
HOUSE BILL 1482

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By Representatives Goodman, Habib, Kirby, Orwall, Hurst, Moscoso, Takko, Seaquist, Bergquist, Ryu, Fey, Appleton, McCoy, Green, Lytton, Pollet, Liias, and Stonier

Read first time 01/29/13. Referred to Committee on Public Safety.

1 AN ACT Relating to impaired driving; amending RCW 2.28.175,
2 3.66.068, 3.66.067, 3.50.320, 3.50.330, 35.20.255, 9.94A.525,
3 10.31.100, 43.43.395, 9.94A.533, 46.20.720, 46.20.270, 9.94A.603,
4 46.25.090, 46.25.110, and 46.25.120; reenacting and amending RCW
5 46.61.5055 and 46.20.308; adding a new section to chapter 9.94A RCW;
6 and prescribing penalties.

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

8 **Sec. 1.** RCW 2.28.175 and 2012 c 183 s 1 are each amended to read
9 as follows:

10 (1) Counties and municipalities may establish and operate DUI
11 courts. Municipalities may also enter into cooperative agreements with
12 counties that have DUI 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 jurisdiction that establishes a DUI court pursuant to this
15 section shall establish minimum requirements for the participation of
16 offenders in the program. The DUI court may adopt local requirements
17 that are more stringent than the minimum. The minimum requirements
18 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 3.66.068 and 2010 c 274 s 405 are each amended to read
34 as follows:

35 (1) A court has continuing jurisdiction and authority to suspend
36 the execution of all or any part of its sentence upon stated terms,
37 including installment payment of fines for a period not to exceed:

1 (a) Five years after imposition of sentence for a defendant
2 sentenced for a domestic violence offense or under RCW 46.61.5055; and

3 (b) Two years after imposition of sentence for all other
4 offenses((, the)).

5 (2)(a) Except as provided in (b) of this subsection, a court has
6 continuing jurisdiction and authority to ((suspend or)) defer the
7 execution of all or any part of its sentence upon stated terms,
8 including installment payment of fines for a period not to exceed:

9 (i) Five years after imposition of sentence for a defendant
10 sentenced for a domestic violence offense; and

11 (ii) Two years after imposition of sentence for all other offenses.

12 (b) A court shall not defer sentence for an offense sentenced under
13 RCW 46.61.5055.

14 (3) A defendant who has been sentenced, or whose sentence has been
15 deferred, and who then fails to appear for any hearing to address the
16 defendant's compliance with the terms of probation when ordered to do
17 so by the court, shall have the term of probation tolled until such
18 time as the defendant makes his or her presence known to the court on
19 the record.

20 (4) However, the court's jurisdiction period in this section does
21 not apply to the enforcement of orders issued under RCW 46.20.720.

22 (5) For the purposes of this section, "domestic violence offense"
23 means a crime listed in RCW 10.99.020 that is not a felony offense.

24 **Sec. 3.** RCW 3.66.067 and 2001 c 94 s 1 are each amended to read as
25 follows:

26 After a conviction, the court may impose sentence by suspending all
27 or a portion of the defendant's sentence or by deferring the sentence
28 of the defendant and may place the defendant on probation for a period
29 of no longer than two years and prescribe the conditions thereof. A
30 defendant who has been sentenced, or whose sentence has been deferred,
31 and who then fails to appear for any hearing to address the defendant's
32 compliance with the terms of probation when ordered to do so by the
33 court, shall have the term of probation tolled until such time as the
34 defendant makes his or her presence known to the court on the record.
35 During the time of the deferral, the court may, for good cause shown,
36 permit a defendant to withdraw the plea of guilty and to enter a plea

1 of not guilty, and the court may dismiss the charges. A court shall
2 not defer sentence for an offense sentenced under RCW 46.61.5055.

3 **Sec. 4.** RCW 3.50.320 and 2001 c 94 s 4 are each amended to read as
4 follows:

5 After a conviction, the court may impose sentence by suspending all
6 or a portion of the defendant's sentence or by deferring the sentence
7 of the defendant and may place the defendant on probation for a period
8 of no longer than two years and prescribe the conditions thereof. A
9 defendant who has been sentenced, or whose sentence has been deferred,
10 and who then fails to appear for any hearing to address the defendant's
11 compliance with the terms of probation when ordered to do so by the
12 court, shall have the term of probation tolled until such time as the
13 defendant makes his or her presence known to the court on the record.
14 During the time of the deferral, the court may, for good cause shown,
15 permit a defendant to withdraw the plea of guilty, permit the defendant
16 to enter a plea of not guilty, and dismiss the charges. A court shall
17 not defer sentence for an offense sentenced under RCW 46.61.5055.

18 **Sec. 5.** RCW 3.50.330 and 2010 c 274 s 406 are each amended to read
19 as follows:

20 (1) A court has continuing jurisdiction and authority to suspend
21 the execution of all or any part of its sentence upon stated terms,
22 including installment payment of fines for a period not to exceed:

23 (a) Five years after imposition of sentence for a defendant
24 sentenced for a domestic violence offense or under RCW 46.61.5055; and

25 (b) Two years after imposition of sentence for all other
26 offenses(~~(, the)~~).

27 (2)(a) Except as provided in (b) of this subsection, a court shall
28 have continuing jurisdiction and authority to (~~suspend or~~) defer the
29 execution of all or any part of the sentence upon stated terms,
30 including installment payment of fines for a period not to exceed:

31 (i) Five years after imposition of sentence for a defendant
32 sentenced for a domestic violence offense; and

33 (ii) Two years after imposition of sentence for all other offenses.

34 (b) A court shall not defer sentence for an offense sentenced under
35 RCW 46.61.5055.

1 (3) A defendant who has been sentenced, or whose sentence has been
2 deferred, and who then fails to appear for any hearing to address the
3 defendant's compliance with the terms of probation when ordered to do
4 so by the court, shall have the term of probation tolled until such
5 time as the defendant makes his or her presence known to the court on
6 the record.

7 (4) However, the court's jurisdiction period in this section does
8 not apply to the enforcement of orders issued under RCW 46.20.720.

9 (5) Any time before entering an order terminating probation, the
10 court may modify or revoke its order suspending or deferring the
11 imposition or execution of the sentence.

12 (6) For the purposes of this section, "domestic violence offense"
13 means a crime listed in RCW 10.99.020 that is not a felony offense.

14 **Sec. 6.** RCW 35.20.255 and 2010 c 274 s 407 are each amended to
15 read as follows:

16 (1) Except as provided in subsection (3) of this section, judges of
17 the municipal court, in their discretion, shall have the power in all
18 criminal proceedings within their jurisdiction including violations of
19 city ordinances, to defer imposition of any sentence, suspend all or
20 part of any sentence including installment payment of fines, fix the
21 terms of any such deferral or suspension, and provide for such
22 probation as in their opinion is reasonable and necessary under the
23 circumstances of the case, but in no case shall it extend for more than
24 five years from the date of conviction for a defendant to be sentenced
25 for a domestic violence offense or under RCW 46.61.5055 and two years
26 from the date of conviction for all other offenses. A defendant who
27 has been sentenced, or whose sentence has been deferred, and who then
28 fails to appear for any hearing to address the defendant's compliance
29 with the terms of probation when ordered to do so by the court, shall
30 have the term of probation tolled until such time as the defendant
31 makes his or her presence known to the court on the record. However,
32 the jurisdiction period in this section does not apply to the
33 enforcement of orders issued under RCW 46.20.720. Any time before
34 entering an order terminating probation, the court may modify or revoke
35 its order suspending or deferring the imposition or execution of the
36 sentence. For the purposes of this subsection, "domestic violence

1 offense" means a crime listed in RCW 10.99.020 that is not a felony
2 offense.

3 (2)(a) If a defendant whose sentence has been deferred requests
4 permission to travel or transfer to another state, the director of
5 probation services or a designee thereof shall determine whether such
6 request is subject to RCW 9.94A.745, the interstate compact for adult
7 offender supervision. If such request is subject to the compact, the
8 director or designee shall:

9 (i) Notify the department of corrections of the defendant's
10 request;

11 (ii) Provide the department of corrections with the supporting
12 documentation it requests for processing an application for transfer;

13 (iii) Notify the defendant of the fee due to the department of
14 corrections for processing an application under the compact;

15 (iv) Cease supervision of the defendant while another state
16 supervises the defendant pursuant to the compact;

17 (v) Resume supervision if the defendant returns to this state
18 before the period of deferral expires.

19 (b) The defendant shall receive credit for time served while being
20 supervised by another state.

21 (c) If the probationer is returned to the state at the request of
22 the receiving state under rules of the interstate compact for adult
23 offender supervision, the department of corrections is responsible for
24 the cost of returning the probationer.

