

E2SHB 1276 - H AMD 511

By Representative Klippert

ADOPTED 6/11/2015

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that impaired
4 driving continues to be a significant cause of motor vehicle crashes
5 and that additional measures need to be taken to identify people who
6 are driving under the influence, provide appropriate sanctions, and
7 ensure compliance with court-ordered restrictions. The legislature
8 intends to increase the availability of forensic phlebotomists so
9 that offenders can be appropriately and efficiently identified. The
10 legislature further intends to require consecutive sentencing in
11 certain cases to increase punishment and supervision of offenders.
12 The legislature intends to clarify ignition interlock processes and
13 requirements to ensure that those offenders ordered to have ignition
14 interlock devices do not drive vehicles without the required devices.

15 **Conditions of release—Requirements—Ignition interlock device—24/7**
16 **sobriety program monitoring**

17 **Sec. 2.** RCW 10.21.055 and 2013 2nd sp.s. c 35 s 1 are each
18 amended to read as follows:

19 (1)(a) When any person charged with (~~or arrested for~~) a
20 violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in
21 which the person has a prior offense as defined in RCW 46.61.5055 and
22 the current offense involves alcohol, is released from custody
23 (~~before~~) at arraignment or trial on bail or personal recognizance,
24 the court authorizing the release shall require, as a condition of
25 release(~~(r)~~) that person (~~to (a)~~) comply with one of the following
26 four requirements:

27 (i) Have a functioning ignition interlock device installed on all
28 motor vehicles operated by the person, with proof of installation
29 filed with the court by the person or the certified interlock
30 provider within five business days of the date of release from

1 custody or as soon thereafter as determined by the court based on
2 availability within the jurisdiction; or (~~(b)~~)

3 (ii) Comply with 24/7 sobriety program monitoring, as defined in
4 RCW 36.28A.330; or (~~both~~)

5 (iii) Have an ignition interlock device on all motor vehicles
6 operated by the person pursuant to (a)(i) of this subsection and
7 submit to 24/7 sobriety program monitoring pursuant to (a)(ii) of
8 this subsection, if available, or alcohol monitoring, at the expense
9 of the person, as provided in RCW 46.61.5055(5) (b) and (c); or

10 (iv) Have an ignition interlock device on all motor vehicles
11 operated by the person and that such person agrees not to operate any
12 motor vehicle without an ignition interlock device as required by the
13 court. Under this subsection (1)(a)(iv), the person must file a sworn
14 statement with the court upon release at arraignment that states the
15 person will not operate any motor vehicle without an ignition
16 interlock device while the ignition interlock restriction is imposed
17 by the court. Such person must also submit to 24/7 sobriety program
18 monitoring pursuant to (a)(ii) of this subsection, if available, or
19 alcohol monitoring, at the expense of the person, as provided in RCW
20 46.61.5055(5) (b) and (c).

21 (b) The court shall immediately notify the department of
22 licensing when an ignition interlock restriction is imposed: (i) As a
23 condition of release pursuant to (a) of this subsection; or (ii) in
24 instances where a person is charged with, or convicted of, a
25 violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, and
26 the offense involves alcohol. If the court imposes an ignition
27 interlock restriction, the department of licensing shall attach or
28 imprint a notation on the driving record of any person restricted
29 under this section stating that the person may operate only a motor
30 vehicle equipped with a functioning ignition interlock device.

31 (2)(a) Upon acquittal or dismissal of all pending or current
32 charges relating to a violation of RCW 46.61.502, 46.61.504,
33 46.61.520, or 46.61.522, or equivalent local ordinance, the court
34 shall authorize removal of the ignition interlock device and lift any
35 requirement to comply with electronic alcohol/drug monitoring imposed
36 under subsection (1) of this section. Nothing in this section limits
37 the authority of the court or department under RCW 46.20.720.

38 (b) If the court authorizes removal of an ignition interlock
39 device imposed under (a) of this subsection the court shall
40 immediately notify the department of licensing regarding the lifting

1 of the ignition interlock restriction and the department of licensing
2 shall release any attachment, imprint, or notation on such person's
3 driving record relating to the ignition interlock requirement imposed
4 under this section.

5 (3) When an ignition interlock restriction imposed as a condition
6 of release is canceled, the court shall provide a defendant with a
7 written order confirming release of the restriction. The written
8 order shall serve as proof of release of the restriction until which
9 time the department of licensing updates the driving record.

10 **Ignition interlock driver's license—Application—Eligibility—**
11 **Cancellation—Costs—Rules**

12 **Sec. 3.** RCW 46.20.385 and 2013 2nd sp.s. c 35 s 20 are each
13 amended to read as follows:

14 (1)(a) ~~((Beginning January 1, 2009,))~~ Any person licensed under
15 this chapter or who has a valid driver's license from another state,
16 who is convicted of: (i) A violation of RCW 46.61.502 or 46.61.504 or
17 an equivalent local or out-of-state statute or ordinance, or (ii) a
18 violation of RCW 46.61.520(1)(a) or an equivalent local or out-of-
19 state statute or ordinance, or (iii) a conviction for a violation of
20 RCW 46.61.520(1) (b) or (c) if the conviction is the result of a
21 charge that was originally filed as a violation of RCW
22 46.61.520(1)(a), or (iv) RCW 46.61.522(1)(b) or an equivalent local
23 or out-of-state statute or ordinance, or (v) RCW 46.61.522(1) (a) or
24 (c) if the conviction is the result of a charge that was originally
25 filed as a violation of RCW 46.61.522(1)(b) committed while under the
26 influence of intoxicating liquor or any drug, or (vi) who has had or
27 will have his or her license suspended, revoked, or denied under RCW
28 46.20.3101, or who is otherwise permitted under subsection (8) of
29 this section, may submit to the department an application for an
30 ignition interlock driver's license. The department, upon receipt of
31 the prescribed fee and upon determining that the petitioner is
32 eligible to receive the license, may issue an ignition interlock
33 driver's license.

34 (b) A person may apply for an ignition interlock driver's license
35 anytime, including immediately after receiving the notices under RCW
36 46.20.308 or after his or her license is suspended, revoked, or
37 denied. ~~((A person receiving an ignition interlock driver's license~~
38 ~~waives his or her right to a hearing or appeal under RCW 46.20.308.))~~

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

4 (i) The department shall require the person to maintain the
5 device on all vehicles operated by the person and shall restrict the
6 person to operating only vehicles equipped with the device, for the
7 remainder of the period of suspension, revocation, or denial. Subject
8 to the provisions of RCW 46.20.720(3)(b)(ii), the installation of an
9 ignition interlock device is not necessary on vehicles owned, leased,
10 or rented by a person's employer and on those vehicles whose care
11 and/or maintenance is the temporary responsibility of the employer,
12 and driven at the direction of a person's employer as a requirement
13 of employment during working hours. The person must provide the
14 department with a declaration pursuant to RCW 9A.72.085 from his or
15 her employer stating that the person's employment requires the person
16 to operate a vehicle owned by the employer or other persons during
17 working hours.

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

26 (iii) The time period during which the person is licensed under
27 this section shall apply on a day-for-day basis toward satisfying the
28 period of time the ignition interlock device restriction is required
29 under RCW 46.20.720 (~~and~~), 46.61.5055, 10.05.140, 46.61.500(3), and
30 46.61.5249(4). Beginning with incidents occurring on or after
31 September 1, 2011, when calculating the period of time for the
32 restriction under RCW 46.20.720 (2) or (3), the department must also
33 give the person a day-for-day credit for the time period, beginning
34 from the date of the incident, during which the person kept an
35 ignition interlock device installed on all vehicles the person
36 operates. For the purposes of this subsection (1)(c)(iii), the term
37 "all vehicles" does not include vehicles that would be subject to the
38 employer exception under RCW 46.20.720(3).

