

CERTIFICATION OF ENROLLMENT  
SECOND SUBSTITUTE HOUSE BILL 2443

62nd Legislature  
2012 Regular Session

Passed by the House March 8, 2012  
Yeas 98 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate March 8, 2012  
Yeas 49 Nays 0

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**President of the Senate**

Approved

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**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 **SECOND SUBSTITUTE HOUSE BILL 2443** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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SECOND SUBSTITUTE HOUSE BILL 2443

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AS AMENDED BY THE SENATE

Passed Legislature - 2012 Regular Session

State of Washington

62nd Legislature

2012 Regular Session

By House Transportation (originally sponsored by Representatives Goodman, Pedersen, Hurst, Kelley, Blake, Fitzgibbon, Ormsby, Hasegawa, and Miloscia)

READ FIRST TIME 02/07/12.

1 AN ACT Relating to increasing accountability of persons who drive  
2 impaired; amending RCW 2.28.175, 9.94A.475, 9.94A.640, 9.95.210,  
3 9.96.060, 38.52.430, 46.20.308, 46.20.385, 46.20.720, 46.20.745,  
4 46.61.5249, 46.61.540, and 43.43.395; reenacting and amending RCW  
5 46.61.500 and 46.61.5055; adding a new section to chapter 43.43 RCW;  
6 prescribing penalties; and providing an effective date.

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

8 **Sec. 1.** RCW 2.28.175 and 2011 c 293 s 10 are each amended to read  
9 as follows:

10 (1) Counties may establish and operate DUI courts. Municipalities  
11 may enter into cooperative agreements with counties that have DUI  
12 courts to provide DUI court services.

13 (2) For the purposes of this section, "DUI court" means a court  
14 that has special calendars or dockets designed to achieve a reduction  
15 in recidivism of impaired driving among nonviolent, alcohol abusing  
16 offenders, whether adult or juvenile, by increasing their likelihood  
17 for successful rehabilitation through early, continuous, and intense  
18 judicially supervised treatment; mandatory periodic testing for alcohol

1 use and, if applicable, drug use; and the use of appropriate sanctions  
2 and other rehabilitation services.

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

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

7 (ii) Match, on a dollar-for-dollar basis, state moneys allocated  
8 for DUI court programs with local cash or in-kind resources. Moneys  
9 allocated by the state must be used to supplement, not supplant, other  
10 federal, state, and local funds for DUI court operations and associated  
11 services. However, until June 30, 2014, no match is required for state  
12 moneys expended for the administrative and overhead costs associated  
13 with the operation of a DUI court established as of January 1, 2011.

14 (b) Any (~~county~~) jurisdiction that establishes a DUI court  
15 pursuant to this section shall establish minimum requirements for the  
16 participation of offenders in the program. The DUI court may adopt  
17 local requirements that are more stringent than the minimum. The  
18 minimum requirements are:

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

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

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

27 (A) That is a sex offense;

28 (B) That is a serious violent offense;

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

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

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

33 **Sec. 2.** RCW 9.94A.475 and 2002 c 290 s 15 are each amended to read  
34 as follows:

35 Any and all recommended sentencing agreements or plea agreements  
36 and the sentences for any and all felony crimes shall be made and  
37 retained as public records if the felony crime involves:

- 1 (1) Any violent offense as defined in this chapter;
- 2 (2) Any most serious offense as defined in this chapter;
- 3 (3) Any felony with a deadly weapon special verdict under RCW  
4 (~~9.94A.602~~) 9.94A.825;
- 5 (4) Any felony with any deadly weapon enhancements under RCW  
6 9.94A.533 (3) or (4), or both; (~~and/or~~)
- 7 (5) The felony crimes of possession of a machine gun, possessing a  
8 stolen firearm, drive-by shooting, theft of a firearm, unlawful  
9 possession of a firearm in the first or second degree, and/or use of a  
10 machine gun in a felony; or
- 11 (6) The felony crime of driving a motor vehicle while under the  
12 influence of intoxicating liquor or any drug as defined in RCW  
13 46.61.502, and felony physical control of a motor vehicle while under  
14 the influence of intoxicating liquor or any drug as defined in RCW  
15 46.61.504.

16 **Sec. 3.** RCW 9.94A.640 and 2006 c 73 s 8 are each amended to read  
17 as follows:

18 (1) Every offender who has been discharged under RCW 9.94A.637 may  
19 apply to the sentencing court for a vacation of the offender's record  
20 of conviction. If the court finds the offender meets the tests  
21 prescribed in subsection (2) of this section, the court may clear the  
22 record of conviction by: (a) Permitting the offender to withdraw the  
23 offender's plea of guilty and to enter a plea of not guilty; or (b) if  
24 the offender has been convicted after a plea of not guilty, by the  
25 court setting aside the verdict of guilty; and (c) by the court  
26 dismissing the information or indictment against the offender.

27 (2) An offender may not have the record of conviction cleared if:  
28 (a) There are any criminal charges against the offender pending in any  
29 court of this state or another state, or in any federal court; (b) the  
30 offense was a violent offense as defined in RCW 9.94A.030; (c) the  
31 offense was a crime against persons as defined in RCW 43.43.830; (d)  
32 the offender has been convicted of a new crime in this state, another  
33 state, or federal court since the date of the offender's discharge  
34 under RCW 9.94A.637; (e) the offense is a class B felony and less than  
35 ten years have passed since the date the applicant was discharged under  
36 RCW 9.94A.637; (f) the offense was a class C felony, other than a class  
37 C felony described in RCW 46.61.502(6) or 46.61.504(6), and less than

1 five years have passed since the date the applicant was discharged  
2 under RCW 9.94A.637; or (g) the offense was a class C felony described  
3 in RCW 46.61.502(6) or 46.61.504(6) (~~and less than ten years have~~  
4 ~~passed since the applicant was discharged under RCW 9.94A.637~~)).

5 (3) Once the court vacates a record of conviction under subsection  
6 (1) of this section, the fact that the offender has been convicted of  
7 the offense shall not be included in the offender's criminal history  
8 for purposes of determining a sentence in any subsequent conviction,  
9 and the offender shall be released from all penalties and disabilities  
10 resulting from the offense. For all purposes, including responding to  
11 questions on employment applications, an offender whose conviction has  
12 been vacated may state that the offender has never been convicted of  
13 that crime. Nothing in this section affects or prevents the use of an  
14 offender's prior conviction in a later criminal prosecution.