25 (d) The state of Washington, the department of corrections and its
26 employees, and any city and its employees are not liable for civil
27 damages resulting from any act or omission authorized or required under
28 this section unless the act or omission constitutes gross negligence.

29 (3) Judges of the municipal court shall not defer sentence for an
30 offense sentenced under RCW 46.61.5055.

31 **Sec. 7.** RCW 9.94A.525 and 2011 c 166 s 3 are each amended to read
32 as follows:

33 The offender score is measured on the horizontal axis of the
34 sentencing grid. The offender score rules are as follows:

35 The offender score is the sum of points accrued under this section
36 rounded down to the nearest whole number.

1 (1) A prior conviction is a conviction which exists before the date
2 of sentencing for the offense for which the offender score is being
3 computed. Convictions entered or sentenced on the same date as the
4 conviction for which the offender score is being computed shall be
5 deemed "other current offenses" within the meaning of RCW 9.94A.589.

6 (2)(a) Class A and sex prior felony convictions shall always be
7 included in the offender score.

8 (b) Class B prior felony convictions other than sex offenses shall
9 not be included in the offender score, if since the last date of
10 release from confinement (including full-time residential treatment)
11 pursuant to a felony conviction, if any, or entry of judgment and
12 sentence, the offender had spent ten consecutive years in the community
13 without committing any crime that subsequently results in a conviction.

14 (c) Except as provided in (e) of this subsection, class C prior
15 felony convictions other than sex offenses shall not be included in the
16 offender score if, since the last date of release from confinement
17 (including full-time residential treatment) pursuant to a felony
18 conviction, if any, or entry of judgment and sentence, the offender had
19 spent five consecutive years in the community without committing any
20 crime that subsequently results in a conviction.

21 (d) Except as provided in (e) of this subsection, serious traffic
22 convictions shall not be included in the offender score if, since the
23 last date of release from confinement (including full-time residential
24 treatment) pursuant to a ((felony)) conviction, if any, or entry of
25 judgment and sentence, the offender spent five years in the community
26 without committing any crime that subsequently results in a conviction.

27 (e) If the present conviction is felony driving while under the
28 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
29 felony physical control of a vehicle while under the influence of
30 intoxicating liquor or any drug (RCW 46.61.504(6)), ((prior convictions
31 ef)) one point must be counted for each felony driving while under the
32 influence of intoxicating liquor or any drug conviction, felony
33 physical control of a vehicle while under the influence of intoxicating
34 liquor or any drug conviction, ((and)) serious traffic offense((s shall
35 be included in the offender score if: (i) The prior convictions were
36 committed within five years since the last date of release from
37 confinement (including full-time residential treatment) or entry of
38 judgment and sentence; or (ii) the)) conviction, and prior

1 conviction(~~s~~) that would be considered "prior offenses within ten
2 years" as defined in RCW 46.61.5055. If the present conviction is
3 felony driving while under the influence of intoxicating liquor or any
4 drug (RCW 46.61.502(6)) or felony physical control of a vehicle while
5 under the influence of intoxicating liquor or any drug (RCW
6 46.61.504(6)), prior convictions of felony driving while under the
7 influence of intoxicating liquor or any drug and prior convictions of
8 felony physical control of a vehicle while under the influence of
9 intoxicating liquor or any drug shall always be included in the
10 offender score.

11 (f) Prior convictions for a repetitive domestic violence offense,
12 as defined in RCW 9.94A.030, shall not be included in the offender
13 score if, since the last date of release from confinement or entry of
14 judgment and sentence, the offender had spent ten consecutive years in
15 the community without committing any crime that subsequently results in
16 a conviction.

17 (g) This subsection applies to both adult and juvenile prior
18 convictions.

19 (3) Out-of-state convictions for offenses shall be classified
20 according to the comparable offense definitions and sentences provided
21 by Washington law. Federal convictions for offenses shall be
22 classified according to the comparable offense definitions and
23 sentences provided by Washington law. If there is no clearly
24 comparable offense under Washington law or the offense is one that is
25 usually considered subject to exclusive federal jurisdiction, the
26 offense shall be scored as a class C felony equivalent if it was a
27 felony under the relevant federal statute.

28 (4) Score prior convictions for felony anticipatory offenses
29 (attempts, criminal solicitations, and criminal conspiracies) the same
30 as if they were convictions for completed offenses.

31 (5)(a) In the case of multiple prior convictions, for the purpose
32 of computing the offender score, count all convictions separately,
33 except:

34 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
35 encompass the same criminal conduct, shall be counted as one offense,
36 the offense that yields the highest offender score. The current
37 sentencing court shall determine with respect to other prior adult
38 offenses for which sentences were served concurrently or prior juvenile

1 offenses for which sentences were served consecutively, whether those
2 offenses shall be counted as one offense or as separate offenses using
3 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
4 if the court finds that they shall be counted as one offense, then the
5 offense that yields the highest offender score shall be used. The
6 current sentencing court may presume that such other prior offenses
7 were not the same criminal conduct from sentences imposed on separate
8 dates, or in separate counties or jurisdictions, or in separate
9 complaints, indictments, or informations;

10 (ii) In the case of multiple prior convictions for offenses
11 committed before July 1, 1986, for the purpose of computing the
12 offender score, count all adult convictions served concurrently as one
13 offense, and count all juvenile convictions entered on the same date as
14 one offense. Use the conviction for the offense that yields the
15 highest offender score.

16 (b) As used in this subsection (5), "served concurrently" means
17 that: (i) The latter sentence was imposed with specific reference to
18 the former; (ii) the concurrent relationship of the sentences was
19 judicially imposed; and (iii) the concurrent timing of the sentences
20 was not the result of a probation or parole revocation on the former
21 offense.

22 (6) If the present conviction is one of the anticipatory offenses
23 of criminal attempt, solicitation, or conspiracy, count each prior
24 conviction as if the present conviction were for a completed offense.
25 When these convictions are used as criminal history, score them the
26 same as a completed crime.

27 (7) If the present conviction is for a nonviolent offense and not
28 covered by subsection (11), (12), or (13) of this section, count one
29 point for each adult prior felony conviction and one point for each
30 juvenile prior violent felony conviction and 1/2 point for each
31 juvenile prior nonviolent felony conviction.

32 (8) If the present conviction is for a violent offense and not
33 covered in subsection (9), (10), (11), (12), or (13) of this section,
34 count two points for each prior adult and juvenile violent felony
35 conviction, one point for each prior adult nonviolent felony
36 conviction, and 1/2 point for each prior juvenile nonviolent felony
37 conviction.

1 (9) If the present conviction is for a serious violent offense,
2 count three points for prior adult and juvenile convictions for crimes
3 in this category, two points for each prior adult and juvenile violent
4 conviction (not already counted), one point for each prior adult
5 nonviolent felony conviction, and 1/2 point for each prior juvenile
6 nonviolent felony conviction.

7 (10) If the present conviction is for Burglary 1, count prior
8 convictions as in subsection (8) of this section; however count two
9 points for each prior adult Burglary 2 or residential burglary
10 conviction, and one point for each prior juvenile Burglary 2 or
11 residential burglary conviction.

12 (11) If the present conviction is for a felony traffic offense
13 count two points for each adult or juvenile prior conviction for
14 Vehicular Homicide or Vehicular Assault; for each felony offense count
15 one point for each adult and 1/2 point for each juvenile prior
16 conviction; for each serious traffic offense, other than those used for
17 an enhancement pursuant to RCW 46.61.520(2), count one point for each
18 adult and 1/2 point for each juvenile prior conviction; count one point
19 for each adult and 1/2 point for each juvenile prior conviction for
20 operation of a vessel while under the influence of intoxicating liquor
21 or any drug.

22 (12) If the present conviction is for homicide by watercraft or
23 assault by watercraft count two points for each adult or juvenile prior
24 conviction for homicide by watercraft or assault by watercraft; for
25 each felony offense count one point for each adult and 1/2 point for
26 each juvenile prior conviction; count one point for each adult and 1/2
27 point for each juvenile prior conviction for driving under the
28 influence of intoxicating liquor or any drug, actual physical control
29 of a motor vehicle while under the influence of intoxicating liquor or
30 any drug, or operation of a vessel while under the influence of
31 intoxicating liquor or any drug.

32 (13) If the present conviction is for manufacture of
33 methamphetamine count three points for each adult prior manufacture of
34 methamphetamine conviction and two points for each juvenile manufacture
35 of methamphetamine offense. If the present conviction is for a drug
36 offense and the offender has a criminal history that includes a sex
37 offense or serious violent offense, count three points for each adult
38 prior felony drug offense conviction and two points for each juvenile

1 drug offense. All other adult and juvenile felonies are scored as in
2 subsection (8) of this section if the current drug offense is violent,
3 or as in subsection (7) of this section if the current drug offense is
4 nonviolent.