39 (2) An applicant for an ignition interlock driver's license who
40 qualifies under subsection (1) of this section is eligible to receive

1 a license only if the applicant files satisfactory proof of financial
2 responsibility under chapter 46.29 RCW.

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

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

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

31 (6)(a) Unless costs are waived by the ignition interlock company
32 or the person is indigent under RCW 10.101.010, the applicant shall
33 pay the cost of installing, removing, and leasing the ignition
34 interlock device and shall pay an additional fee of twenty dollars
35 per month. Payments shall be made directly to the ignition interlock
36 company. The company shall remit the additional twenty dollar fee to
37 the department.

38 (b) The department shall deposit the proceeds of the twenty
39 dollar fee into the ignition interlock device revolving account.
40 Expenditures from the account may be used only to administer and

1 operate the ignition interlock device revolving account program. The
2 department shall adopt rules to provide monetary assistance according
3 to greatest need and when funds are available.

4 (7) The department shall adopt rules to implement ignition
5 interlock licensing. The department shall consult with the
6 administrative office of the courts, the state patrol, the Washington
7 association of sheriffs and police chiefs, ignition interlock
8 companies, and any other organization or entity the department deems
9 appropriate.

10 (8)(a) Any person licensed under this chapter who is convicted of
11 a violation of RCW 46.61.500 when the charge was originally filed as
12 a violation of RCW 46.61.502 or 46.61.504, or an equivalent local
13 ordinance, may submit to the department an application for an
14 ignition interlock driver's license under this section.

15 (b) A person who does not have any driver's license under this
16 chapter, but who would otherwise be eligible under this section to
17 apply for an ignition interlock license, may submit to the department
18 an application for an ignition interlock license. The department may
19 require the person to take any driver's licensing examination under
20 this chapter and may require the person to also apply and qualify for
21 a temporary restricted driver's license under RCW 46.20.391.

22 **Notation on driving record—Verification of interlock—Penalty**

23 **Sec. 4.** RCW 46.20.740 and 2010 c 269 s 8 are each amended to
24 read as follows:

25 (1) The department shall attach or imprint a notation on the
26 driving record of any person restricted under RCW 46.20.720,
27 46.61.5055, or 10.05.140 stating that the person may operate only a
28 motor vehicle equipped with a functioning ignition interlock device.
29 The department shall determine the person's eligibility for licensing
30 based upon written verification by a company doing business in the
31 state that it has installed the required device on a vehicle owned or
32 operated by the person seeking reinstatement. If, based upon
33 notification from the interlock provider or otherwise, the department
34 determines that an ignition interlock required under this section is
35 no longer installed or functioning as required, the department shall
36 suspend the person's license or privilege to drive. Whenever the
37 license or driving privilege of any person is suspended or revoked as
38 a result of noncompliance with an ignition interlock requirement, the

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

5 (2) It is a gross misdemeanor for a person with such a notation
6 on his or her driving record to operate a motor vehicle that is not
7 so equipped, unless the notation resulted from a restriction imposed
8 as a condition of release and the restriction has been released by
9 the court prior to driving.

10 (3) Any sentence imposed for a violation of subsection (2) of
11 this section shall be served consecutively with any sentence imposed
12 under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055.

13 **Implied consent—Test refusal—Procedures**

14 **Sec. 5.** RCW 46.20.308 and 2013 2nd sp.s. c 35 s 36 are each
15 amended to read as follows:

16 (1) Any person who operates a motor vehicle within this state is
17 deemed to have given consent, subject to the provisions of RCW
18 46.61.506, to a test or tests of his or her breath for the purpose of
19 determining the alcohol concentration(~~(, THC concentration, or~~
20 ~~presence of any drug))~~) in his or her breath if arrested for any
21 offense where, at the time of the arrest, the arresting officer has
22 reasonable grounds to believe the person had been driving or was in
23 actual physical control of a motor vehicle while under the influence
24 of intoxicating liquor or any drug or was in violation of RCW
25 46.61.503. (~~Neither consent nor this section precludes a police~~
26 ~~officer from obtaining a search warrant for a person's breath or~~
27 ~~blood.))~~)

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

1 tests administered by any qualified person of his or her choosing as
2 provided in RCW 46.61.506. The officer shall warn the driver, in
3 substantially the following language, that:

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

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

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

12 (i) The driver is age twenty-one or over and the test indicates
13 either that the alcohol concentration of the driver's breath is 0.08
14 or more (~~or that the THC concentration of the driver's blood is 5.00~~
15 ~~or more)); or~~

16 (ii) The driver is under age twenty-one and the test indicates
17 either that the alcohol concentration of the driver's breath is 0.02
18 or more (~~or that the THC concentration of the driver's blood is~~
19 ~~above 0.00)); or~~

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

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

25 (3) (~~Except as provided in this section, the test administered~~
26 ~~shall be of the breath only. If an individual is unconscious or is~~
27 ~~under arrest for the crime of felony driving under the influence of~~
28 ~~intoxicating liquor or drugs under RCW 46.61.502(6), felony physical~~
29 ~~control of a motor vehicle while under the influence of intoxicating~~
30 ~~liquor or any drug under RCW 46.61.504(6), vehicular homicide as~~
31 ~~provided in RCW 46.61.520, or vehicular assault as provided in RCW~~
32 ~~46.61.522, or if an individual is under arrest for the crime of~~
33 ~~driving while under the influence of intoxicating liquor or drugs as~~
34 ~~provided in RCW 46.61.502, which arrest results from an accident in~~
35 ~~which there has been serious bodily injury to another person, a~~
36 ~~breath or blood test may be administered without the consent of the~~
37 ~~individual so arrested pursuant to a search warrant, a valid waiver~~
38 ~~of the warrant requirement, or when exigent circumstances exist.~~

39 (4)) If, following his or her arrest and receipt of warnings
40 under subsection (2) of this section, the person arrested ((refuses))

1 exercises the right, granted herein, by refusing upon the request of
2 a law enforcement officer to submit to a test or tests of his or her
3 breath, no test shall be given except as otherwise authorized by ((a
4 ~~search warrant~~)) law.

5 (4) Nothing in subsection (1), (2), or (3) of this section
6 precludes a law enforcement officer from obtaining a person's blood
7 to test for alcohol, marijuana, or any drug, pursuant to a search
8 warrant, a valid waiver of the warrant requirement, when exigent
9 circumstances exist, or under any other authority of law. Any blood
10 drawn for the purpose of determining the person's alcohol, marijuana
11 levels, or any drug, is drawn pursuant to this section when the
12 officer has reasonable grounds to believe that the person is in
13 physical control or driving a vehicle under the influence or in
14 violation of RCW 46.61.503.

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

28 (a) Serve notice in writing on the person on behalf of the
29 department of its intention to suspend, revoke, or deny the person's
30 license, permit, or privilege to drive as required by subsection (6)
31 of this section;

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

37 (c) Serve notice in writing that the license or permit, if any,
38 is a temporary license that is valid for sixty days from the date of
39 arrest or from the date notice has been given in the event notice is
40 given by the department following a blood test, or until the

1 suspension, revocation, or denial of the person's license, permit, or
2 privilege to drive is sustained at a hearing pursuant to subsection
3 (7) of this section, whichever occurs first. No temporary license is
4 valid to any greater degree than the license or permit that it
5 replaces; and

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

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

17 (ii) That after receipt of ((the)) any applicable warnings
18 required by subsection (2) of this section the person refused to
19 submit to a test of his or her breath, or a test was administered and
20 the results indicated that the alcohol concentration of the person's
21 breath or blood was 0.08 or more, or the THC concentration of the
22 person's blood was 5.00 or more, if the person is age twenty-one or
23 over, or that the alcohol concentration of the person's breath or
24 blood was 0.02 or more, or the THC concentration of the person's
25 blood was above 0.00, if the person is under the age of twenty-one;
26 and

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

29 (6) The department of licensing, upon the receipt of a sworn
30 report or report under a declaration authorized by RCW 9A.72.085
31 under subsection (5)(d) of this section, shall suspend, revoke, or
32 deny the person's license, permit, or privilege to drive or any
33 nonresident operating privilege, as provided in RCW 46.20.3101, such
34 suspension, revocation, or denial to be effective beginning sixty
35 days from the date of arrest or from the date notice has been given
36 in the event notice is given by the department following a blood
37 test, or when sustained at a hearing pursuant to subsection (7) of
38 this section, whichever occurs first.