15 **Sec. 4.** RCW 9.95.210 and 2011 1st sp.s. c 40 s 7 are each amended  
16 to read as follows:

17 (1)(a) Except as provided in (b) of this subsection in granting  
18 probation, the superior court may suspend the imposition or the  
19 execution of the sentence and may direct that the suspension may  
20 continue upon such conditions and for such time as it shall designate,  
21 not exceeding the maximum term of sentence or two years, whichever is  
22 longer.

23 (b) For a defendant sentenced under RCW 46.61.5055, the superior  
24 court may suspend the imposition or the execution of the sentence and  
25 may direct that the suspension continue upon such conditions and for  
26 such time as the court shall designate, not to exceed five years. The  
27 court shall have continuing jurisdiction and authority to suspend the  
28 execution of all or any part of the sentence upon stated terms,  
29 including installment payment of fines. A defendant who has been  
30 sentenced, and who then fails to appear for any hearing to address the  
31 defendant's compliance with the terms of probation when ordered to do  
32 so by the court shall have the term of probation tolled until such time  
33 as the defendant makes his or her presence known to the court on the  
34 record. Any time before entering an order terminating probation, the  
35 court may modify or revoke its order suspending the imposition or  
36 execution of the sentence if the defendant violates or fails to carry  
37 out any of the conditions of the suspended sentence.

1           (2) In the order granting probation and as a condition thereof, the  
2 superior court may in its discretion imprison the defendant in the  
3 county jail for a period not exceeding one year and may fine the  
4 defendant any sum not exceeding the statutory limit for the offense  
5 committed, and court costs. As a condition of probation, the superior  
6 court shall require the payment of the penalty assessment required by  
7 RCW 7.68.035. The superior court may also require the defendant to  
8 make such monetary payments, on such terms as it deems appropriate  
9 under the circumstances, as are necessary: (a) To comply with any  
10 order of the court for the payment of family support; (b) to make  
11 restitution to any person or persons who may have suffered loss or  
12 damage by reason of the commission of the crime in question or when the  
13 offender pleads guilty to a lesser offense or fewer offenses and agrees  
14 with the prosecutor's recommendation that the offender be required to  
15 pay restitution to a victim of an offense or offenses which are not  
16 prosecuted pursuant to a plea agreement; (c) to pay such fine as may be  
17 imposed and court costs, including reimbursement of the state for costs  
18 of extradition if return to this state by extradition was required; (d)  
19 following consideration of the financial condition of the person  
20 subject to possible electronic monitoring, to pay for the costs of  
21 electronic monitoring if that monitoring was required by the court as  
22 a condition of release from custody or as a condition of probation; (e)  
23 to contribute to a county or interlocal drug fund; and (f) to make  
24 restitution to a public agency for the costs of an emergency response  
25 under RCW 38.52.430, and may require bonds for the faithful observance  
26 of any and all conditions imposed in the probation.

27           (3) The superior court shall order restitution in all cases where  
28 the victim is entitled to benefits under the crime victims'  
29 compensation act, chapter 7.68 RCW. If the superior court does not  
30 order restitution and the victim of the crime has been determined to be  
31 entitled to benefits under the crime victims' compensation act, the  
32 department of labor and industries, as administrator of the crime  
33 victims' compensation program, may petition the superior court within  
34 one year of imposition of the sentence for entry of a restitution  
35 order. Upon receipt of a petition from the department of labor and  
36 industries, the superior court shall hold a restitution hearing and  
37 shall enter a restitution order.

1 (4) In granting probation, the superior court may order the  
2 probationer to report to the secretary of corrections or such officer  
3 as the secretary may designate and as a condition of the probation to  
4 follow the instructions of the secretary. If the county legislative  
5 authority has elected to assume responsibility for the supervision of  
6 superior court misdemeanor probationers within its jurisdiction, the  
7 superior court misdemeanor probationer shall report to a probation  
8 officer employed or contracted for by the county. In cases where a  
9 superior court misdemeanor probationer is sentenced in one county, but  
10 resides within another county, there must be provisions for the  
11 probationer to report to the agency having supervision responsibility  
12 for the probationer's county of residence.

13 (5) If the probationer has been ordered to make restitution and the  
14 superior court has ordered supervision, the officer supervising the  
15 probationer shall make a reasonable effort to ascertain whether  
16 restitution has been made. If the superior court has ordered  
17 supervision and restitution has not been made as ordered, the officer  
18 shall inform the prosecutor of that violation of the terms of probation  
19 not less than three months prior to the termination of the probation  
20 period. The secretary of corrections will promulgate rules and  
21 regulations for the conduct of the person during the term of probation.  
22 For defendants found guilty in district court, like functions as the  
23 secretary performs in regard to probation may be performed by probation  
24 officers employed for that purpose by the county legislative authority  
25 of the county wherein the court is located.

26 (6) The provisions of RCW 9.94A.501 and 9.94A.5011 apply to  
27 sentences imposed under this section.

28 **Sec. 5.** RCW 9.96.060 and 2001 c 140 s 1 are each amended to read  
29 as follows:

30 (1) Every person convicted of a misdemeanor or gross misdemeanor  
31 offense who has completed all of the terms of the sentence for the  
32 misdemeanor or gross misdemeanor offense may apply to the sentencing  
33 court for a vacation of the applicant's record of conviction for the  
34 offense. If the court finds the applicant meets the tests prescribed  
35 in subsection (2) of this section, the court may in its discretion  
36 vacate the record of conviction by: (a)(i) Permitting the applicant to  
37 withdraw the applicant's plea of guilty and to enter a plea of not

1 guilty; or (ii) if the applicant has been convicted after a plea of not  
2 guilty, the court setting aside the verdict of guilty; and (b) the  
3 court dismissing the information, indictment, complaint, or citation  
4 against the applicant and vacating the judgment and sentence.