5 (14) If the present conviction is for Escape from Community
6 Custody, RCW 72.09.310, count only prior escape convictions in the
7 offender score. Count adult prior escape convictions as one point and
8 juvenile prior escape convictions as 1/2 point.

9 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
10 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
11 juvenile prior convictions as 1/2 point.

12 (16) If the present conviction is for Burglary 2 or residential
13 burglary, count priors as in subsection (7) of this section; however,
14 count two points for each adult and juvenile prior Burglary 1
15 conviction, two points for each adult prior Burglary 2 or residential
16 burglary conviction, and one point for each juvenile prior Burglary 2
17 or residential burglary conviction.

18 (17) If the present conviction is for a sex offense, count priors
19 as in subsections (7) through (11) and (13) through (16) of this
20 section; however count three points for each adult and juvenile prior
21 sex offense conviction.

22 (18) If the present conviction is for failure to register as a sex
23 offender under RCW 9A.44.130 or 9A.44.132, count priors as in
24 subsections (7) through (11) and (13) through (16) of this section;
25 however count three points for each adult and juvenile prior sex
26 offense conviction, excluding prior convictions for failure to register
27 as a sex offender under RCW 9A.44.130 or 9A.44.132, which shall count
28 as one point.

29 (19) If the present conviction is for an offense committed while
30 the offender was under community custody, add one point. For purposes
31 of this subsection, community custody includes community placement or
32 postrelease supervision, as defined in chapter 9.94B RCW.

33 (20) If the present conviction is for Theft of a Motor Vehicle,
34 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
35 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
36 priors as in subsections (7) through (18) of this section; however
37 count one point for prior convictions of Vehicle Prowling 2, and three
38 points for each adult and juvenile prior Theft 1 (of a motor vehicle),

1 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a
2 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),
3 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a
4 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without
5 Permission 2 conviction.

6 (21) If the present conviction is for a felony domestic violence
7 offense where domestic violence as defined in RCW 9.94A.030 was plead
8 and proven, count priors as in subsections (7) through (20) of this
9 section; however, count points as follows:

10 (a) Count two points for each adult prior conviction where domestic
11 violence as defined in RCW 9.94A.030 was plead and proven after August
12 1, 2011, for the following offenses: A violation of a no-contact order
13 that is a felony offense, a violation of a protection order that is a
14 felony offense, a felony domestic violence harassment offense, a felony
15 domestic violence stalking offense, a domestic violence Burglary 1
16 offense, a domestic violence Kidnapping 1 offense, a domestic violence
17 Kidnapping 2 offense, a domestic violence unlawful imprisonment
18 offense, a domestic violence Robbery 1 offense, a domestic violence
19 Robbery 2 offense, a domestic violence Assault 1 offense, a domestic
20 violence Assault 2 offense, a domestic violence Assault 3 offense, a
21 domestic violence Arson 1 offense, or a domestic violence Arson 2
22 offense;

23 (b) Count one point for each second and subsequent juvenile
24 conviction where domestic violence as defined in RCW 9.94A.030 was
25 plead and proven after August 1, 2011, for the offenses listed in (a)
26 of this subsection; and

27 (c) Count one point for each adult prior conviction for a
28 repetitive domestic violence offense as defined in RCW 9.94A.030, where
29 domestic violence as defined in RCW 9.94A.030, was plead and proven
30 after August 1, 2011.

31 (22) The fact that a prior conviction was not included in an
32 offender's offender score or criminal history at a previous sentencing
33 shall have no bearing on whether it is included in the criminal history
34 or offender score for the current offense. Prior convictions that were
35 not counted in the offender score or included in criminal history under
36 repealed or previous versions of the sentencing reform act shall be
37 included in criminal history and shall count in the offender score if
38 the current version of the sentencing reform act requires including or

1 counting those convictions. Prior convictions that were not included
2 in criminal history or in the offender score shall be included upon any
3 resentencing to ensure imposition of an accurate sentence.

4 **Sec. 8.** RCW 10.31.100 and 2010 c 274 s 201 are each amended to
5 read as follows:

6 A police officer having probable cause to believe that a person has
7 committed or is committing a felony shall have the authority to arrest
8 the person without a warrant. A police officer may arrest a person
9 without a warrant for committing a misdemeanor or gross misdemeanor
10 only when the offense is committed in the presence of the officer,
11 except as provided in subsections (1) through (10) of this section.

12 (1) Any police officer having probable cause to believe that a
13 person has committed or is committing a misdemeanor or gross
14 misdemeanor, involving physical harm or threats of harm to any person
15 or property or the unlawful taking of property or involving the use or
16 possession of cannabis, or involving the acquisition, possession, or
17 consumption of alcohol by a person under the age of twenty-one years
18 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070
19 or 9A.52.080, shall have the authority to arrest the person.

20 (2) A police officer shall arrest and take into custody, pending
21 release on bail, personal recognizance, or court order, a person
22 without a warrant when the officer has probable cause to believe that:

23 (a) An order has been issued of which the person has knowledge
24 under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26,
25 26.50, or 74.34 RCW restraining the person and the person has violated
26 the terms of the order restraining the person from acts or threats of
27 violence, or restraining the person from going onto the grounds of or
28 entering a residence, workplace, school, or day care, or prohibiting
29 the person from knowingly coming within, or knowingly remaining within,
30 a specified distance of a location or, in the case of an order issued
31 under RCW 26.44.063, imposing any other restrictions or conditions upon
32 the person; or

33 (b) A foreign protection order, as defined in RCW 26.52.010, has
34 been issued of which the person under restraint has knowledge and the
35 person under restraint has violated a provision of the foreign
36 protection order prohibiting the person under restraint from contacting
37 or communicating with another person, or excluding the person under

1 restraint from a residence, workplace, school, or day care, or
2 prohibiting the person from knowingly coming within, or knowingly
3 remaining within, a specified distance of a location, or a violation of
4 any provision for which the foreign protection order specifically
5 indicates that a violation will be a crime; or

6 (c) The person is sixteen years or older and within the preceding
7 four hours has assaulted a family or household member as defined in RCW
8 10.99.020 and the officer believes: (i) A felonious assault has
9 occurred; (ii) an assault has occurred which has resulted in bodily
10 injury to the victim, whether the injury is observable by the
11 responding officer or not; or (iii) that any physical action has
12 occurred which was intended to cause another person reasonably to fear
13 imminent serious bodily injury or death. Bodily injury means physical
14 pain, illness, or an impairment of physical condition. When the
15 officer has probable cause to believe that family or household members
16 have assaulted each other, the officer is not required to arrest both
17 persons. The officer shall arrest the person whom the officer believes
18 to be the primary physical aggressor. In making this determination,
19 the officer shall make every reasonable effort to consider: (i) The
20 intent to protect victims of domestic violence under RCW 10.99.010;
21 (ii) the comparative extent of injuries inflicted or serious threats
22 creating fear of physical injury; and (iii) the history of domestic
23 violence of each person involved, including whether the conduct was
24 part of an ongoing pattern of abuse.

25 (3) Any police officer having probable cause to believe that a
26 person has committed or is committing a violation of any of the
27 following traffic laws shall have the authority to arrest the person:

28 (a) RCW 46.52.010, relating to duty on striking an unattended car
29 or other property;

30 (b) RCW 46.52.020, relating to duty in case of injury to or death
31 of a person or damage to an attended vehicle;

32 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or
33 racing of vehicles;

34 (d) RCW 46.61.502 or 46.61.504, relating to persons under the
35 influence of intoxicating liquor or drugs;

36 (e) RCW 46.61.503 or 46.25.110, relating to persons having alcohol
37 in their system;

1 (f) RCW 46.20.342, relating to driving a motor vehicle while
2 operator's license is suspended or revoked;

3 ~~((+f+))~~ (g) RCW 46.61.5249, relating to operating a motor vehicle
4 in a negligent manner.

5 (4) A law enforcement officer investigating at the scene of a motor
6 vehicle accident may arrest the driver of a motor vehicle involved in
7 the accident if the officer has probable cause to believe that the
8 driver has committed in connection with the accident a violation of any
9 traffic law or regulation.

10 (5) Any police officer having probable cause to believe that a
11 person has committed or is committing a violation of RCW 79A.60.040
12 shall have the authority to arrest the person.

13 (6) An officer may act upon the request of a law enforcement
14 officer in whose presence a traffic infraction was committed, to stop,
15 detain, arrest, or issue a notice of traffic infraction to the driver
16 who is believed to have committed the infraction. The request by the
17 witnessing officer shall give an officer the authority to take
18 appropriate action under the laws of the state of Washington.

19 (7) Any police officer having probable cause to believe that a
20 person has committed or is committing any act of indecent exposure, as
21 defined in RCW 9A.88.010, may arrest the person.