39 (7) A person receiving notification under subsection (5)(b) of
40 this section may, within twenty days after the notice has been given,

1 request in writing a formal hearing before the department. The person
2 shall pay a fee of three hundred seventy-five dollars as part of the
3 request. If the request is mailed, it must be postmarked within
4 twenty days after receipt of the notification. Upon timely receipt of
5 such a request for a formal hearing, including receipt of the
6 required three hundred seventy-five dollar fee, the department shall
7 afford the person an opportunity for a hearing. The department may
8 waive the required three hundred seventy-five dollar fee if the
9 person is an indigent as defined in RCW 10.101.010. Except as
10 otherwise provided in this section, the hearing is subject to and
11 shall be scheduled and conducted in accordance with RCW 46.20.329 and
12 46.20.332. The hearing shall be conducted in the county of the
13 arrest, except that all or part of the hearing may, at the discretion
14 of the department, be conducted by telephone or other electronic
15 means. The hearing shall be held within sixty days following the
16 arrest or following the date notice has been given in the event
17 notice is given by the department following a blood test, unless
18 otherwise agreed to by the department and the person, in which case
19 the action by the department shall be stayed, and any valid temporary
20 license (~~marked~~) under subsection (5) of this section extended, if
21 the person is otherwise eligible for licensing. For the purposes of
22 this section, the scope of the hearing shall cover the issues of
23 whether a law enforcement officer had reasonable grounds to believe
24 the person had been driving or was in actual physical control of a
25 motor vehicle within this state while under the influence of
26 intoxicating liquor or any drug or had been driving or was in actual
27 physical control of a motor vehicle within this state while having
28 alcohol in his or her system in a concentration of 0.02 or more, or
29 THC in his or her system in a concentration above 0.00, if the person
30 was under the age of twenty-one, whether the person was placed under
31 arrest, and (a) whether the person refused to submit to the test or
32 tests upon request of the officer after having been informed that
33 such refusal would result in the revocation of the person's license,
34 permit, or privilege to drive, or (b) if a test or tests were
35 administered, whether the applicable requirements of this section
36 were satisfied before the administration of the test or tests,
37 whether the person submitted to the test or tests, or whether a test
38 was administered (~~without express consent~~) pursuant to a search
39 warrant, a valid waiver of the warrant requirement, when exigent
40 circumstances exist, or under any other authority of law as permitted

1 under this section, and whether the test or tests indicated that the
2 alcohol concentration of the person's breath or blood was 0.08 or
3 more, or the THC concentration of the person's blood was 5.00 or
4 more, if the person was age twenty-one or over at the time of the
5 arrest, or that the alcohol concentration of the person's breath or
6 blood was 0.02 or more, or the THC concentration of the person's
7 blood was above 0.00, if the person was under the age of twenty-one
8 at the time of the arrest. Where a person is found to be in actual
9 physical control of a motor vehicle while under the influence of
10 intoxicating liquor or any drug or was under the age of twenty-one at
11 the time of the arrest and was in physical control of a motor vehicle
12 while having alcohol in his or her system in a concentration of 0.02
13 or THC concentration above 0.00, the person may petition the hearing
14 officer to apply the affirmative defense found in RCW 46.61.504(3)
15 and 46.61.503(2). The driver has the burden to prove the affirmative
16 defense by a preponderance of the evidence. The sworn report or
17 report under a declaration authorized by RCW 9A.72.085 submitted by a
18 law 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
24 in 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
26 that 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
31 the person unless the request is accompanied by the fee required by
32 RCW 5.56.010 for a witness in district court. The sworn report or
33 report under a declaration authorized by RCW 9A.72.085 of the law
34 enforcement officer and any other evidence accompanying the report
35 shall be 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
39 witnesses, may present evidence, and may testify. The department

1 shall order that the suspension, revocation, or denial either be
2 rescinded or sustained.

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

37 (9)(a) If a person whose driver's license, permit, or privilege
38 to drive has been or will be suspended, revoked, or denied under
39 subsection (6) of this section, other than as a result of a breath
40 test refusal, and who has not committed an offense for which he or

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

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

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

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

1 **Circumventing ignition interlock—Penalty**

2 **Sec. 6.** RCW 46.20.750 and 2005 c 200 s 2 are each amended to
3 read as follows:

4 (1) A person who is restricted to the use of a vehicle equipped
5 with an ignition interlock device (~~((and who tampers with the device
6 or directs, authorizes, or requests another to tamper with the
7 device, in order to circumvent the device by modifying, detaching,
8 disconnecting, or otherwise disabling it,))~~) is guilty of a gross
9 misdemeanor if the restricted driver:

10 (a) Tampers with the device by modifying, detaching,
11 disconnecting, or otherwise disabling it to allow the restricted
12 driver to operate the vehicle;

13 (b) Uses or requests another person to use a filter or other
14 device to circumvent the ignition interlock or to start or operate
15 the vehicle to allow the restricted driver to operate the vehicle;

16 (c) Has, directs, authorizes, or requests another person to
17 tamper with the device by modifying, detaching, disconnecting, or
18 otherwise disabling it to allow the restricted driver to operate the
19 vehicle; or

20 (d) Has, allows, directs, authorizes, or requests another person
21 to blow or otherwise exhale into the device in order to circumvent
22 the device to allow the restricted driver to operate the vehicle.

23 (2) A person who knowingly assists another person who is
24 restricted to the use of a vehicle equipped with an ignition
25 interlock device to circumvent the device or to start and operate
26 that vehicle (~~((in violation of a court order))~~) is guilty of a gross
27 misdemeanor. The provisions of this subsection do not apply if the
28 starting of a motor vehicle, or the request to start a motor vehicle,
29 equipped with an ignition interlock device is done for the purpose of
30 safety or mechanical repair of the device or the vehicle and the
31 person subject to the court order does not operate the vehicle.

32 (3) Any sentence imposed for a violation of subsection (1) of
33 this section shall be served consecutively with any sentence imposed
34 under RCW 46.20.740, 46.61.502, 46.61.504, 46.61.5055,
35 46.61.520(1)(a), or 46.61.522(1)(b).

36 **Commercial vehicles—Test for alcohol or drugs—Disqualification for**
37 **refusal of test or positive test—Procedures**

1 **Sec. 7.** RCW 46.25.120 and 2013 2nd sp.s. c 35 s 12 are each
2 amended to read as follows:

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

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

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

19 (4) A law enforcement officer who at the time of stopping or
20 detaining a commercial motor vehicle driver has reasonable grounds to
21 believe that driver was driving a commercial motor vehicle while
22 having alcohol, marijuana, or any drug in his or her system or while
23 under the influence of alcohol, marijuana, or any drug may obtain a
24 blood test pursuant to a search warrant, a valid waiver of the
25 warrant requirement, when exigent circumstances exist, or under any
26 other authority of law.

27 (5) If the person refuses testing, or (~~submits to~~) a test is
28 administered that discloses an alcohol concentration of 0.04 or more
29 or any measurable amount of THC concentration, the law enforcement
30 officer shall submit a sworn report to the department certifying that
31 the test was requested pursuant to subsection (1) of this section or
32 a blood test was administered pursuant to subsection (4) of this
33 section and that the person refused to submit to testing, or
34 (~~submitted to~~) a test was administered that disclosed an alcohol
35 concentration of 0.04 or more or any measurable amount of THC
36 concentration.