5 (2) An applicant may not have the record of conviction for a  
6 misdemeanor or gross misdemeanor offense vacated if any one of the  
7 following is present:

8 (a) There are any criminal charges against the applicant pending in  
9 any court of this state or another state, or in any federal court;

10 (b) The offense was a violent offense as defined in RCW 9.94A.030  
11 or an attempt to commit a violent offense;

12 (c) The offense was a violation of RCW 46.61.502 (driving while  
13 under the influence), 46.61.504 (actual physical control while under  
14 the influence), (~~or~~) 9.91.020 (operating a railroad, etc. while  
15 intoxicated), or the offense is considered a "prior offense" under RCW  
16 46.61.5055 and the applicant has had a subsequent alcohol or drug  
17 violation within ten years of the date of arrest for the prior offense;

18 (d) The offense was any misdemeanor or gross misdemeanor violation,  
19 including attempt, of chapter 9.68 RCW (obscenity and pornography),  
20 chapter 9.68A RCW (sexual exploitation of children), or chapter 9A.44  
21 RCW (sex offenses);

22 (e) The applicant was convicted of a misdemeanor or gross  
23 misdemeanor offense as defined in RCW 10.99.020, or the court  
24 determines after a review of the court file that the offense was  
25 committed by one family member or household member against another, or  
26 the court, after considering the damage to person or property that  
27 resulted in the conviction, any prior convictions for crimes defined in  
28 RCW 10.99.020, or for comparable offenses in another state or in  
29 federal court, and the totality of the records under review by the  
30 court regarding the conviction being considered for vacation,  
31 determines that the offense involved domestic violence, and any one of  
32 the following factors exist:

33 (i) The applicant has not provided written notification of the  
34 vacation petition to the prosecuting attorney's office that prosecuted  
35 the offense for which vacation is sought, or has not provided that  
36 notification to the court;

37 (ii) The applicant has previously had a conviction for domestic

1 violence. For purposes of this subsection, however, if the current  
2 application is for more than one conviction that arose out of a single  
3 incident, none of those convictions counts as a previous conviction;

4 (iii) The applicant has signed an affidavit under penalty of  
5 perjury affirming that the applicant has not previously had a  
6 conviction for a domestic violence offense, and a criminal history  
7 check reveals that the applicant has had such a conviction; or

8 (iv) Less than five years have elapsed since the person completed  
9 the terms of the original conditions of the sentence, including any  
10 financial obligations and successful completion of any treatment  
11 ordered as a condition of sentencing;

12 (f) For any offense other than those described in (e) of this  
13 subsection, less than three years have passed since the person  
14 completed the terms of the sentence, including any financial  
15 obligations;

16 (g) The offender has been convicted of a new crime in this state,  
17 another state, or federal court since the date of conviction;

18 (h) The applicant has ever had the record of another conviction  
19 vacated; or

20 (i) The applicant is currently restrained, or has been restrained  
21 within five years prior to the vacation application, by a domestic  
22 violence protection order, a no-contact order, an antiharassment order,  
23 or a civil restraining order which restrains one party from contacting  
24 the other party.

25 (3) Once the court vacates a record of conviction under subsection  
26 (1) of this section, the person shall be released from all penalties  
27 and disabilities resulting from the offense and the fact that the  
28 person has been convicted of the offense shall not be included in the  
29 person's criminal history for purposes of determining a sentence in any  
30 subsequent conviction. For all purposes, including responding to  
31 questions on employment or housing applications, a person whose  
32 conviction has been vacated under subsection (1) of this section may  
33 state that he or she has never been convicted of that crime. Nothing  
34 in this section affects or prevents the use of an offender's prior  
35 conviction in a later criminal prosecution.

36 (4) All costs incurred by the court and probation services shall be  
37 paid by the person making the motion to vacate the record unless a

1 determination is made pursuant to chapter 10.101 RCW that the person  
2 making the motion is indigent, at the time the motion is brought.

3 (5) The clerk of the court in which the vacation order is entered  
4 shall immediately transmit the order vacating the conviction to the  
5 Washington state patrol identification section and to the local police  
6 agency, if any, which holds criminal history information for the person  
7 who is the subject of the conviction. The Washington state patrol and  
8 any such local police agency shall immediately update their records to  
9 reflect the vacation of the conviction, and shall transmit the order  
10 vacating the conviction to the federal bureau of investigation. A  
11 conviction that has been vacated under this section may not be  
12 disseminated or disclosed by the state patrol or local law enforcement  
13 agency to any person, except other criminal justice enforcement  
14 agencies.

15 **Sec. 6.** RCW 38.52.430 and 1993 c 251 s 2 are each amended to read  
16 as follows:

17 A person whose intoxication causes an incident resulting in an  
18 appropriate emergency response, and who, in connection with the  
19 incident, has been found guilty of or has had their prosecution  
20 deferred for (1) driving while under the influence of intoxicating  
21 liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the  
22 influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel  
23 while under the influence of alcohol or drugs, RCW (~~88.12.100~~)  
24 79A.60.040; (4) vehicular homicide while under the influence of  
25 intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular  
26 assault while under the influence of intoxicating liquor or any drug,  
27 RCW 46.61.522(1)(b), is liable for the expense of an emergency response  
28 by a public agency to the incident.

29 The expense of an emergency response is a charge against the person  
30 liable for expenses under this section. The charge constitutes a debt  
31 of that person and is collectible by the public agency incurring those  
32 costs in the same manner as in the case of an obligation under a  
33 contract, expressed or implied. Following a conviction of an offense  
34 listed in this section, and prior to sentencing, the prosecution may  
35 present to the court information setting forth the expenses incurred by  
36 the public agency for its emergency response to the incident. Upon a  
37 finding by the court that the expenses are reasonable, the court shall

1 order the defendant to reimburse the public agency. The cost  
2 reimbursement shall be included in the sentencing order as an  
3 additional monetary obligation of the defendant and may not be  
4 substituted for any other fine or cost required or allowed by statute.  
5 The court may establish a payment schedule for the payment of the cost  
6 reimbursement, separate from any payment schedule imposed for other  
7 finances and costs.

8 In no event shall a person's liability under this section for the  
9 expense of an emergency response exceed ((one)) two thousand five  
10 hundred dollars for a particular incident.

11 If more than one public agency makes a claim for payment from an  
12 individual for an emergency response to a single incident under the  
13 provisions of this section, and the sum of the claims exceeds the  
14 amount recovered, the division of the amount recovered shall be  
15 determined by an interlocal agreement consistent with the requirements  
16 of chapter 39.34 RCW.