22 (8) A police officer may arrest and take into custody, pending
23 release on bail, personal recognizance, or court order, a person
24 without a warrant when the officer has probable cause to believe that
25 an order has been issued of which the person has knowledge under
26 chapter 10.14 RCW and the person has violated the terms of that order.

27 (9) Any police officer having probable cause to believe that a
28 person has, within twenty-four hours of the alleged violation,
29 committed a violation of RCW 9A.50.020 may arrest such person.

30 (10) A police officer having probable cause to believe that a
31 person illegally possesses or illegally has possessed a firearm or
32 other dangerous weapon on private or public elementary or secondary
33 school premises shall have the authority to arrest the person.

34 For purposes of this subsection, the term "firearm" has the meaning
35 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning
36 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

37 (11) Except as specifically provided in subsections (2), (3), (4),

1 and (6) of this section, nothing in this section extends or otherwise
2 affects the powers of arrest prescribed in Title 46 RCW.

3 (12) No police officer may be held criminally or civilly liable for
4 making an arrest pursuant to subsection (2) or (8) of this section if
5 the police officer acts in good faith and without malice.

6 **Sec. 9.** RCW 46.61.5055 and 2012 c 183 s 12, 2012 c 42 s 2, and
7 2012 c 28 s 1 are each reenacted and amended to read as follows:

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

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

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

35 (ii) By a fine of not less than three hundred fifty dollars nor
36 more than five thousand dollars. Three hundred fifty dollars of the

1 fine may not be suspended or deferred unless the court finds the
2 offender to be indigent; or

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

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

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

30 (2) **One prior offense in seven years.** Except as provided in RCW
31 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation
32 of RCW 46.61.502 or 46.61.504 and who has one prior offense within
33 seven years shall be punished as follows:

34 (a) **Penalty for alcohol concentration less than 0.15.** In the case
35 of a person whose alcohol concentration was less than 0.15, or for whom
36 for reasons other than the person's refusal to take a test offered
37 pursuant to RCW 46.20.308 there is no test result indicating the
38 person's alcohol concentration:

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

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

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

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

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

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

12 (3) **Two to three prior offenses in seven years.** Except as provided
13 in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a
14 violation of RCW 46.61.502 or 46.61.504 and who has two or three prior
15 offenses within seven years shall be punished as follows:

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

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

1 deferral and the facts upon which the suspension or deferral is based;
2 and

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

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

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

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

35 (4) **Four or more prior offenses in ten years.** A person who is
36 convicted of a violation of RCW 46.61.502 or 46.61.504 shall be
37 punished under chapter 9.94A RCW if:

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

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

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

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

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

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

9 (5)(a) **Mandated alcohol monitoring device.** The court shall require
10 any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an
11 equivalent local ordinance to comply with the rules and requirements of
12 the department regarding the installation and use of a functioning
13 ignition interlock device installed on all motor vehicles operated by
14 the person.

15 (b) If the court orders that a person refrain from consuming any
16 alcohol, the court may order the person to submit to alcohol monitoring
17 through an alcohol detection breathalyzer device, transdermal sensor
18 device, or other technology designed to detect alcohol in a person's
19 system. The person shall pay for the cost of the monitoring, unless
20 the court specifies that the cost of monitoring will be paid with funds
21 that are available from an alternative source identified by the court.
22 The county or municipality where the penalty is being imposed shall
23 determine the cost.

24 (6) **Penalty for having a minor passenger in vehicle.** In addition
25 to any other penalty provided by law, if a person who is convicted of
26 a violation of RCW 46.61.502 or 46.61.504 committed the offense while
27 a passenger under the age of sixteen was in the vehicle, the ((court
28 shall)) following must occur:

29 (a) ((Order)) The court shall require the use of an ignition
30 interlock or other device for an additional six months;

31 (b) In any case in which the person has no prior offenses within
32 seven years, and except as provided in RCW 46.61.502(6) or
33 46.61.504(6), order ((a)) an additional penalty by ((a)) an additional
34 fine of not less than one thousand dollars and not more than five
35 thousand dollars. One thousand dollars of the fine may not be
36 suspended or deferred unless the court finds the offender to be
37 indigent;

1 (c) In any case in which the person has one prior offense within
2 seven years, and except as provided in RCW 46.61.502(6) or
3 46.61.504(6), order ((a)) an additional penalty by ((a)) an additional
4 fine of not less than two thousand dollars and not more than five
5 thousand dollars. One thousand dollars of the fine may not be
6 suspended or deferred unless the court finds the offender to be
7 indigent;

8 (d) In any case in which the person has two or three prior offenses
9 within seven years, and except as provided in RCW 46.61.502(6) or
10 46.61.504(6), order ((a)) an additional penalty by ((a)) an additional
11 fine of not less than three thousand dollars and not more than ten
12 thousand dollars. One thousand dollars of the fine may not be
13 suspended or deferred unless the court finds the offender to be
14 indigent.

15 (7) **Other items courts must consider while setting penalties.** In
16 exercising its discretion in setting penalties within the limits
17 allowed by this section, the court shall particularly consider the
18 following:

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

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

23 (8) **Treatment and information school.** An offender punishable under
24 this section is subject to the alcohol assessment and treatment
25 provisions of RCW 46.61.5056.

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

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

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

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

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

3 (b) **Penalty for alcohol concentration at least 0.15.** If the
4 person's alcohol concentration was at least 0.15:

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

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

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

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

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

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

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

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

24 Upon its own motion or upon motion by a person, a court may find,
25 on the record, that notice to the department under RCW 46.20.270 has
26 been delayed for three years or more as a result of a clerical or court
27 error. If so, the court may order that the person's license, permit,
28 or nonresident privilege shall not be revoked, suspended, or denied for
29 that offense. The court shall send notice of the finding and order to
30 the department and to the person. Upon receipt of the notice from the
31 court, the department shall not revoke, suspend, or deny the license,
32 permit, or nonresident privilege of the person for that offense.

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

36 (10) **Probation of driving privilege.** After expiration of any
37 period of suspension, revocation, or denial of the offender's license,

1 permit, or privilege to drive required by this section, the department
2 shall place the offender's driving privilege in probationary status
3 pursuant to RCW 46.20.355.

4 (11) Conditions of probation. (a) In addition to any
5 nonsuspendable and nondeferrable jail sentence required by this
6 section, whenever the court imposes up to three hundred sixty-four days
7 in jail, the court shall also suspend but shall not defer a period of
8 confinement for a period not exceeding five years. The court shall
9 impose conditions of probation that include: (i) Not driving a motor
10 vehicle within this state without both a valid license to drive and
11 proof of liability insurance or other financial responsibility for the
12 future pursuant to RCW 46.30.020; (ii) not driving a motor vehicle
13 within this state while having an alcohol concentration of 0.08 or more
14 or any measurable amount of drug concentration within two hours after
15 driving; and (iii) not refusing to submit to a test of his or her
16 breath or blood to determine alcohol or drug concentration upon request
17 of a law enforcement officer who has reasonable grounds to believe the
18 person was driving or was in actual physical control of a motor vehicle
19 within this state while under the influence of intoxicating liquor or
20 drug. The court may impose conditions of probation that include
21 nonrepetition, installation of an ignition interlock device on the
22 probationer's motor vehicle, alcohol or drug treatment, supervised
23 probation, or other conditions that may be appropriate. The sentence
24 may be imposed in whole or in part upon violation of a condition of
25 probation during the suspension period.

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

30 (c) For each incident involving a violation of a mandatory
31 condition of probation imposed under this subsection, the license,
32 permit, or privilege to drive of the person shall be suspended by the
33 court for thirty days or, if such license, permit, or privilege to
34 drive already is suspended, revoked, or denied at the time the finding
35 of probation violation is made, the suspension, revocation, or denial
36 then in effect shall be extended by thirty days. The court shall
37 notify the department of any suspension, revocation, or denial or any

1 extension of a suspension, revocation, or denial imposed under this
2 subsection.

3 (12) **Waiver of electronic home monitoring.** A court may waive the
4 electronic home monitoring requirements of this chapter when:

5 (a) The offender does not have a dwelling, telephone service, or
6 any other necessity to operate an electronic home monitoring system.
7 However, if a court determines that an alcohol monitoring device
8 utilizing wireless reporting technology is reasonably available, the
9 court may require the person to obtain such a device during the period
10 of required electronic home monitoring;

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

12 (c) The court determines that there is reason to believe that the
13 offender would violate the conditions of the electronic home monitoring
14 penalty.

15 Whenever the mandatory minimum term of electronic home monitoring
16 is waived, the court shall state in writing the reason for granting the
17 waiver and the facts upon which the waiver is based, and shall impose
18 an alternative sentence with similar punitive consequences. The
19 alternative sentence may include, but is not limited to, use of an
20 ignition interlock device, additional jail time, work crew, or work
21 camp.