37 (~~(+5)~~) (6) Upon receipt of the sworn report of a law enforcement
38 officer under subsection (~~(+4)~~) (5) of this section, the department
39 shall disqualify the driver from driving a commercial motor vehicle
40 under RCW 46.25.090, subject to the hearing provisions of RCW

1 46.20.329 and 46.20.332. The hearing shall be conducted in the county
2 of the arrest. For the purposes of this section, the hearing shall
3 cover the issues of whether a law enforcement officer had reasonable
4 grounds to believe the person had been driving or was in actual
5 physical control of a commercial motor vehicle within this state
6 while having alcohol in the person's system or while under the
7 influence of any drug, whether the person refused to submit to the
8 test or tests upon request of the officer after having been informed
9 that the refusal would result in the disqualification of the person
10 from driving a commercial motor vehicle, if applicable, and, if the
11 test was administered, whether the results indicated an alcohol
12 concentration of 0.04 percent or more or any measurable amount of THC
13 concentration. The department shall order that the disqualification
14 of the person either be rescinded or sustained. Any decision by the
15 department disqualifying a person from driving a commercial motor
16 vehicle is stayed and does not take effect while a formal hearing is
17 pending under this section or during the pendency of a subsequent
18 appeal to superior court so long as there is no conviction for a
19 moving violation or no finding that the person has committed a
20 traffic infraction that is a moving violation during the pendency of
21 the hearing and appeal. If the disqualification of the person is
22 sustained after the hearing, the person who is disqualified may file
23 a petition in the superior court of the county of arrest to review
24 the final order of disqualification by the department in the manner
25 provided in RCW 46.20.334.

26 ~~((+6+))~~ (7) If a motor carrier or employer who is required to
27 have a testing program under 49 C.F.R. 382 knows that a commercial
28 driver in his or her employ has refused to submit to testing under
29 this section and has not been disqualified from driving a commercial
30 motor vehicle, the employer may notify law enforcement or his or her
31 medical review officer or breath alcohol technician that the driver
32 has refused to submit to the required testing.

33 ~~((+7+))~~ (8) The hearing provisions of this section do not apply
34 to those persons disqualified from driving a commercial motor vehicle
35 under RCW 46.25.090(7).

36 **Open container law for marijuana**

37 NEW SECTION. **Sec. 8.** A new section is added to chapter 46.61
38 RCW to read as follows:

1 (1)(a) It is a traffic infraction:

2 (i) For the registered owner of a motor vehicle, or the driver if
3 the registered owner is not then present, or passengers in the
4 vehicle, to keep marijuana in a motor vehicle when the vehicle is
5 upon a highway, unless it is (A) in the trunk of the vehicle, (B) in
6 some other area of the vehicle not normally occupied or directly
7 accessible by the driver or passengers if the vehicle does not have a
8 trunk, or (C) in a package, container, or receptacle that has not
9 been opened or the seal broken or contents partially removed. A
10 utility compartment or glove compartment is deemed to be within the
11 area occupied by the driver and passengers;

12 (ii) To consume marijuana in any manner including, but not
13 limited to, smoking or ingesting in a motor vehicle when the vehicle
14 is upon the public highway; or

15 (iii) To place marijuana in a container specifically labeled by
16 the manufacturer of the container as containing a nonmarijuana
17 substance and to then violate (a)(i) of this subsection.

18 (b) There is a rebuttable presumption that it is a traffic
19 infraction if the original container of marijuana is incorrectly
20 labeled and there is a subsequent violation of (a)(i) of this
21 subsection.

22 (2) As used in this section, "marijuana" or "marihuana" means all
23 parts of the plant *Cannabis*, whether growing or not; the seeds
24 thereof; the resin extracted from any part of the plant; and every
25 compound, manufacture, salt, derivative, mixture, or preparation of
26 the plant, its seeds, or resin. The term does not include the mature
27 stalks of the plant, fiber produced from the stalks, oil or cake made
28 from the seeds of the plant, any other compound, manufacture, salt,
29 derivative, mixture, or preparation of the mature stalks, except the
30 resin extracted therefrom, fiber, oil, or cake, or the sterilized
31 seed of the plant which is incapable of germination.

32 Alcohol and drug violators—Penalty schedule

33 **Sec. 9.** RCW 46.61.5055 and 2015 c 265 s 33 are each amended to
34 read as follows:

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

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

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

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

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

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

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

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

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

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

23 (i) By imprisonment for not less than thirty days nor more than
24 three hundred sixty-four days and sixty days of electronic home
25 monitoring. In lieu of the mandatory minimum term of sixty days
26 electronic home monitoring, the court may order at least an
27 additional four days in jail or, if available in that county or city,
28 a six-month period of 24/7 sobriety program monitoring pursuant to
29 RCW 36.28A.300 through 36.28A.390, and the court shall order an
30 expanded alcohol assessment and treatment, if deemed appropriate by
31 the assessment. The offender shall pay for the cost of the electronic
32 monitoring. The county or municipality where the penalty is being
33 imposed shall determine the cost. The court may also require the
34 offender's electronic home monitoring device include an alcohol
35 detection breathalyzer or other separate alcohol monitoring device,
36 and may restrict the amount of alcohol the offender may consume
37 during the time the offender is on electronic home monitoring. Thirty
38 days of imprisonment and sixty days of electronic home monitoring may
39 not be suspended unless the court finds that the imposition of this
40 mandatory minimum sentence would impose a substantial risk to the

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

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

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

13 (i) By imprisonment for not less than forty-five days nor more
14 than three hundred sixty-four days and ninety days of electronic home
15 monitoring. In lieu of the mandatory minimum term of ninety days
16 electronic home monitoring, the court may order at least an
17 additional six days in jail or, if available in that county or city,
18 a six-month period of 24/7 sobriety program monitoring pursuant to
19 RCW 36.28A.300 through 36.28A.390, and the court shall order an
20 expanded alcohol assessment and treatment, if deemed appropriate by
21 the assessment. The offender shall pay for the cost of the electronic
22 monitoring. The county or municipality where the penalty is being
23 imposed shall determine the cost. The court may also require the
24 offender's electronic home monitoring device include an alcohol
25 detection breathalyzer or other separate alcohol monitoring device,
26 and may restrict the amount of alcohol the offender may consume
27 during the time the offender is on electronic home monitoring. Forty-
28 five days of imprisonment and ninety days of electronic home
29 monitoring may not be suspended unless the court finds that the
30 imposition of this mandatory minimum sentence would impose a
31 substantial risk to the offender's physical or mental well-being.
32 Whenever the mandatory minimum sentence is suspended, the court shall
33 state in writing the reason for granting the suspension and the facts
34 upon which the suspension is based; and

35 (ii) By a fine of not less than seven hundred fifty dollars nor
36 more than five thousand dollars. Seven hundred fifty dollars of the
37 fine may not be suspended unless the court finds the offender to be
38 indigent.