17 **Sec. 7.** RCW 46.20.308 and 2008 c 282 s 2 are each amended to read  
18 as follows:

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

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

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

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

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

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

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

30 (3) Except as provided in this section, the test administered shall  
31 be of the breath only. If an individual is unconscious or is under  
32 arrest for the crime of felony driving under the influence of  
33 intoxicating liquor or drugs under RCW 46.61.502(6), felony physical  
34 control of a motor vehicle while under the influence of intoxicating  
35 liquor or any drug under RCW 46.61.504(6), vehicular homicide as  
36 provided in RCW 46.61.520, or vehicular assault as provided in RCW  
37 46.61.522, or if an individual is under arrest for the crime of driving  
38 while under the influence of intoxicating liquor or drugs as provided

1 in RCW 46.61.502, which arrest results from an accident in which there  
2 has been serious bodily injury to another person, a breath or blood  
3 test may be administered without the consent of the individual so  
4 arrested.

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

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

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

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

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

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

37 (d) Serve notice in writing that the marked license or permit, if  
38 any, is a temporary license that is valid for sixty days from the date

1 of arrest or from the date notice has been given in the event notice is  
2 given by the department following a blood test, or until the  
3 suspension, revocation, or denial of the person's license, permit, or  
4 privilege to drive is sustained at a hearing pursuant to subsection (8)  
5 of this section, whichever occurs first. No temporary license is valid  
6 to any greater degree than the license or permit that it replaces; and

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

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

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

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

24 (7) The department of licensing, upon the receipt of a sworn report  
25 or report under a declaration authorized by RCW 9A.72.085 under  
26 subsection (6)(e) of this section, shall suspend, revoke, or deny the  
27 person's license, permit, or privilege to drive or any nonresident  
28 operating privilege, as provided in RCW 46.20.3101, such suspension,  
29 revocation, or denial to be effective beginning sixty days from the  
30 date of arrest or from the date notice has been given in the event  
31 notice is given by the department following a blood test, or when  
32 sustained at a hearing pursuant to subsection (8) of this section,  
33 whichever occurs first.

34 (8) A person receiving notification under subsection (6)(b) of this  
35 section may, within twenty days after the notice has been given,  
36 request in writing a formal hearing before the department. The person  
37 shall pay a fee of two hundred dollars as part of the request. If the  
38 request is mailed, it must be postmarked within twenty days after

1 receipt of the notification. Upon timely receipt of such a request for  
2 a formal hearing, including receipt of the required two hundred dollar  
3 fee, the department shall afford the person an opportunity for a  
4 hearing. The department may waive the required two hundred dollar fee  
5 if the person is an indigent as defined in RCW 10.101.010. Except as  
6 otherwise provided in this section, the hearing is subject to and shall  
7 be scheduled and conducted in accordance with RCW 46.20.329 and  
8 46.20.332. The hearing shall be conducted in the county of the arrest,  
9 except that all or part of the hearing may, at the discretion of the  
10 department, be conducted by telephone or other electronic means. The  
11 hearing shall be held within sixty days following the arrest or  
12 following the date notice has been given in the event notice is given  
13 by the department following a blood test, unless otherwise agreed to by  
14 the department and the person, in which case the action by the  
15 department shall be stayed, and any valid temporary license marked  
16 under subsection (6)(c) of this section extended, if the person is  
17 otherwise eligible for licensing. For the purposes of this section,  
18 the scope of the hearing shall cover the issues of whether a law  
19 enforcement officer had reasonable grounds to believe the person had  
20 been driving or was in actual physical control of a motor vehicle  
21 within this state while under the influence of intoxicating liquor or  
22 any drug or had been driving or was in actual physical control of a  
23 motor vehicle within this state while having alcohol in his or her  
24 system in a concentration of 0.02 or more if the person was under the  
25 age of twenty-one, whether the person was placed under arrest, and (a)  
26 whether the person refused to submit to the test or tests upon request  
27 of the officer after having been informed that such refusal would  
28 result in the revocation of the person's license, permit, or privilege  
29 to drive, or (b) if a test or tests were administered, whether the  
30 applicable requirements of this section were satisfied before the  
31 administration of the test or tests, whether the person submitted to  
32 the test or tests, or whether a test was administered without express  
33 consent as permitted under this section, and whether the test or tests  
34 indicated that the alcohol concentration of the person's breath or  
35 blood was 0.08 or more if the person was age twenty-one or over at the  
36 time of the arrest, or 0.02 or more if the person was under the age of  
37 twenty-one at the time of the arrest. The sworn report or report under  
38 a declaration authorized by RCW 9A.72.085 submitted by a law

1 enforcement officer is prima facie evidence that the officer had  
2 reasonable grounds to believe the person had been driving or was in  
3 actual physical control of a motor vehicle within this state while  
4 under the influence of intoxicating liquor or drugs, or both, or the  
5 person had been driving or was in actual physical control of a motor  
6 vehicle within this state while having alcohol in his or her system in  
7 a concentration of 0.02 or more and was under the age of twenty-one and  
8 that the officer complied with the requirements of this section.

9 A hearing officer shall conduct the hearing, may issue subpoenas  
10 for the attendance of witnesses and the production of documents, and  
11 shall administer oaths to witnesses. The hearing officer shall not  
12 issue a subpoena for the attendance of a witness at the request of the  
13 person unless the request is accompanied by the fee required by RCW  
14 5.56.010 for a witness in district court. The sworn report or report  
15 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
16 officer and any other evidence accompanying the report shall be  
17 admissible without further evidentiary foundation and the  
18 certifications authorized by the criminal rules for courts of limited  
19 jurisdiction shall be admissible without further evidentiary  
20 foundation. The person may be represented by counsel, may question  
21 witnesses, may present evidence, and may testify. The department shall  
22 order that the suspension, revocation, or denial either be rescinded or  
23 sustained.