22 Whenever the combination of jail time and electronic home
23 monitoring or alternative sentence would exceed three hundred sixty-
24 four days, the offender shall serve the jail portion of the sentence
25 first, and the electronic home monitoring or alternative portion of the
26 sentence shall be reduced so that the combination does not exceed three
27 hundred sixty-four days.

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

33 (14) **Definitions.** For purposes of this section and RCW 46.61.502
34 and 46.61.504:

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

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

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

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

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

15 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
16 9A.36.050 or an equivalent local ordinance, if the conviction is the
17 result of a charge that was originally filed as a violation of RCW
18 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
19 46.61.520 or 46.61.522;

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

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

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

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

1 (x) If a deferred prosecution is revoked based on a subsequent
2 conviction for an offense listed in this subsection (14)(a), the
3 subsequent conviction shall not be treated as a prior offense of the
4 revoked deferred prosecution for the purposes of sentencing; or

5 (xi) A deferred sentence imposed in a prosecution for a violation
6 of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local
7 ordinance, if the charge under which the deferred sentence was imposed
8 was originally filed as a violation of RCW 46.61.502 or 46.61.504, or
9 an equivalent local ordinance, or a violation of RCW 46.61.520 or
10 46.61.522;

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

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

17 **Sec. 10.** RCW 43.43.395 and 2012 c 183 s 16 are each amended to
18 read as follows:

19 (1) The state patrol shall by rule provide standards for the
20 certification, installation, repair, maintenance, monitoring,
21 inspection, and removal of ignition interlock devices, as defined under
22 RCW 46.04.215, and equipment as outlined under this section, and may
23 inspect the records and equipment of manufacturers and vendors during
24 regular business hours for compliance with statutes and rules and may
25 suspend or revoke certification for any noncompliance. The state
26 patrol may only inspect ignition interlock devices in the vehicles of
27 customers for proper installation and functioning when installation is
28 being done at the vendors' place of business.

29 (2)(a) When a certified service provider or individual installer of
30 ignition interlock devices is found to be out of compliance, the
31 installation privileges of that certified service provider or
32 individual installer may be suspended or revoked until the certified
33 service provider or individual installer comes into compliance. During
34 any suspension or revocation period, the certified service provider or
35 individual installer is responsible for notifying affected customers of
36 any changes in their service agreement.

1 (b) A certified service provider or individual installer whose
2 certification is suspended or revoked for noncompliance has a right to
3 an administrative hearing under chapter 34.05 RCW to contest the
4 suspension or revocation, or both. For the administrative hearing, the
5 procedure and rules of evidence are as specified in chapter 34.05 RCW,
6 except as otherwise provided in this chapter. Any request for an
7 administrative hearing must be made in writing and must be received by
8 the state patrol within twenty days after the receipt of the notice of
9 suspension or revocation.

10 (3)(a) An ignition interlock device must employ fuel cell
11 technology. For the purposes of this subsection, "fuel cell
12 technology" consists of the following electrochemical method: An
13 electrolyte designed to oxidize the alcohol and release electrons to be
14 collected by an active electrode; a current flow is generated within
15 the electrode proportional to the amount of alcohol oxidized on the
16 fuel cell surface; and the electrical current is measured and reported
17 as breath alcohol concentration. Fuel cell technology is highly
18 specific for alcohols.

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

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

24 (i) Meet or exceed the minimum test standards according to rules
25 adopted by the state patrol. Only a notarized statement from a
26 laboratory that is certified by the international organization of
27 standardization and is capable of performing the tests specified will
28 be accepted as proof of meeting or exceeding the standards. The
29 notarized statement must include the name and signature of the person
30 in charge of the tests under the ~~((following statement:~~

31 ~~"Two samples of (model name), manufactured by (manufacturer)
32 were tested by (laboratory) certified by the International Organization of
33 Standardization. They do meet or exceed all specifications listed in
34 the Federal Register, Volume 71, Number 31 (57 FR 11772), Breath
35 Alcohol Ignition Interlock Devices (BAIID), NHTSA 2005-23470."~~)~~
36 certification statement. The state patrol must adopt by rule the
37 required language of the certification statement that must, at a~~

1 minimum, outline that the testing meets or exceeds all specifications
2 listed in the federal register adopted in rule by the state patrol; and

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

5 **Sec. 11.** RCW 9.94A.533 and 2012 c 42 s 3 are each amended to read
6 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (11) An additional twelve months and one day shall be added to the
14 standard sentence range for a conviction of attempting to elude a
15 police vehicle as defined by RCW 46.61.024, if the conviction included
16 a finding by special allegation of endangering one or more persons
17 under RCW 9.94A.834. The enhancement under this subsection shall be
18 mandatory, shall be served in total confinement, and shall run
19 consecutively with all other sentencing provisions.

20 (12) An additional twelve months shall be added to the standard
21 sentence range for an offense that is also a violation of RCW
22 9.94A.831.

23 (13) An additional twelve months shall be added to the standard
24 sentence range for vehicular homicide committed while under the
25 influence of intoxicating liquor or any drug as defined by RCW
26 46.61.520 or for vehicular assault committed while under the influence
27 of intoxicating liquor or any drug as defined by RCW 46.61.522, or for
28 any felony driving under the influence (RCW 46.61.502(6)) or felony
29 physical control under the influence (RCW 46.61.504(6)) for each child
30 passenger under the age of sixteen who is an occupant in the
31 defendant's vehicle. These enhancements shall be mandatory, shall be
32 served in total confinement, and shall run consecutively to all other
33 sentencing provisions. If the addition of a minor child enhancement
34 increases the sentence so that it would exceed the statutory maximum
35 for the offense, the portion of the sentence representing the
36 enhancement may not be reduced.

37 (14) An additional twelve months shall be added to the standard
38 sentence range for an offense that is also a violation of section 17 of

1 this act. The enhancement under this subsection shall be mandatory,
2 shall be served in total confinement, and shall run consecutively with
3 all other sentencing provisions.

4 **Sec. 12.** RCW 46.20.720 and 2012 c 183 s 9 are each amended to read
5 as follows:

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

15 (2) Under RCW 46.61.5055 and subject to the exceptions listed in
16 that statute, the court shall order any person convicted of a violation
17 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to
18 comply with the rules and requirements of the department regarding the
19 installation and use of a functioning ignition interlock device
20 installed on all motor vehicles operated by the person. The court
21 shall order any person participating in a deferred prosecution program
22 under RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 or an
23 equivalent local ordinance to have a functioning ignition interlock
24 device installed on all motor vehicles operated by the person.

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

36 The department may waive the requirement for the use of such a
37 device if it concludes that such devices are not reasonably available

1 in the local area. The installation of an ignition interlock device is
2 not necessary on vehicles owned, leased, or rented by a person's
3 employer and on those vehicles whose care and/or maintenance is the
4 temporary responsibility of the employer, and driven at the direction
5 of a person's employer as a requirement of employment during working
6 hours. The person must provide the department with a declaration
7 pursuant to RCW 9A.72.085 from his or her employer stating that the
8 person's employment requires the person to operate a vehicle owned by
9 the employer or other persons during working hours. However, when the
10 employer's vehicle is assigned exclusively to the restricted driver and
11 used solely for commuting to and from employment, the employer
12 exemption does not apply.

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

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

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

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

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

30 (a) ~~((An))~~ Any attempt to start the vehicle with a breath alcohol
31 concentration of 0.04 or more unless a subsequent test performed within
32 ten minutes registers a breath alcohol concentration lower than 0.04
33 and the digital image confirms the same person provided both samples;

34 (b) Failure to take ~~((or pass))~~ any ~~((required retest))~~ random test
35 unless a review of the digital image confirms that the vehicle was not
36 occupied by the driver at the time of the missed test; ~~((or))~~

37 (c) Failure to pass any random retest with a breath alcohol
38 concentration of 0.025 or lower unless a subsequent test performed

1 within ten minutes registers a breath alcohol concentration lower than
2 0.025, and the digital image confirms the same person provided both
3 samples; or

4 (d) Failure of the person to appear at the ignition interlock
5 device vendor when required for maintenance, repair, calibration,
6 monitoring, inspection, or replacement of the device.

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

11 (6) In addition to any other costs associated with the use of an
12 ignition interlock device imposed on the person restricted under this
13 section, the person shall pay an additional fee of twenty dollars per
14 month. Payments must be made directly to the ignition interlock
15 company. The company shall remit the additional twenty dollar fee to
16 the department to be deposited into the ignition interlock device
17 revolving account.