39 (3) **Two or three prior offenses in seven years.** Except as
40 provided in RCW 46.61.502(6) or 46.61.504(6), a person who is

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

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

9 (i) By imprisonment for not less than ninety days nor more than
10 three hundred sixty-four days, if available in that county or city, a
11 six-month period of 24/7 sobriety program monitoring pursuant to RCW
12 36.28A.300 through 36.28A.390, and one hundred twenty days of
13 electronic home monitoring. In lieu of the mandatory minimum term of
14 one hundred twenty days of electronic home monitoring, the court may
15 order at least an additional eight days in jail. The court shall
16 order an expanded alcohol assessment and treatment, if deemed
17 appropriate by the assessment. The offender shall pay for the cost of
18 the electronic monitoring. The county or municipality where the
19 penalty is being imposed shall determine the cost. The court may also
20 require the offender's electronic home monitoring device include an
21 alcohol detection breathalyzer or other separate alcohol monitoring
22 device, and may restrict the amount of alcohol the offender may
23 consume during the time the offender is on electronic home
24 monitoring. Ninety days of imprisonment and one hundred twenty days
25 of electronic home monitoring may not be suspended unless the court
26 finds that the imposition of this mandatory minimum sentence would
27 impose a substantial risk to the offender's physical or mental well-
28 being. Whenever the mandatory minimum sentence is suspended, the
29 court shall state in writing the reason for granting the suspension
30 and the facts upon which the suspension is based; and

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

34 (b) **Penalty for alcohol concentration at least 0.15.** In the case
35 of a person whose alcohol concentration was at least 0.15, or for
36 whom by reason of 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:

39 (i) By imprisonment for not less than one hundred twenty days nor
40 more than three hundred sixty-four days, if available in that county

1 or city, a six-month period of 24/7 sobriety program monitoring
2 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty
3 days of electronic home monitoring. In lieu of the mandatory minimum
4 term of one hundred fifty days of electronic home monitoring, the
5 court may order at least an additional ten days in jail. The offender
6 shall pay for the cost of the electronic monitoring. The court shall
7 order an expanded alcohol assessment and treatment, if deemed
8 appropriate by the assessment. The county or municipality where the
9 penalty is being imposed shall determine the cost. The court may also
10 require the offender's electronic home monitoring device include an
11 alcohol detection breathalyzer or other separate alcohol monitoring
12 device, and may restrict the amount of alcohol the offender may
13 consume during the time the offender is on electronic home
14 monitoring. One hundred twenty days of imprisonment and one hundred
15 fifty days of electronic home monitoring may not be suspended unless
16 the court finds that the imposition of this mandatory minimum
17 sentence would impose a substantial risk to the offender's physical
18 or mental well-being. Whenever the mandatory minimum sentence is
19 suspended, the court shall state in writing the reason for granting
20 the suspension and the facts upon which the suspension is based; and

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

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

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

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

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

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

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

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

38 (5) **Monitoring.**

39 (a) **Ignition interlock device.** The court shall require any person
40 convicted of a violation of RCW 46.61.502 or 46.61.504 or an

1 equivalent local ordinance to comply with the rules and requirements
2 of the department regarding the installation and use of a functioning
3 ignition interlock device installed on all motor vehicles operated by
4 the person.

5 (b) **Monitoring devices.** If the court orders that a person refrain
6 from consuming any alcohol, the court may order the person to submit
7 to alcohol monitoring through an alcohol detection breathalyzer
8 device, transdermal sensor device, or other technology designed to
9 detect alcohol in a person's system. The person shall pay for the
10 cost of the monitoring, unless the court specifies that the cost of
11 monitoring will be paid with funds that are available from an
12 alternative source identified by the court. The county or
13 municipality where the penalty is being imposed shall determine the
14 cost.

15 (c) **Ignition interlock device substituted for 24/7 sobriety**
16 **program monitoring.** In any county or city where a 24/7 sobriety
17 program is available and verified by the Washington association of
18 sheriffs and police chiefs, the court shall:

19 (i) Order the person to install and use a functioning ignition
20 interlock or other device in lieu of such period of 24/7 sobriety
21 program monitoring;

22 (ii) Order the person to a period of 24/7 sobriety program
23 monitoring pursuant to subsections (1) through (3) of this section;
24 or

25 (iii) Order the person to install and use a functioning ignition
26 interlock or other device in addition to a period of 24/7 sobriety
27 program monitoring pursuant to subsections (1) through (3) of this
28 section.

29 (6) **Penalty for having a minor passenger in vehicle.** If a person
30 who is convicted of a violation of RCW 46.61.502 or 46.61.504
31 committed the offense while a passenger under the age of sixteen was
32 in the vehicle, the court shall:

33 (a) Order the use of an ignition interlock or other device for an
34 additional six months;

35 (b) In any case in which the person has no prior offenses within
36 seven years, and except as provided in RCW 46.61.502(6) or
37 46.61.504(6), order an additional twenty-four hours of imprisonment
38 and a fine of not less than one thousand dollars and not more than
39 five thousand dollars. One thousand dollars of the fine may not be
40 suspended unless the court finds the offender to be 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 an additional five days of imprisonment and a
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 unless the court finds the offender to be indigent;

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

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

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

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

22 (c) Whether the driver was driving in the opposite direction of
23 the normal flow of traffic on a multiple lane highway, as defined by
24 RCW 46.04.350, with a posted speed limit of forty-five miles per hour
25 or greater; and

26 (d) Whether a child passenger under the age of sixteen was an
27 occupant in the driver's vehicle.

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

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

35 (a) **Penalty for alcohol concentration less than 0.15.** If the
36 person's alcohol concentration was less than 0.15, or if for reasons
37 other than the person's refusal to take a test offered under RCW
38 46.20.308 there is no test result indicating the person's alcohol
39 concentration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (10) **Probation of driving privilege.** After expiration of any
5 period of suspension, revocation, or denial of the offender's
6 license, permit, or privilege to drive required by this section, the
7 department shall place the offender's driving privilege in
8 probationary status pursuant to RCW 46.20.355.

9 (11) **Conditions of probation.** (a) In addition to any
10 nonsuspendable and nondeferrable jail sentence required by this
11 section, whenever the court imposes up to three hundred sixty-four
12 days in jail, the court shall also suspend but shall not defer a
13 period of confinement for a period not exceeding five years. The
14 court shall impose conditions of probation that include: (i) Not
15 driving a motor vehicle within this state without a valid license to
16 drive (~~and~~); (ii) not driving a motor vehicle within this state
17 without proof of liability insurance or other financial
18 responsibility for the future pursuant to RCW 46.30.020; (~~(+ii))~~
19 (iii) not driving or being in physical control of a motor vehicle
20 within this state while having an alcohol concentration of 0.08 or
21 more or a THC concentration of 5.00 nanograms per milliliter of whole
22 blood or higher, within two hours after driving; (~~and-(iii))~~ (iv)
23 not refusing to submit to a test of his or her breath or blood to
24 determine alcohol or drug concentration upon request of a law
25 enforcement officer who has reasonable grounds to believe the person
26 was driving or was in actual physical control of a motor vehicle
27 within this state while under the influence of intoxicating liquor or
28 drug; and (v) not driving a motor vehicle in this state without a
29 functioning ignition interlock device as required by the department
30 under RCW 46.20.720(3). The court may impose conditions of probation
31 that include nonrepetition, installation of an ignition interlock
32 device on the probationer's motor vehicle, alcohol or drug treatment,
33 supervised probation, or other conditions that may be appropriate.
34 The sentence may be imposed in whole or in part upon violation of a
35 condition of probation during the suspension period.

36 (b) For each violation of mandatory conditions of probation under
37 (a)(i), (ii), (~~(+))~~ (iii), (iv), or (v) of this subsection, the
38 court shall order the convicted person to be confined for thirty
39 days, which shall not be suspended or deferred.

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

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

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

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

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

23 Whenever the mandatory minimum term of electronic home monitoring
24 is waived, the court shall state in writing the reason for granting
25 the waiver and the facts upon which the waiver is based, and shall
26 impose an alternative sentence with similar punitive consequences.
27 The alternative sentence may include, but is not limited to, use of
28 an ignition interlock device, the 24/7 sobriety program monitoring,
29 additional jail time, work crew, or work camp.

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

36 (13) **Extraordinary medical placement.** An offender serving a
37 sentence under this section, whether or not a mandatory minimum term
38 has expired, may be granted an extraordinary medical placement by the
39 jail administrator subject to the standards and limitations set forth
40 in RCW 9.94A.728(~~(+3)~~) (1)(c).