24 (9) If the suspension, revocation, or denial is sustained after  
25 such a hearing, the person whose license, privilege, or permit is  
26 suspended, revoked, or denied has the right to file a petition in the  
27 superior court of the county of arrest to review the final order of  
28 revocation by the department in the same manner as an appeal from a  
29 decision of a court of limited jurisdiction. Notice of appeal must be  
30 filed within thirty days after the date the final order is served or  
31 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ  
32 1.1, or other statutes or rules referencing de novo review, the appeal  
33 shall be limited to a review of the record of the administrative  
34 hearing. The appellant must pay the costs associated with obtaining  
35 the record of the hearing before the hearing officer. The filing of  
36 the appeal does not stay the effective date of the suspension,  
37 revocation, or denial. A petition filed under this subsection must  
38 include the petitioner's grounds for requesting review. Upon granting

1 petitioner's request for review, the court shall review the  
2 department's final order of suspension, revocation, or denial as  
3 expeditiously as possible. The review must be limited to a  
4 determination of whether the department has committed any errors of  
5 law. The superior court shall accept those factual determinations  
6 supported by substantial evidence in the record: (a) That were  
7 expressly made by the department; or (b) that may reasonably be  
8 inferred from the final order of the department. The superior court  
9 may reverse, affirm, or modify the decision of the department or remand  
10 the case back to the department for further proceedings. The decision  
11 of the superior court must be in writing and filed in the clerk's  
12 office with the other papers in the case. The court shall state the  
13 reasons for the decision. If judicial relief is sought for a stay or  
14 other temporary remedy from the department's action, the court shall  
15 not grant such relief unless the court finds that the appellant is  
16 likely to prevail in the appeal and that without a stay the appellant  
17 will suffer irreparable injury. If the court stays the suspension,  
18 revocation, or denial it may impose conditions on such stay.

19 (10)(a) If a person whose driver's license, permit, or privilege to  
20 drive has been or will be suspended, revoked, or denied under  
21 subsection (7) of this section, other than as a result of a breath or  
22 blood test refusal, and who has not committed an offense for which he  
23 or she was granted a deferred prosecution under chapter 10.05 RCW,  
24 petitions a court for a deferred prosecution on criminal charges  
25 arising out of the arrest for which action has been or will be taken  
26 under subsection (7) of this section, or notifies the department of  
27 licensing of the intent to seek such a deferred prosecution, then the  
28 license suspension or revocation shall be stayed pending entry of the  
29 deferred prosecution. The stay shall not be longer than one hundred  
30 fifty days after the date charges are filed, or two years after the  
31 date of the arrest, whichever time period is shorter. If the court  
32 stays the suspension, revocation, or denial, it may impose conditions  
33 on such stay. If the person is otherwise eligible for licensing, the  
34 department shall issue a temporary license, or extend any valid  
35 temporary license marked under subsection (6) of this section, for the  
36 period of the stay. If a deferred prosecution treatment plan is not  
37 recommended in the report made under RCW 10.05.050, or if treatment is  
38 rejected by the court, or if the person declines to accept an offered

1 treatment plan, or if the person violates any condition imposed by the  
2 court, then the court shall immediately direct the department to cancel  
3 the stay and any temporary marked license or extension of a temporary  
4 license issued under this subsection.

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

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

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

24 **Sec. 8.** RCW 46.20.385 and 2011 c 293 s 1 are each amended to read  
25 as follows:

26 (1)(a) Beginning January 1, 2009, any person licensed under this  
27 chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504  
28 or an equivalent local or out-of-state statute or ordinance, or a  
29 violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), or who has had or  
30 will have his or her license suspended, revoked, or denied under RCW  
31 46.20.3101, or who is otherwise permitted under subsection (8) of this  
32 section, may submit to the department an application for an ignition  
33 interlock driver's license. The department, upon receipt of the  
34 prescribed fee and upon determining that the petitioner is eligible to  
35 receive the license, may issue an ignition interlock driver's license.

36 (b) A person may apply for an ignition interlock driver's license  
37 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. However, when the employer's vehicle is assigned  
20 exclusively to the restricted driver and used solely for commuting to  
21 and from employment, the employer exemption does not apply.

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 September 1, 2011, when calculating the period of time for  
35 the restriction under RCW 46.20.720(3), the department must also give  
36 the person a day-for-day credit for the time period, beginning from the  
37 date of the incident, during which the person kept an ignition  
38 interlock device installed on all vehicles the person operates. For

1 the purposes of this subsection (1)(c)(iii), the term "all vehicles"  
2 does not include vehicles that would be subject to the employer  
3 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 (8)(a) Any person licensed under this chapter who is convicted of  
17 a violation of RCW 46.61.500 when the charge was originally filed as a  
18 violation of RCW 46.61.502 or 46.61.504, or an equivalent local  
19 ordinance, may submit to the department an application for an ignition  
20 interlock driver's license under this section.

21 (b) A person who does not have any driver's license under this  
22 chapter, but who would otherwise be eligible under this section to  
23 apply for an ignition interlock license, may submit to the department  
24 an application for an ignition interlock license. The department may  
25 require the person to take any driver's licensing examination under  
26 chapter 46.20 RCW and may require the person to also apply and qualify  
27 for a temporary restricted driver's license under RCW 46.20.391.

28 **Sec. 9.** RCW 46.20.720 and 2011 c 293 s 6 are each amended to read  
29 as follows:

30 (1) The court may order that after a period of suspension,  
31 revocation, or denial of driving privileges, and for up to as long as  
32 the court has jurisdiction, any person convicted of any offense  
33 involving the use, consumption, or possession of alcohol while  
34 operating a motor vehicle may drive only a motor vehicle equipped with  
35 a functioning ignition interlock. The court shall establish a specific  
36 calibration setting at which the interlock will prevent the vehicle

1 from being started. The court shall also establish the period of time  
2 for which interlock use will be required.

3 (2) Under RCW 46.61.5055 and subject to the exceptions listed in  
4 that statute, the court shall order any person convicted of a violation  
5 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to  
6 (~~apply for an ignition interlock driver's license from the department~~  
7 ~~under RCW 46.20.385 and to have~~) comply with the rules and  
8 requirements of the department regarding the installation and use of a  
9 functioning ignition interlock device installed on all motor vehicles  
10 operated by the person. The court shall order any person participating  
11 in a deferred prosecution program under RCW 10.05.020 for a violation  
12 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to have  
13 a functioning ignition interlock device installed on all motor vehicles  
14 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 46.61.500 and is required under RCW 46.61.5249(4) or 46.61.500(3) (a)  
24 or (b) to install an ignition interlock device on all vehicles operated  
25 by the person.

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

1 used solely for commuting to and from employment, the employer  
2 exemption does not apply.

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

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

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

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

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

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

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

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

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

30 (6) In addition to any other costs associated with the use of an  
31 ignition interlock device imposed on the person restricted under this  
32 section, the person shall pay an additional fee of twenty dollars per  
33 month. Payments must be made directly to the ignition interlock  
34 company. The company shall remit the additional twenty dollar fee to  
35 the department to be deposited into the ignition interlock device  
36 revolving account.