18 **Sec. 13.** RCW 46.20.308 and 2013 c 3 s 31 (Initiative Measure No.
19 502), 2012 c 183 s 7, and 2012 c 80 s 12 are each reenacted and amended
20 to read as follows:

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

32 (2) The test or tests of breath shall be administered at the
33 direction of a law enforcement officer having reasonable grounds to
34 believe the person to have been driving or in actual physical control
35 of a motor vehicle within this state while under the influence of
36 intoxicating liquor or any drug or the person to have been driving or
37 in actual physical control of a motor vehicle while having alcohol or

1 THC in a concentration in violation of RCW 46.61.503 in his or her
2 system and being under the age of twenty-one. However, in those
3 instances where the person is incapable due to physical injury,
4 physical incapacity, or other physical limitation, of providing a
5 breath sample or where the person is being treated in a hospital,
6 clinic, doctor's office, emergency medical vehicle, ambulance, or other
7 similar facility or where the officer has reasonable grounds to believe
8 that the person is under the influence of a drug, a blood test shall be
9 administered by a qualified person as provided in RCW 46.61.506(5).
10 The officer shall inform the person of his or her right to refuse the
11 breath or blood test, and of his or her right to have additional tests
12 administered by any qualified person of his or her choosing as provided
13 in RCW 46.61.506. The officer shall warn the driver, in substantially
14 the following language, that:

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

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

20 (c) If the driver submits to the test and the test is administered,
21 the driver's license, permit, or privilege to drive will be suspended,
22 revoked, or denied for at least ninety days if:

23 (i) The driver is age twenty-one or over and the test indicates
24 either that the alcohol concentration of the driver's breath or blood
25 is 0.08 or more or that the THC concentration of the driver's blood is
26 5.00 or more; or

27 (ii) The driver is under age twenty-one and the test indicates
28 either that the alcohol concentration of the driver's breath or blood
29 is 0.02 or more or that the THC concentration of the driver's blood is
30 above 0.00; or

31 (iii) The driver is under age twenty-one and the driver is in
32 violation of RCW 46.61.502 or 46.61.504; and

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

36 (3) Except as provided in this section, the test administered shall
37 be of the breath only. If an individual is unconscious or is under
38 arrest for the crime of felony driving under the influence of

1 intoxicating liquor or drugs under RCW 46.61.502(6), felony physical
2 control of a motor vehicle while under the influence of intoxicating
3 liquor or any drug under RCW 46.61.504(6), vehicular homicide as
4 provided in RCW 46.61.520, or vehicular assault as provided in RCW
5 46.61.522, or if an individual is under arrest for the crime of driving
6 while under the influence of intoxicating liquor or drugs as provided
7 in RCW 46.61.502, which arrest results from an accident in which there
8 has been serious bodily injury to another person, a breath or blood
9 test may be administered without the consent of the individual so
10 arrested.

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

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

22 (6) If, after arrest and after the other applicable conditions and
23 requirements of this section have been satisfied, a test or tests of
24 the person's blood or breath is administered and the test results
25 indicate that the alcohol concentration of the person's breath or blood
26 is 0.08 or more, or the THC concentration of the person's blood is 5.00
27 or more, if the person is age twenty-one or over, or that the alcohol
28 concentration of the person's breath or blood is 0.02 or more, or the
29 THC concentration of the person's blood is above 0.00, if the person is
30 under the age of twenty-one, or the person refuses to submit to a test,
31 the arresting officer or other law enforcement officer at whose
32 direction any test has been given, or the department, where applicable,
33 if the arrest results in a test of the person's blood, shall:

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

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

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

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

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

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

27 (ii) That after receipt of the warnings required by subsection (2)
28 of this section the person refused to submit to a test of his or her
29 blood or breath, or a test was administered and the results indicated
30 that the alcohol concentration of the person's breath or blood was 0.08
31 or more, or the THC concentration of the person's blood was 5.00 or
32 more, if the person is age twenty-one or over, or that the alcohol
33 concentration of the person's breath or blood was 0.02 or more, or the
34 THC concentration of the person's blood was above 0.00, if the person
35 is under the age of twenty-one; and

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

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

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

9 (8) A person receiving notification under subsection (6)(b) of this
10 section may, within twenty days after the notice has been given,
11 request in writing a formal hearing before the department. The person
12 shall pay a fee of three hundred seventy-five dollars as part of the
13 request. If the request is mailed, it must be postmarked within twenty
14 days after receipt of the notification. Upon timely receipt of such a
15 request for a formal hearing, including receipt of the required three
16 hundred seventy-five dollar fee, the department shall afford the person
17 an opportunity for a hearing. The department may waive the required
18 three hundred seventy-five dollar fee if the person is an indigent as
19 defined in RCW 10.101.010. Except as otherwise provided in this
20 section, the hearing is subject to and shall be scheduled and conducted
21 in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be
22 conducted in the county of the arrest, except that all or part of the
23 hearing may, at the discretion of the department, be conducted by
24 telephone or other electronic means. The hearing shall be held within
25 sixty days following the arrest or following the date notice has been
26 given in the event notice is given by the department following a blood
27 test, unless otherwise agreed to by the department and the person, in
28 which case the action by the department shall be stayed, and any valid
29 temporary license marked under subsection (6)((+e)) of this section
30 extended, if the person is otherwise eligible for licensing. For the
31 purposes of this section, the scope of the hearing shall cover the
32 issues of whether a law enforcement officer had reasonable grounds to
33 believe the person had been driving or was in actual physical control
34 of a motor vehicle within this state while under the influence of
35 intoxicating liquor or any drug or had been driving or was in actual
36 physical control of a motor vehicle within this state while having
37 alcohol in his or her system in a concentration of 0.02 or more, or THC
38 in his or her system in a concentration above 0.00, if the person was

1 under the age of twenty-one, whether the person was placed under
2 arrest, and (a) whether the person refused to submit to the test or
3 tests upon request of the officer after having been informed that such
4 refusal would result in the revocation of the person's license, permit,
5 or privilege to drive, or (b) if a test or tests were administered,
6 whether the applicable requirements of this section were satisfied
7 before the administration of the test or tests, whether the person
8 submitted to the test or tests, or whether a test was administered
9 without express consent as permitted under this section, and whether
10 the test or tests indicated that the alcohol concentration of the
11 person's breath or blood was 0.08 or more, or the THC concentration of
12 the person's blood was 5.00 or more, if the person was age twenty-one
13 or over at the time of the arrest, or that the alcohol concentration of
14 the person's breath or blood was 0.02 or more, or the THC concentration
15 of the person's blood was above 0.00, if the person was under the age
16 of twenty-one at the time of the arrest. The sworn report or report
17 under a declaration authorized by RCW 9A.72.085 submitted by a law
18 enforcement officer is prima facie evidence that the officer had
19 reasonable grounds to believe the person had been driving or was in
20 actual physical control of a motor vehicle within this state while
21 under the influence of intoxicating liquor or drugs, or both, or the
22 person had been driving or was in actual physical control of a motor
23 vehicle within this state while having alcohol in his or her system in
24 a concentration of 0.02 or more, or THC in his or her system in a
25 concentration above 0.00, and was under the age of twenty-one and that
26 the officer complied with the requirements of this section.

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

1 witnesses, may present evidence, and may testify. The department shall
2 order that the suspension, revocation, or denial either be rescinded or
3 sustained.

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

37 (10)(a) If a person whose driver's license, permit, or privilege to
38 drive has been or will be suspended, revoked, or denied under

1 subsection (7) of this section, other than as a result of a breath or
2 blood test refusal, and who has not committed an offense for which he
3 or she was granted a deferred prosecution under chapter 10.05 RCW,
4 petitions a court for a deferred prosecution on criminal charges
5 arising out of the arrest for which action has been or will be taken
6 under subsection (7) of this section, or notifies the department of
7 licensing of the intent to seek such a deferred prosecution, then the
8 license suspension or revocation shall be stayed pending entry of the
9 deferred prosecution. The stay shall not be longer than one hundred
10 fifty days after the date charges are filed, or two years after the
11 date of the arrest, whichever time period is shorter. If the court
12 stays the suspension, revocation, or denial, it may impose conditions
13 on such stay. If the person is otherwise eligible for licensing, the
14 department shall issue a temporary license, or extend any valid
15 temporary license marked under subsection (6) of this section, for the
16 period of the stay. If a deferred prosecution treatment plan is not
17 recommended in the report made under RCW 10.05.050, or if treatment is
18 rejected by the court, or if the person declines to accept an offered
19 treatment plan, or if the person violates any condition imposed by the
20 court, then the court shall immediately direct the department to cancel
21 the stay and any temporary marked license or extension of a temporary
22 license issued under this subsection.

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

31 (c) The provisions of (b) of this subsection relating to a stay of
32 a suspension, revocation, or denial and the cancellation of any
33 suspension, revocation, or denial do not apply to the suspension,
34 revocation, denial, or disqualification of a person's commercial
35 driver's license or privilege to operate a commercial motor vehicle.