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

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

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

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

8 (iii) A conviction for a violation of RCW 46.25.110 or an
9 equivalent local ordinance;

10 (iv) A conviction for a violation of RCW 79A.60.040(2) or an
11 equivalent local ordinance;

12 (v) A conviction for a violation of RCW 79A.60.040(1) or an
13 equivalent local ordinance committed in a reckless manner if the
14 conviction is the result of a charge that was originally filed as a
15 violation of RCW 79A.60.040(2) or an equivalent local ordinance;

16 (vi) A conviction for a violation of RCW 47.68.220 or an
17 equivalent local ordinance committed while under the influence of
18 intoxicating liquor or any drug;

19 ~~((vi))~~ (vii) A conviction for a violation of RCW 47.68.220 or
20 an equivalent local ordinance committed in a careless or reckless
21 manner if the conviction is the result of a charge that was
22 originally filed as a violation of RCW 47.68.220 or an equivalent
23 local ordinance while under the influence of intoxicating liquor or
24 any drug;

25 (viii) A conviction for a violation of RCW 46.09.470(2) or an
26 equivalent local ordinance;

27 ~~((vii))~~ (ix) A conviction for a violation of RCW 46.10.490(2)
28 or an equivalent local ordinance;

29 ~~((viii))~~ (x) A conviction for a violation of RCW 46.61.520
30 committed while under the influence of intoxicating liquor or any
31 drug, or a conviction for a violation of RCW 46.61.520 committed in a
32 reckless manner or with the disregard for the safety of others if the
33 conviction is the result of a charge that was originally filed as a
34 violation of RCW 46.61.520 committed while under the influence of
35 intoxicating liquor or any drug;

36 ~~((ix))~~ (xi) A conviction for a violation of RCW 46.61.522
37 committed while under the influence of intoxicating liquor or any
38 drug, or a conviction for a violation of RCW 46.61.522 committed in a
39 reckless manner or with the disregard for the safety of others if the
40 conviction is the result of a charge that was originally filed as a

1 violation of RCW 46.61.522 committed while under the influence of
2 intoxicating liquor or any drug;

3 ~~((x))~~ (xii) A conviction for a violation of RCW 46.61.5249,
4 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the
5 conviction is the result of a charge that was originally filed as a
6 violation of RCW 46.61.502 or 46.61.504, or an equivalent local
7 ordinance, or of RCW 46.61.520 or 46.61.522;

8 ~~((xi))~~ (xiii) An out-of-state conviction for a violation that
9 would have been a violation of (a)(i), (ii), ~~((viii))~~ (x), ~~((ix))~~
10 (xi), or ~~((x))~~ (xii) of this subsection if committed in this state;

11 ~~((xii))~~ (xiv) A deferred prosecution under chapter 10.05 RCW
12 granted in a prosecution for a violation of RCW 46.61.502, 46.61.504,
13 or an equivalent local ordinance;

14 ~~((xiii))~~ (xv) A deferred prosecution under chapter 10.05 RCW
15 granted in a prosecution for a violation of RCW 46.61.5249, or an
16 equivalent local ordinance, if the charge under which the deferred
17 prosecution was granted 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 ~~((xiv))~~ (xvi) A deferred prosecution granted in another state
21 for a violation of driving or having physical control of a vehicle
22 while under the influence of intoxicating liquor or any drug if the
23 out-of-state deferred prosecution is equivalent to the deferred
24 prosecution under chapter 10.05 RCW, including a requirement that the
25 defendant participate in a chemical dependency treatment program; or

26 ~~((xv))~~ (xvii) A deferred sentence imposed in a prosecution for
27 a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
28 equivalent local ordinance, if the charge under which the deferred
29 sentence was imposed was originally filed as a violation of RCW
30 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
31 violation of RCW 46.61.520 or 46.61.522;

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

36 (b) "Treatment" means alcohol or drug treatment approved by the
37 department of social and health services;

38 (c) "Within seven years" means that the arrest for a prior
39 offense occurred within seven years before or after the arrest for
40 the current offense; and

1 (d) "Within ten years" means that the arrest for a prior offense
2 occurred within ten years before or after the arrest for the current
3 offense.

4 (15) All fines imposed by this section apply to adult offenders
5 only.

6 **Sec. 10.** RCW 46.01.260 and 2010 c 161 s 208 are each amended to
7 read as follows:

8 (1) Except as provided in subsection (2) of this section, the
9 director may destroy applications for vehicle registrations, copies
10 of vehicle registrations issued, applications for drivers' licenses,
11 copies of issued drivers' licenses, certificates of title and
12 registration or other documents, and records or supporting papers on
13 file in the department that have been microfilmed or photographed or
14 are more than five years old. The director may destroy applications
15 for vehicle registrations that are renewal applications when the
16 computer record of the applications has been updated.

17 (2)(a) The director shall not destroy records of convictions or
18 adjudications of RCW 46.61.502, 46.61.503, 46.61.504, 46.61.520, and
19 46.61.522, or records of deferred prosecutions granted under RCW
20 10.05.120 and shall maintain such records permanently on file.

21 (b) The director shall not, within fifteen years from the date of
22 conviction or adjudication, destroy records if the offense was
23 originally charged as one of the offenses designated in (a) of this
24 subsection, convictions or adjudications of the following offenses:
25 RCW 46.61.500 or 46.61.5249 or any other violation that was
26 originally charged as one of the offenses designated in (a) of this
27 subsection.

28 (c) For purposes of RCW 46.52.101 and 46.52.130, offenses subject
29 to this subsection shall be considered "alcohol-related" offenses.

30 **Ignition interlock devices—Standards—Compliance**

31 **Sec. 11.** RCW 43.43.395 and 2013 2nd sp.s. c 35 s 9 are each
32 amended to read as follows:

33 (1) The state patrol shall by rule provide standards for the
34 certification, installation, repair, maintenance, monitoring,
35 inspection, and removal of ignition interlock devices, as defined
36 under RCW 46.04.215, and equipment as outlined under this section,
37 and may inspect the records and equipment of manufacturers and

1 vendors during regular business hours for compliance with statutes
2 and rules and may suspend or revoke certification for any
3 noncompliance.

4 (2)(a) When a certified service provider or individual installer
5 of ignition interlock devices is found to be out of compliance, the
6 installation privileges of that certified service provider or
7 individual installer may be suspended or revoked until the certified
8 service provider or individual installer comes into compliance.
9 During any suspension or revocation period, the certified service
10 provider or individual installer is responsible for notifying
11 affected customers of any changes in their service agreement.

12 (b) A certified service provider or individual installer whose
13 certification is suspended or revoked for noncompliance has a right
14 to an administrative hearing under chapter 34.05 RCW to contest the
15 suspension or revocation, or both. For the administrative hearing,
16 the procedure and rules of evidence are as specified in chapter 34.05
17 RCW, except as otherwise provided in this chapter. Any request for an
18 administrative hearing must be made in writing and must be received
19 by the state patrol within twenty days after the receipt of the
20 notice of suspension or revocation.

21 (3)(a) An ignition interlock device must employ:

22 (i) Fuel cell technology. For the purposes of this subsection,
23 "fuel cell technology" consists of the following electrochemical
24 method: An electrolyte designed to oxidize the alcohol and release
25 electrons to be collected by an active electrode; a current flow is
26 generated within the electrode proportional to the amount of alcohol
27 oxidized on the fuel cell surface; and the electrical current is
28 measured and reported as breath alcohol concentration. Fuel cell
29 technology is highly specific for alcohols((-

30 ~~(b) When reasonably available in the area, as determined by the
31 state patrol, an ignition interlock device must employ));~~

32 (ii) Technology capable of taking a photo identification of the
33 user giving the breath sample and recording on the photo the time the
34 breath sample was given; and

35 (iii) Technology capable of providing the global positioning
36 coordinates at the time of each test sequence. Such coordinates must
37 be displayed within the data log that is downloaded by the
38 manufacturer and must be made available to the state patrol to be
39 used for circumvention and tampering investigations.