1       **Sec. 10.** RCW 46.20.745 and 2008 c 282 s 10 are each amended to  
2 read as follows:

3       (1) The ignition interlock device revolving account program is  
4 created within the department to assist in covering the monetary costs  
5 of installing, removing, and leasing an ignition interlock device, and  
6 applicable licensing, for indigent persons who are required under RCW  
7 46.20.385, 46.20.720, and 46.61.5055 to install an ignition interlock  
8 device in all vehicles owned or operated by the person. For purposes  
9 of this subsection, "indigent" has the same meaning as in RCW  
10 10.101.010, as determined by the department.

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

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

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

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

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

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

28       (5) As part of monitoring compliance, the Washington traffic safety  
29 commission shall also track recidivism for violations of RCW 46.61.502  
30 and 46.61.504 by persons required to have an ignition interlock  
31 driver's license under RCW 46.20.385 and 46.20.720.

32       **Sec. 11.** RCW 46.61.500 and 2011 c 293 s 4 and 2011 c 96 s 34 are  
33 each reenacted and amended to read as follows:

34       (1) Any person who drives any vehicle in willful or wanton  
35 disregard for the safety of persons or property is guilty of reckless  
36 driving. Violation of the provisions of this section is a gross

1 misdemeanor punishable by imprisonment for up to three hundred sixty-  
2 four days and by a fine of not more than five thousand dollars.

3 (2)(a) Subject to (b) of this subsection, the license or permit to  
4 drive or any nonresident privilege of any person convicted of reckless  
5 driving shall be suspended by the department for not less than thirty  
6 days.

7 (b) When a reckless driving conviction is a result of a charge that  
8 was originally filed as a violation of RCW 46.61.502 or 46.61.504, or  
9 an equivalent local ordinance, the department shall grant credit on a  
10 day-for-day basis for any portion of a suspension, revocation, or  
11 denial already served under an administrative action arising out of the  
12 same incident. During any period of suspension, revocation, or denial  
13 due to a conviction for reckless driving as the result of a charge  
14 originally filed as a violation of RCW 46.61.502 or 46.61.504, any  
15 person who has obtained an ignition interlock driver's license under  
16 RCW 46.20.385 may continue to drive a motor vehicle pursuant to the  
17 provision of the ignition interlock driver's license without obtaining  
18 a separate temporary restricted driver's license under RCW 46.20.391.

19 (3)(a) Except as provided under (b) of this subsection, a person  
20 convicted of reckless driving who has one or more prior offenses as  
21 defined in RCW 46.61.5055(14) within seven years shall be required,  
22 under RCW 46.20.720, to install an ignition interlock device on all  
23 vehicles operated by the person if the conviction is the result of a  
24 charge that was originally filed as a violation of RCW 46.61.502,  
25 46.61.504, or an equivalent local ordinance.

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

32 **Sec. 12.** RCW 46.61.5055 and 2011 c 293 s 7 and 2011 c 96 s 35 are  
33 each reenacted and amended to read as follows:

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

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

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

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

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

30 (i) By imprisonment for not less than two days nor more than three  
31 hundred sixty-four days. Two consecutive days of the imprisonment may  
32 not be suspended or deferred unless the court finds that the imposition  
33 of this mandatory minimum sentence would impose a substantial risk to  
34 the offender's physical or mental well-being. Whenever the mandatory  
35 minimum sentence is suspended or deferred, the court shall state in  
36 writing the reason for granting the suspension or deferral and the  
37 facts upon which the suspension or deferral is based. In lieu of the  
38 mandatory minimum term of imprisonment required under this subsection

1 (1)(b)(i), the court may order not less than thirty days of electronic  
2 home monitoring. The offender shall pay the cost of electronic home  
3 monitoring. The county or municipality in which the penalty is being  
4 imposed shall determine the cost. The court may also require the  
5 offender's electronic home monitoring device to include an alcohol  
6 detection breathalyzer, and the court may restrict the amount of  
7 alcohol the offender may consume during the time the offender is on  
8 electronic home monitoring; and

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

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

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

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

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

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

9 (i) By imprisonment for not less than forty-five days nor more than  
10 three hundred sixty-four days and ninety days of electronic home  
11 monitoring. In lieu of the mandatory minimum term of ninety days  
12 electronic home monitoring, the court may order at least an additional  
13 six days in jail. The offender shall pay for the cost of the  
14 electronic monitoring. The county or municipality where the penalty is  
15 being imposed shall determine the cost. The court may also require the  
16 offender's electronic home monitoring device include an alcohol  
17 detection breathalyzer, and may restrict the amount of alcohol the  
18 offender may consume during the time the offender is on electronic home  
19 monitoring. Forty-five days of imprisonment and ninety days of  
20 electronic home monitoring may not be suspended or deferred unless the  
21 court finds that the imposition of this mandatory minimum sentence  
22 would impose a substantial risk to the offender's physical or mental  
23 well-being. Whenever the mandatory minimum sentence is suspended or  
24 deferred, the court shall state in writing the reason for granting the  
25 suspension or deferral and the facts upon which the suspension or  
26 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  
2 three hundred sixty-four days and one hundred twenty days of electronic  
3 home monitoring. In lieu of the mandatory minimum term of one hundred  
4 twenty days of electronic home monitoring, the court may order at least  
5 an additional eight days in jail. The offender shall pay for the cost  
6 of the electronic monitoring. The county or municipality where the  
7 penalty is being imposed shall determine the cost. The court may also  
8 require the offender's electronic home monitoring device include an  
9 alcohol detection breathalyzer, and may restrict the amount of alcohol  
10 the offender may consume during the time the offender is on electronic  
11 home monitoring. Ninety days of imprisonment and one hundred twenty  
12 days of electronic home monitoring may not be suspended or deferred  
13 unless the court finds that the imposition of this mandatory minimum  
14 sentence would impose a substantial risk to the offender's physical or  
15 mental well-being. Whenever the mandatory minimum sentence is  
16 suspended or deferred, the court shall state in writing the reason for  
17 granting the suspension or deferral and the facts upon which the  
18 suspension or deferral is based; and