36 (11) When it has been finally determined under the procedures of
37 this section that a nonresident's privilege to operate a motor vehicle
38 in this state has been suspended, revoked, or denied, the department

1 shall give information in writing of the action taken to the motor
2 vehicle administrator of the state of the person's residence and of any
3 state in which he or she has a license.

4 **Sec. 14.** RCW 46.20.270 and 2010 c 249 s 11 are each amended to
5 read as follows:

6 ~~(1) ((Whenever any person is convicted of any offense for which
7 this title makes mandatory the withholding of the driving privilege of
8 such person by the department, the court in which such conviction is
9 had shall forthwith mark the person's Washington state driver's license
10 or permit to drive, if any, in a manner authorized by the department.
11 A valid driver's license or permit to drive marked under this
12 subsection shall remain in effect until the person's driving privilege
13 is withheld by the department pursuant to notice given under RCW
14 46.20.245, unless the license or permit expires or otherwise becomes
15 invalid prior to the effective date of this action. Perfection of
16 notice of appeal shall stay the execution of sentence including the
17 withholding of the driving privilege.~~

18 ~~(2))~~ Every court having jurisdiction over offenses committed under
19 this chapter, or any other act of this state or municipal ordinance
20 adopted by a local authority regulating the operation of motor vehicles
21 on highways, or any federal authority having jurisdiction over offenses
22 substantially the same as those set forth in this title which occur on
23 federal installations within this state, shall immediately forward to
24 the department a forfeiture of bail or collateral deposited to secure
25 the defendant's appearance in court, a payment of a fine, penalty, or
26 court cost, a plea of guilty or nolo contendere or a finding of guilt,
27 or a finding that any person has committed a traffic infraction an
28 abstract of the court record in the form prescribed by rule of the
29 supreme court, showing the conviction of any person or the finding that
30 any person has committed a traffic infraction in said court for a
31 violation of any said laws other than regulations governing standing,
32 stopping, parking, and pedestrian offenses.

33 ~~((3))~~ (2) Every state agency or municipality having jurisdiction
34 over offenses committed under this chapter, or under any other act of
35 this state or municipal ordinance adopted by a state or local authority
36 regulating the operation of motor vehicles on highways, may forward to
37 the department within ten days of failure to respond, failure to pay a

1 penalty, failure to appear at a hearing to contest the determination
2 that a violation of any statute, ordinance, or regulation relating to
3 standing, stopping, parking, or civil penalties issued under RCW
4 46.63.160 has been committed, or failure to appear at a hearing to
5 explain mitigating circumstances, an abstract of the citation record in
6 the form prescribed by rule of the department, showing the finding by
7 such municipality that two or more violations of laws governing
8 standing, stopping, and parking or one or more civil penalties issued
9 under RCW 46.63.160 have been committed and indicating the nature of
10 the defendant's failure to act. Such violations or infractions may not
11 have occurred while the vehicle is stolen from the registered owner or
12 is leased or rented under a bona fide commercial vehicle lease or
13 rental agreement between a lessor engaged in the business of leasing
14 vehicles and a lessee who is not the vehicle's registered owner. The
15 department may enter into agreements of reciprocity with the duly
16 authorized representatives of the states for reporting to each other
17 violations of laws governing standing, stopping, and parking.

18 ~~((4))~~ (3) For the purposes of this title and except as defined in
19 RCW 46.25.010, "conviction" means a final conviction in a state or
20 municipal court or by any federal authority having jurisdiction over
21 offenses substantially the same as those set forth in this title which
22 occur on federal installations in this state, an unvacated forfeiture
23 of bail or collateral deposited to secure a defendant's appearance in
24 court, the payment of a fine or court cost, a plea of guilty or nolo
25 contendere, or a finding of guilt on a traffic law violation charge,
26 regardless of whether the imposition of sentence or sanctions are
27 deferred or the penalty is suspended, but not including entry into a
28 deferred prosecution agreement under chapter 10.05 RCW.

29 (4) Perfection of a notice of appeal shall stay the execution of
30 sentence including the withholding of the driving privilege.

31 (5) For the purposes of this title, "finding that a traffic
32 infraction has been committed" means a failure to respond to a notice
33 of infraction or a determination made by a court pursuant to this
34 chapter. Payment of a monetary penalty made pursuant to RCW
35 46.63.070(2) is deemed equivalent to such a finding.

36 **Sec. 15.** RCW 9.94A.603 and 2006 c 73 s 4 are each amended to read
37 as follows:

1 (1) When sentencing an offender convicted of a violation of RCW
2 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the
3 provisions of this chapter, shall order the offender to undergo alcohol
4 or chemical dependency treatment services during incarceration. The
5 offender shall be liable for the cost of treatment unless the court
6 finds the offender indigent and no third-party insurance coverage is
7 available.

8 (2) The provisions under RCW 46.61.5055 (~~((+8))~~) (9) and (~~((+9))~~)
9 (10) regarding the suspension, revocation, or denial of the offender's
10 license, permit, or nonresident privilege to drive shall apply to an
11 offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6).

12 (3) The provisions under RCW 46.20.720 and 46.61.5055(5) regarding
13 ignition interlock devices shall apply to an offender convicted of a
14 violation of RCW 46.61.502(6) or 46.61.504(6).

15 **Sec. 16.** RCW 46.25.090 and 2011 c 227 s 4 are each amended to read
16 as follows:

17 (1) A person is disqualified from driving a commercial motor
18 vehicle for a period of not less than one year if a report has been
19 received by the department pursuant to RCW 46.20.308 or 46.25.120, or
20 if the person has been convicted of a first violation, within this or
21 any other jurisdiction, of:

22 (a) Driving a motor vehicle under the influence of alcohol or any
23 drug;

24 (b) Driving a commercial motor vehicle while the alcohol
25 concentration in the person's system is 0.04 or more, or a THC
26 concentration above 0.00, or driving a noncommercial motor vehicle
27 while the alcohol concentration in the person's system is 0.08 or more,
28 or is 0.02 or more if the person is under age twenty-one, as determined
29 by any testing methods approved by law in this state or any other state
30 or jurisdiction;

31 (c) Leaving the scene of an accident involving a motor vehicle
32 driven by the person;

33 (d) Using a motor vehicle in the commission of a felony;

34 (e) Refusing to submit to a test or tests to determine the driver's
35 alcohol concentration or the presence of any drug while driving a motor
36 vehicle;

1 (f) Driving a commercial motor vehicle when, as a result of prior
2 violations committed while operating a commercial motor vehicle, the
3 driver's commercial driver's license is revoked, suspended, or
4 canceled, or the driver is disqualified from operating a commercial
5 motor vehicle;

6 (g) Causing a fatality through the negligent operation of a
7 commercial motor vehicle, including but not limited to the crimes of
8 vehicular homicide and negligent homicide.

9 If any of the violations set forth in this subsection occurred
10 while transporting hazardous material, the person is disqualified for
11 a period of not less than three years.

12 (2) A person is disqualified for life if it has been determined
13 that the person has committed or has been convicted of two or more
14 violations of any of the offenses specified in subsection (1) of this
15 section, or any combination of those offenses, arising from two or more
16 separate incidents.

17 (3) The department may adopt rules, in accordance with federal
18 regulations, establishing guidelines, including conditions, under which
19 a disqualification for life under subsection (2) of this section may be
20 reduced to a period of not less than ten years.

21 (4) A person is disqualified from driving a commercial motor
22 vehicle for life who uses a motor vehicle in the commission of a felony
23 involving the manufacture, distribution, or dispensing of a controlled
24 substance, as defined by chapter 69.50 RCW, or possession with intent
25 to manufacture, distribute, or dispense a controlled substance, as
26 defined by chapter 69.50 RCW.

27 (5)(a) A person is disqualified from driving a commercial motor
28 vehicle for a period of:

29 (i) Not less than sixty days if:

30 (A) Convicted of or found to have committed a second serious
31 traffic violation while driving a commercial motor vehicle; or

32 (B) Convicted of reckless driving, where there has been a prior
33 serious traffic violation; or

34 (ii) Not less than one hundred twenty days if:

35 (A) Convicted of or found to have committed a third or subsequent
36 serious traffic violation while driving a commercial motor vehicle; or

37 (B) Convicted of reckless driving, where there has been two or more
38 prior serious traffic violations.

1 (b) The disqualification period under (a)(ii) of this subsection
2 must be in addition to any other previous period of disqualification.

3 (c) For purposes of determining prior serious traffic violations
4 under this subsection, each conviction of or finding that a driver has
5 committed a serious traffic violation while driving a commercial motor
6 vehicle or noncommercial motor vehicle, arising from a separate
7 incident occurring within a three-year period, must be counted.