40 ((+e)) (b) To be certified, an ignition interlock device must:

1 (i) Meet or exceed the minimum test standards according to rules
2 adopted by the state patrol. Only a notarized statement from a
3 laboratory that is accredited and certified ((by)) under the current
4 edition of ISO (the international organization of standardization)
5 17025 standard for testing and calibration laboratories and is
6 capable of performing the tests specified will be accepted as proof
7 of meeting or exceeding the standards. The notarized statement must
8 include the name and signature of the person in charge of the tests
9 under the certification statement. The state patrol must adopt by
10 rule the required language of the certification statement that must,
11 at a minimum, outline that the testing meets or exceeds all
12 specifications listed in the federal register adopted in rule by the
13 state patrol; and
14 (ii) Be maintained in accordance with the rules and standards
15 adopted by the state patrol.

16 **Abstract of driving record—Access—Fee—Violations**

17 **Sec. 12.** RCW 46.52.130 and 2015 c 265 s 4 are each amended to
18 read as follows:

19 Upon a proper request, the department may furnish an abstract of
20 a person's driving record as permitted under this section.

21 (1) **Contents of abstract of driving record.** An abstract of a
22 person's driving record, whenever possible, must include:

23 (a) An enumeration of motor vehicle accidents in which the person
24 was driving, including:

25 (i) The total number of vehicles involved;

26 (ii) Whether the vehicles were legally parked or moving;

27 (iii) Whether the vehicles were occupied at the time of the
28 accident; and

29 (iv) Whether the accident resulted in a fatality;

30 (b) Any reported convictions, forfeitures of bail, or findings
31 that an infraction was committed based upon a violation of any motor
32 vehicle law;

33 (c) The status of the person's driving privilege in this state;
34 and

35 (d) Any reports of failure to appear in response to a traffic
36 citation or failure to respond to a notice of infraction served upon
37 the named individual by an arresting officer.

1 (2) **Release of abstract of driving record.** An abstract of a
2 person's driving record may be furnished to the following persons or
3 entities:

4 (a) **Named individuals.** (i) An abstract of the full driving record
5 maintained by the department may be furnished to the individual named
6 in the abstract.

7 (ii) Nothing in this section prevents a court from providing a
8 copy of the driver's abstract to the individual named in the abstract
9 or that named individual's attorney, provided that the named
10 individual has a pending or open infraction or criminal case in that
11 court. A pending case includes criminal cases that have not reached a
12 disposition by plea, stipulation, trial, or amended charge. An open
13 infraction or criminal case includes cases on probation, payment
14 agreement or subject to, or in collections. Courts may charge a
15 reasonable fee for the production and copying of the abstract for the
16 individual.

17 (b) **Employers or prospective employers.** (i)(A) An abstract of the
18 full driving record maintained by the department may be furnished to
19 an employer or prospective employer or an agent acting on behalf of
20 an employer or prospective employer of the named individual for
21 purposes related to driving by the individual as a condition of
22 employment or otherwise at the direction of the employer.

23 (B) Release of an abstract of the driving record of an employee
24 or prospective employee requires a statement signed by: (I) The
25 employee or prospective employee that authorizes the release of the
26 record; and (II) the employer attesting that the information is
27 necessary for employment purposes related to driving by the
28 individual as a condition of employment or otherwise at the direction
29 of the employer. If the employer or prospective employer authorizes
30 an agent to obtain this information on their behalf, this must be
31 noted in the statement. The statement must also note that any
32 information contained in the abstract related to an adjudication that
33 is subject to a court order sealing the juvenile record of an
34 employee or prospective employee may not be used by the employer or
35 prospective employer, or an agent authorized to obtain this
36 information on their behalf, unless required by federal regulation or
37 law. The employer or prospective employer must afford the employee or
38 prospective employee an opportunity to demonstrate that an
39 adjudication contained in the abstract is subject to a court order
40 sealing the juvenile record.

1 (C) Upon request of the person named in the abstract provided
2 under this subsection, and upon that same person furnishing copies of
3 court records ruling that the person was not at fault in a motor
4 vehicle accident, the department must indicate on any abstract
5 provided under this subsection that the person was not at fault in
6 the motor vehicle accident.

7 (D) No employer or prospective employer, nor any agent of an
8 employer or prospective employer, may use information contained in
9 the abstract related to an adjudication that is subject to a court
10 order sealing the juvenile record of an employee or prospective
11 employee for any purpose unless required by federal regulation or
12 law. The employee or prospective employee must furnish a copy of the
13 court order sealing the juvenile record to the employer or
14 prospective employer, or the agent of the employer or prospective
15 employer, as may be required to ensure the application of this
16 subsection.

17 (ii) In addition to the methods described in (b)(i) of this
18 subsection, the director may enter into a contractual agreement with
19 an employer or its agent for the purpose of reviewing the driving
20 records of existing employees for changes to the record during
21 specified periods of time. The department shall establish a fee for
22 this service, which must be deposited in the highway safety fund. The
23 fee for this service must be set at a level that will not result in a
24 net revenue loss to the state. Any information provided under this
25 subsection must be treated in the same manner and is subject to the
26 same restrictions as driving record abstracts.

27 (c) **Volunteer organizations.** (i) An abstract of the full driving
28 record maintained by the department may be furnished to a volunteer
29 organization or an agent for a volunteer organization for which the
30 named individual has submitted an application for a position that
31 would require driving by the individual at the direction of the
32 volunteer organization.

33 (ii) Release of an abstract of the driving record of a
34 prospective volunteer requires a statement signed by: (A) The
35 prospective volunteer that authorizes the release of the record; and
36 (B) the volunteer organization attesting that the information is
37 necessary for purposes related to driving by the individual at the
38 direction of the volunteer organization. If the volunteer
39 organization authorizes an agent to obtain this information on their
40 behalf, this must be noted in the statement.

1 (d) **Transit authorities.** An abstract of the full driving record
2 maintained by the department may be furnished to an employee or agent
3 of a transit authority checking prospective volunteer vanpool drivers
4 for insurance and risk management needs.

5 (e) **Insurance carriers.** (i) An abstract of the driving record
6 maintained by the department covering the period of not more than the
7 last three years may be furnished to an insurance company or its
8 agent:

9 (A) That has motor vehicle or life insurance in effect covering
10 the named individual;

11 (B) To which the named individual has applied; or

12 (C) That has insurance in effect covering the employer or a
13 prospective employer of the named individual.

14 (ii) The abstract provided to the insurance company must:

15 (A) Not contain any information related to actions committed by
16 law enforcement officers or firefighters, as both terms are defined
17 in RCW 41.26.030, or by Washington state patrol officers, while
18 driving official vehicles in the performance of their occupational
19 duty. This does not apply to any situation where the vehicle was used
20 in the commission of a misdemeanor or felony;

21 (B) Include convictions under RCW 46.61.5249 and 46.61.525,
22 except that the abstract must report the convictions only as
23 negligent driving without reference to whether they are for first or
24 second degree negligent driving; and

25 (C) Exclude any deferred prosecution under RCW 10.05.060, except
26 that if a person is removed from a deferred prosecution under RCW
27 10.05.090, the abstract must show the deferred prosecution as well as
28 the removal.

29 (iii) Any policy of insurance may not be canceled, nonrenewed,
30 denied, or have the rate increased on the basis of information
31 regarding an accident included in the abstract of a driving record,
32 unless the policyholder was determined to be at fault.

33 (iv) Any insurance company or its agent, for underwriting
34 purposes relating to the operation of commercial motor vehicles, may
35 not use any information contained in the abstract relative to any
36 person's operation of motor vehicles while not engaged in such
37 employment. Any insurance company or its agent, for underwriting
38 purposes relating to the operation of noncommercial motor vehicles,
39 may not use any information contained in the abstract relative to any
40 person's operation of commercial motor vehicles.