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

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

27 (i) By imprisonment for not less than one hundred twenty days nor  
28 more than three hundred sixty-four days and one hundred fifty days of  
29 electronic home monitoring. In lieu of the mandatory minimum term of  
30 one hundred fifty days of electronic home monitoring, the court may  
31 order at least an additional ten days in jail. The offender shall pay  
32 for the cost of the electronic monitoring. The county or municipality  
33 where the penalty is being imposed shall determine the cost. The court  
34 may also require the offender's electronic home monitoring device  
35 include an alcohol detection breathalyzer, and may restrict the amount  
36 of alcohol the offender may consume during the time the offender is on  
37 electronic home monitoring. One hundred twenty days of imprisonment  
38 and one hundred fifty days of electronic home monitoring may not be

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

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

11 (4) A person who is convicted of a violation of RCW 46.61.502 or  
12 46.61.504 shall be punished under chapter 9.94A RCW if:

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

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

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

17 (ii) A violation of RCW 46.61.522 committed while under the  
18 influence of intoxicating liquor or any drug;

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

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

22 (5)(a) The court shall require any person convicted of a violation  
23 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to  
24 ~~((apply for an ignition interlock driver's license from the department  
25 and to have))~~ comply with the rules and requirements of the department  
26 regarding the installation and use of a functioning ignition interlock  
27 device installed on all motor vehicles operated by the person.

28 ~~(b) ((The installation of an ignition interlock device is not  
29 necessary on vehicles owned, leased, or rented by a person's employer  
30 and on those vehicles whose care and/or maintenance is the temporary  
31 responsibility of the employer, and driven at the direction of a  
32 person's employer as a requirement of employment during working hours.  
33 The person must provide the department with a declaration pursuant to  
34 RCW 9A.72.085 from his or her employer stating that the person's  
35 employment requires the person to operate a vehicle owned by the  
36 employer or other persons during working hours.~~

37 ~~(c) An ignition interlock device imposed under this section shall~~

1 ~~be calibrated to prevent a motor vehicle from being started when the~~  
2 ~~breath sample provided has an alcohol concentration of 0.025 or more.~~

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

6 ~~(i) The person lives out of state and the devices are not~~  
7 ~~reasonably available in the person's local area;~~

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

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

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

21 ~~(f)) If the court orders that a person refrain from consuming any~~  
22 ~~alcohol ((and requires the person to apply for an ignition interlock~~  
23 ~~driver's license, and the person states that he or she does not operate~~  
24 ~~a motor vehicle or the person is ineligible to obtain an ignition~~  
25 ~~interlock driver's license)), the court ((shall)) may order the person~~  
26 ~~to submit to alcohol monitoring through an alcohol detection~~  
27 ~~breathalyzer device, transdermal sensor device, or other technology~~  
28 ~~designed to detect alcohol in a person's system. ((Alcohol monitoring~~  
29 ~~ordered under this subsection must be for the period of the mandatory~~  
30 ~~license suspension or revocation.)) The person shall pay for the cost~~  
31 ~~of the monitoring, unless the court specifies that the cost of~~  
32 ~~monitoring will be paid with funds that are available from an~~  
33 ~~alternative source identified by the court. The county or municipality~~  
34 ~~where the penalty is being imposed shall determine the cost.~~

35 ~~((g) The period of time for which ignition interlock use is~~  
36 ~~required will be as follows:~~

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

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

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

5       ~~(h) Beginning with incidents occurring on or after September 1,~~  
6 ~~2011, when calculating the period of time for the restriction under RCW~~  
7 ~~46.20.720(3), the department must also give the person a day for day~~  
8 ~~credit for the time period, beginning from the date of the incident,~~  
9 ~~during which the person kept an ignition interlock device installed on~~  
10 ~~all vehicles the person operates. For the purposes of this subsection~~  
11 ~~(5)(h), the term "all vehicles" does not include vehicles that would be~~  
12 ~~subject to the employer exception under RCW 46.20.720(3).)~~

13       (6) If a person who is convicted of a violation of RCW 46.61.502 or  
14 46.61.504 committed the offense while a passenger under the age of  
15 sixteen was in the vehicle, the court shall:

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

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

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

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

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

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

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

36       (a) If the person's alcohol concentration was less than 0.15, or if  
37 for reasons other than the person's refusal to take a test offered

1 under RCW 46.20.308 there is no test result indicating the person's  
2 alcohol concentration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (11)(a) In addition to any nonsuspendable and nondeferrable jail  
37 sentence required by this section, whenever the court imposes up to  
38 three hundred sixty-four days in jail, the court shall also suspend but

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

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

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

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

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

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

37 (c) The court determines that there is reason to believe that the

1 offender would violate the conditions of the electronic home monitoring  
2 penalty.

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

9 Whenever the combination of jail time and electronic home  
10 monitoring or alternative sentence would exceed three hundred sixty-  
11 four days, the offender shall serve the jail portion of the sentence  
12 first, and the electronic home monitoring or alternative portion of the  
13 sentence shall be reduced so that the combination does not exceed three  
14 hundred sixty-four days.

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

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

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

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

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

25 (iii) A conviction for a violation of RCW 46.61.520 committed while  
26 under the influence of intoxicating liquor or any drug, or a conviction  
27 for a violation of RCW 46.61.520 committed in a reckless manner or with  
28 the disregard for the safety of others if the conviction is the result  
29 of a charge that was originally filed as a violation of RCW 46.61.520  
30 committed while under the influence of intoxicating liquor or any drug;

31 (iv) A conviction for a violation of RCW 46.61.522 committed while  
32 under the influence of intoxicating liquor or any drug, or a conviction  
33 for a violation of RCW 46.61.522 committed in a reckless manner or with  
34 the disregard for the safety of others if the conviction is the result  
35 of a charge that was originally filed as a violation of RCW 46.61.522  
36 committed while under the influence of intoxicating liquor or any drug;

37 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
38 9A.36.050 or an equivalent local ordinance, if the conviction is the

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

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

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

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

16 (ix) A deferred prosecution granted in another state for a  
17 violation of driving or having physical control of a vehicle while  
18 under the influence of intoxicating liquor or any drug if the out-of-  
19 state deferred prosecution is equivalent to the deferred prosecution  
20 under chapter 10.05 RCW, including a requirement that the defendant  
21 participate in a chemical dependency treatment program;

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

26 (b) "Within seven years" means that the arrest for a prior offense  
27 occurred within seven years before or after the arrest for the current  
28 offense; and

29 (c) "Within ten years" means that the arrest for a prior offense  
30 occurred within ten years before or after the arrest for the current  
31 offense.