8 (6) A person is disqualified from driving a commercial motor
9 vehicle for a period of:

10 (a) Not less than one hundred eighty days nor more than one year if
11 convicted of or found to have committed a first violation of an out-of-
12 service order while driving a commercial vehicle;

13 (b) Not less than two years nor more than five years if, during a
14 ten-year period, the person is convicted of or is found to have
15 committed two violations of out-of-service orders while driving a
16 commercial motor vehicle in separate incidents;

17 (c) Not less than three years nor more than five years if, during
18 a ten-year period, the person is convicted of or is found to have
19 committed three or more violations of out-of-service orders while
20 driving commercial motor vehicles in separate incidents;

21 (d) Not less than one hundred eighty days nor more than two years
22 if the person is convicted of or is found to have committed a first
23 violation of an out-of-service order while transporting hazardous
24 materials, or while operating motor vehicles designed to transport
25 sixteen or more passengers, including the driver. A person is
26 disqualified for a period of not less than three years nor more than
27 five years if, during a ten-year period, the person is convicted of or
28 is found to have committed subsequent violations of out-of-service
29 orders, in separate incidents, while transporting hazardous materials,
30 or while operating motor vehicles designed to transport sixteen or more
31 passengers, including the driver.

32 (7) A person is disqualified from driving a commercial motor
33 vehicle if a report has been received by the department under RCW
34 46.25.125 that the person has received a verified positive drug test or
35 positive alcohol confirmation test as part of the testing program
36 conducted under 49 C.F.R. 40. A disqualification under this subsection
37 remains in effect until the person undergoes a drug and alcohol
38 assessment by a substance abuse professional meeting the requirements

1 of 49 C.F.R. 40, and the person presents evidence of satisfactory
2 participation in or successful completion of a drug or alcohol
3 treatment and/or education program as recommended by the substance
4 abuse professional, and until the person has met the requirements of
5 RCW 46.25.100. The substance abuse professional shall forward a
6 diagnostic evaluation and treatment recommendation to the department of
7 licensing for use in determining the person's eligibility for driving
8 a commercial motor vehicle. Persons who are disqualified under this
9 subsection more than twice in a five-year period are disqualified for
10 life.

11 (8)(a) A person is disqualified from driving a commercial motor
12 vehicle for the period of time specified in (b) of this subsection if
13 he or she is convicted of or is found to have committed one of the
14 following six offenses at a railroad-highway grade crossing while
15 operating a commercial motor vehicle in violation of a federal, state,
16 or local law or regulation:

17 (i) For drivers who are not required to always stop, failing to
18 slow down and check that the tracks are clear of an approaching train;

19 (ii) For drivers who are not required to always stop, failing to
20 stop before reaching the crossing, if the tracks are not clear;

21 (iii) For drivers who are always required to stop, failing to stop
22 before driving onto the crossing;

23 (iv) For all drivers, failing to have sufficient space to drive
24 completely through the crossing without stopping;

25 (v) For all drivers, failing to obey a traffic control device or
26 the directions of an enforcement officer at the crossing;

27 (vi) For all drivers, failing to negotiate a crossing because of
28 insufficient undercarriage clearance.

29 (b) A person is disqualified from driving a commercial motor
30 vehicle for a period of:

31 (i) Not less than sixty days if the driver is convicted of or is
32 found to have committed a first violation of a railroad-highway grade
33 crossing violation;

34 (ii) Not less than one hundred twenty days if the driver is
35 convicted of or is found to have committed a second railroad-highway
36 grade crossing violation in separate incidents within a three-year
37 period;

1 (iii) Not less than one year if the driver is convicted of or is
2 found to have committed a third or subsequent railroad-highway grade
3 crossing violation in separate incidents within a three-year period.

4 (9) A person is disqualified from driving a commercial motor
5 vehicle for not more than one year if a report has been received by the
6 department from the federal motor carrier safety administration that
7 the person's driving has been determined to constitute an imminent
8 hazard as defined by 49 C.F.R. 383.5. A person who is simultaneously
9 disqualified from driving a commercial motor vehicle under this
10 subsection and under other provisions of this chapter, or under 49
11 C.F.R. 383.52, shall serve those disqualification periods concurrently.

12 (10) Within ten days after suspending, revoking, or canceling a
13 commercial driver's license or disqualifying a driver from operating a
14 commercial motor vehicle, the department shall update its records to
15 reflect that action.

16 NEW SECTION. **Sec. 17.** A new section is added to chapter 9.94A RCW
17 to read as follows:

18 In a criminal case where:

19 (1) The person has been convicted of driving while under the
20 influence of intoxicating liquor or any drug, under RCW 46.61.502; and

21 (2) There has been a special allegation pleaded and proven beyond
22 a reasonable doubt that the defendant committed the driving while under
23 the influence of intoxicating liquor or any drug offense while driving
24 in the opposite direction of the normal flow of traffic on a multiple
25 lane roadway with a posted speed limit of forty-five miles per hour or
26 greater

27 the court shall make a finding of fact of the special allegation, or if
28 a jury is had, the jury shall, if it finds the defendant guilty, also
29 find a special verdict as to the special allegation.

30 **Sec. 18.** RCW 46.25.110 and 1989 c 178 s 13 are each amended to
31 read as follows:

32 (1) Notwithstanding any other provision of Title 46 RCW, a person
33 may not drive, operate, or be in physical control of a commercial motor
34 vehicle while having alcohol in his or her system.

35 (2) Law enforcement or appropriate officials shall issue an out-of-
36 service order valid for twenty-four hours against a person who drives,

1 operates, or is in physical control of a commercial motor vehicle while
2 having alcohol or THC in his or her system or who refuses to take a
3 test to determine his or her alcohol content or THC concentration as
4 provided by RCW 46.25.120.

5 **Sec. 19.** RCW 46.25.120 and 2006 c 327 s 5 are each amended to read
6 as follows:

7 (1) A person who drives a commercial motor vehicle within this
8 state is deemed to have given consent, subject to RCW 46.61.506, to
9 take a test or tests of that person's blood or breath for the purpose
10 of determining that person's alcohol or THC concentration or the
11 presence of other drugs.

12 (2) A test or tests may be administered at the direction of a law
13 enforcement officer, who after stopping or detaining the commercial
14 motor vehicle driver, has probable cause to believe that driver was
15 driving a commercial motor vehicle while having alcohol or THC in his
16 or her system or while under the influence of any drug.

17 (3) The law enforcement officer requesting the test under
18 subsection (1) of this section shall warn the person requested to
19 submit to the test that a refusal to submit will result in that person
20 being disqualified from operating a commercial motor vehicle under RCW
21 46.25.090.

22 (4) If the person refuses testing, or submits to a test that
23 discloses an alcohol concentration of 0.04 or more, or a THC
24 concentration above 0.00, the law enforcement officer shall submit a
25 sworn report to the department certifying that the test was requested
26 pursuant to subsection (1) of this section and that the person refused
27 to submit to testing, or submitted to a test that disclosed an alcohol
28 concentration of 0.04 or more, or a THC concentration above 0.00.

29 (5) Upon receipt of the sworn report of a law enforcement officer
30 under subsection (4) of this section, the department shall disqualify
31 the driver from driving a commercial motor vehicle under RCW 46.25.090,
32 subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The
33 hearing shall be conducted in the county of the arrest. For the
34 purposes of this section, the hearing shall cover the issues of whether
35 a law enforcement officer had reasonable grounds to believe the person
36 had been driving or was in actual physical control of a commercial
37 motor vehicle within this state while having alcohol or THC in the

1 person's system or while under the influence of any drug, whether the
2 person refused to submit to the test or tests upon request of the
3 officer after having been informed that the refusal would result in the
4 disqualification of the person from driving a commercial motor vehicle,
5 and, if the test was administered, whether the results indicated an
6 alcohol concentration of 0.04 percent or more, or a THC concentration
7 above 0.00. The department shall order that the disqualification of
8 the person either be rescinded or sustained. Any decision by the
9 department disqualifying a person from driving a commercial motor
10 vehicle is stayed and does not take effect while a formal hearing is
11 pending under this section or during the pendency of a subsequent
12 appeal to superior court so long as there is no conviction for a moving
13 violation or no finding that the person has committed a traffic
14 infraction that is a moving violation during the pendency of the
15 hearing and appeal. If the disqualification of the person is sustained
16 after the hearing, the person who is disqualified may file a petition
17 in the superior court of the county of arrest to review the final order
18 of disqualification by the department in the manner provided in RCW
19 46.20.334.

20 (6) If a motor carrier or employer who is required to have a
21 testing program under 49 C.F.R. 382 knows that a commercial driver in
22 his or her employ has refused to submit to testing under this section
23 and has not been disqualified from driving a commercial motor vehicle,
24 the employer may notify law enforcement or his or her medical review
25 officer or breath alcohol technician that the driver has refused to
26 submit to the required testing.

27 (7) The hearing provisions of this section do not apply to those
28 persons disqualified from driving a commercial motor vehicle under RCW
29 46.25.090(7).

--- END ---