responsible for the compliance with these minimum standards and who
34 is responsible for maintaining appropriate records and communication
35 with the referring courts and probationary departments regarding
36 attendance or nonattendance.

1 NEW SECTION. **Sec. 16.** Sections 1 through 9 of this act take
2 effect September 1, 2011.

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