32 **Sec. 13.** RCW 46.61.5249 and 2011 c 293 s 5 are each amended to  
33 read as follows:

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

1 illegal drug or exhibits the effects of having inhaled or ingested any  
2 chemical, whether or not a legal substance, for its intoxicating or  
3 hallucinatory effects.

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

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

11 (2) For the purposes of this section:

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

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

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

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

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

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

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

31 (d) "Exhibiting the effects of having inhaled or ingested any  
32 chemical, whether or not a legal substance, for its intoxicating or  
33 hallucinatory effects" means that a person by speech, manner,  
34 appearance, behavior, or lack of coordination or otherwise exhibits  
35 that he or she has inhaled or ingested a chemical and either:

36 (i) Is in possession of the canister or container from which the  
37 chemical came; or

1        (ii) Is shown by other evidence to have recently inhaled or  
2 ingested a chemical for its intoxicating or hallucinatory effects.

3        (e) "Illegal drug" means a controlled substance under chapter 69.50  
4 RCW for which the driver does not have a valid prescription or that is  
5 not being consumed in accordance with the prescription directions and  
6 warnings, or a legend drug under chapter 69.41 RCW for which the driver  
7 does not have a valid prescription or that is not being consumed in  
8 accordance with the prescription directions and warnings.

9        (3) Any act prohibited by this section that also constitutes a  
10 crime under any other law of this state may be the basis of prosecution  
11 under such other law notwithstanding that it may also be the basis for  
12 prosecution under this section.

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

17        **Sec. 14.** RCW 46.61.540 and 1975 1st ex.s. c 287 s 5 are each  
18 amended to read as follows:

19        The word "drugs", as used in RCW 46.61.500 through 46.61.535, shall  
20 include but not be limited to those drugs and substances regulated by  
21 chapters 69.41 and 69.50 RCW and any chemical inhaled or ingested for  
22 its intoxicating or hallucinatory effects.

23        NEW SECTION. **Sec. 15.** A new section is added to chapter 43.43 RCW  
24 to read as follows:

25        (1) As part of the state patrol's authority to provide standards  
26 for certification, installation, repair, maintenance, monitoring,  
27 inspection, and removal of ignition interlock devices, the state patrol  
28 shall by rule establish a fee schedule and collect fees from ignition  
29 interlock manufacturers, technicians, providers, and persons required  
30 under RCW 46.20.385, 46.20.720, and 46.61.5055 to install an ignition  
31 interlock device in all vehicles owned or operated by the person. At  
32 a minimum, the fees must be set at a level necessary to support  
33 effective performance of the duties identified in this section. The  
34 state patrol must report back to the transportation committees of the  
35 legislature and the office of financial management by December 1st of

1 each year on the level of the fees that have been adopted and whether  
2 those fees are sufficient to cover the cost of performing the duties  
3 listed in this section.

4 (2) Fees collected under this section must be deposited into the  
5 highway safety account to be used solely to fund the Washington state  
6 patrol impaired driving section projects.

7 **Sec. 16.** RCW 43.43.395 and 2010 c 268 s 2 are each amended to read  
8 as follows:

9 (1) The state patrol shall by rule provide standards for the  
10 certification, installation, repair, maintenance, monitoring,  
11 inspection, and removal of ignition interlock devices, as defined under  
12 RCW 46.04.215, and equipment as outlined under this section, and may  
13 inspect the records and equipment of manufacturers and vendors during  
14 regular business hours for compliance with statutes and rules and may  
15 suspend or revoke certification for any noncompliance. The state  
16 patrol may only inspect ignition interlock devices in the vehicles of  
17 customers for proper installation and functioning when installation is  
18 being done at the vendors' place of business.

19 (2)(a) When a certified service provider or individual installer of  
20 ignition interlock devices is found to be out of compliance, the  
21 installation privileges of that certified service provider or  
22 individual installer may be suspended or revoked until the certified  
23 service provider or individual installer comes into compliance. During  
24 any suspension or revocation period, the certified service provider or  
25 individual installer is responsible for notifying affected customers of  
26 any changes in their service agreement.

27 (b) A certified service provider or individual installer whose  
28 certification is suspended or revoked for noncompliance has a right to  
29 an administrative hearing under chapter 34.05 RCW to contest the  
30 suspension or revocation, or both. For the administrative hearing, the  
31 procedure and rules of evidence are as specified in chapter 34.05 RCW,  
32 except as otherwise provided in this chapter. Any request for an  
33 administrative hearing must be made in writing and must be received by  
34 the state patrol within twenty days after the receipt of the notice of  
35 suspension or revocation.

36 (3)(a) An ignition interlock device must employ fuel cell  
37 technology. For the purposes of this subsection, "fuel cell

1 technology" consists of the following electrochemical method: An  
2 electrolyte designed to oxidize the alcohol and release electrons to be  
3 collected by an active electrode; a current flow is generated within  
4 the electrode proportional to the amount of alcohol oxidized on the  
5 fuel cell surface; and the electrical current is measured and reported  
6 as breath alcohol concentration. Fuel cell technology is highly  
7 specific for alcohols.

8 (b) When reasonably available in the area, as determined by the  
9 state patrol, an ignition interlock device must employ technology  
10 capable of taking a photo identification of the user giving the breath  
11 sample and recording on the photo the time the breath sample was given.

12 (c) To be certified, an ignition interlock device must:

13 (i) Meet or exceed the minimum test standards according to rules  
14 adopted by the state patrol. Only a notarized statement from a  
15 laboratory that is certified by the international organization of  
16 standardization and is capable of performing the tests specified will  
17 be accepted as proof of meeting or exceeding the standards. The  
18 notarized statement must include the name and signature of the person  
19 in charge of the tests under the following statement:

20 "Two samples of (model name), manufactured by (manufacturer)  
21 were tested by (laboratory) certified by the Internal Organization of  
22 Standardization. They do meet or exceed all specifications listed in  
23 the Federal Register, Volume 71, Number 31 (57 FR 11772), Breath  
24 Alcohol Ignition Interlock Devices (BAIID), NHTSA 2005-23470."; and

25 (ii) Be maintained in accordance with the rules and standards  
26 adopted by the state patrol.

27 NEW SECTION. Sec. 17. This act takes effect August 1, 2012.

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