1 (v) The director may enter into a contractual agreement with an
2 insurance company or its agent for the limited purpose of reviewing
3 the driving records of existing policyholders for changes to the
4 record during specified periods of time. The department shall
5 establish a fee for this service, which must be deposited in the
6 highway safety fund. The fee for this service must be set at a level
7 that will not result in a net revenue loss to the state. Any
8 information provided under this subsection must be treated in the
9 same manner and is subject to the same restrictions as driving record
10 abstracts.

11 (f) **Alcohol/drug assessment or treatment agencies.** An abstract of
12 the driving record maintained by the department covering the period
13 of not more than the last five years may be furnished to an alcohol/
14 drug assessment or treatment agency approved by the department of
15 social and health services to which the named individual has applied
16 or been assigned for evaluation or treatment, for purposes of
17 assisting employees in making a determination as to what level of
18 treatment, if any, is appropriate, except that the abstract must:

19 (i) Also include records of alcohol-related offenses, as defined
20 in RCW 46.01.260(2), covering a period of not more than the last ten
21 years; and

22 (ii) Indicate whether an alcohol-related offense was originally
23 charged as a violation of either RCW 46.61.502 or 46.61.504.

24 (g) **Attorneys—City attorneys ((and)), county prosecuting**
25 **attorneys, and named individual's attorney of record.** An abstract of
26 the full driving record maintained by the department, including
27 whether a recorded violation is an alcohol-related offense, as
28 defined in RCW 46.01.260(2), that was originally charged as a
29 violation of either RCW 46.61.502 or 46.61.504, may be furnished to
30 city attorneys ((~~or~~)), county prosecuting attorneys, or the named
31 individual's attorney of record. City attorneys ((and)), county
32 prosecuting attorneys, or the named individual's attorney of record
33 may provide the driving record to alcohol/drug assessment or
34 treatment agencies approved by the department of social and health
35 services to which the named individual has applied or been assigned
36 for evaluation or treatment.

37 (h) **State colleges, universities, or agencies, or units of local**
38 **government.** An abstract of the full driving record maintained by the
39 department may be furnished to (i) state colleges, universities, or
40 agencies for employment and risk management purposes or (ii) units of

1 local government authorized to self-insure under RCW 48.62.031 for
2 employment and risk management purposes.

3 (i) **Superintendent of public instruction.** An abstract of the full
4 driving record maintained by the department may be furnished to the
5 superintendent of public instruction for review of public school bus
6 driver records. The superintendent or superintendent's designee may
7 discuss information on the driving record with an authorized
8 representative of the employing school district for employment and
9 risk management purposes.

10 (3) **Release to third parties prohibited.** Any person or entity
11 receiving an abstract of a person's driving record under subsection
12 (2)(b) through (i) of this section shall use the abstract exclusively
13 for his, her, or its own purposes or as otherwise expressly permitted
14 under this section, and shall not divulge any information contained
15 in the abstract to a third party.

16 (4) **Fee.** The director shall collect a thirteen dollar fee for
17 each abstract of a person's driving record furnished by the
18 department. Fifty percent of the fee must be deposited in the highway
19 safety fund, and fifty percent of the fee must be deposited according
20 to RCW 46.68.038.

21 (5) **Violation.** (a) Any negligent violation of this section is a
22 gross misdemeanor.

23 (b) Any intentional violation of this section is a class C
24 felony.

25 (6) Effective July 1, 2019, the contents of a driving abstract
26 pursuant to this section shall not include any information related to
27 sealed juvenile records unless that information is required by
28 federal law or regulation.

29 **Sec. 13.** RCW 9.94A.589 and 2002 c 175 s 7 are each amended to
30 read as follows:

31 (1)(a) Except as provided in (b) (~~(c)~~), (c), or (d) of this
32 subsection, whenever a person is to be sentenced for two or more
33 current offenses, the sentence range for each current offense shall
34 be determined by using all other current and prior convictions as if
35 they were prior convictions for the purpose of the offender score:
36 PROVIDED, That if the court enters a finding that some or all of the
37 current offenses encompass the same criminal conduct then those
38 current offenses shall be counted as one crime. Sentences imposed
39 under this subsection shall be served concurrently. Consecutive

1 sentences may only be imposed under the exceptional sentence
2 provisions of RCW 9.94A.535. "Same criminal conduct," as used in this
3 subsection, means two or more crimes that require the same criminal
4 intent, are committed at the same time and place, and involve the
5 same victim. This definition applies in cases involving vehicular
6 assault or vehicular homicide even if the victims occupied the same
7 vehicle.

8 (b) Whenever a person is convicted of two or more serious violent
9 offenses arising from separate and distinct criminal conduct, the
10 standard sentence range for the offense with the highest seriousness
11 level under RCW 9.94A.515 shall be determined using the offender's
12 prior convictions and other current convictions that are not serious
13 violent offenses in the offender score and the standard sentence
14 range for other serious violent offenses shall be determined by using
15 an offender score of zero. The standard sentence range for any
16 offenses that are not serious violent offenses shall be determined
17 according to (a) of this subsection. All sentences imposed under
18 (~~(b)~~) of this subsection (1)(b) shall be served consecutively to
19 each other and concurrently with sentences imposed under (a) of this
20 subsection.

21 (c) If an offender is convicted under RCW 9.41.040 for unlawful
22 possession of a firearm in the first or second degree and for the
23 felony crimes of theft of a firearm or possession of a stolen
24 firearm, or both, the standard sentence range for each of these
25 current offenses shall be determined by using all other current and
26 prior convictions, except other current convictions for the felony
27 crimes listed in this subsection (1)(c), as if they were prior
28 convictions. The offender shall serve consecutive sentences for each
29 conviction of the felony crimes listed in this subsection (1)(c), and
30 for each firearm unlawfully possessed.

31 (d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6),
32 or 46.61.5055(4) shall be served consecutively to any sentences
33 imposed under RCW 46.20.740 and 46.20.750.

34 (2)(a) Except as provided in (b) of this subsection, whenever a
35 person while under sentence for conviction of a felony commits
36 another felony and is sentenced to another term of confinement, the
37 latter term shall not begin until expiration of all prior terms.

38 (b) Whenever a second or later felony conviction results in
39 community supervision with conditions not currently in effect, under
40 the prior sentence or sentences of community supervision the court

1 may require that the conditions of community supervision contained in
2 the second or later sentence begin during the immediate term of
3 community supervision and continue throughout the duration of the
4 consecutive term of community supervision.

5 (3) Subject to subsections (1) and (2) of this section, whenever
6 a person is sentenced for a felony that was committed while the
7 person was not under sentence for conviction of a felony, the
8 sentence shall run concurrently with any felony sentence which has
9 been imposed by any court in this or another state or by a federal
10 court subsequent to the commission of the crime being sentenced
11 unless the court pronouncing the current sentence expressly orders
12 that they be served consecutively.

13 (4) Whenever any person granted probation under RCW 9.95.210 or
14 9.92.060, or both, has the probationary sentence revoked and a prison
15 sentence imposed, that sentence shall run consecutively to any
16 sentence imposed pursuant to this chapter, unless the court
17 pronouncing the subsequent sentence expressly orders that they be
18 served concurrently.

19 (5) In the case of consecutive sentences, all periods of total
20 confinement shall be served before any partial confinement, community
21 restitution, community supervision, or any other requirement or
22 conditions of any of the sentences. Except for exceptional sentences
23 as authorized under RCW 9.94A.535, if two or more sentences that run
24 consecutively include periods of community supervision, the aggregate
25 of the community supervision period shall not exceed twenty-four
26 months.

27 **Sec. 14.** RCW 46.61.503 and 2013 c 3 s 34 are each amended to
28 read as follows:

29 (1) Notwithstanding any other provision of this title, a person
30 is guilty of driving or being in physical control of a motor vehicle
31 after consuming alcohol or marijuana if the person operates or is in
32 physical control of a motor vehicle within this state and the person:

33 (a) Is under the age of twenty-one; and

34 (b) Has, within two hours after operating or being in physical
35 control of the motor vehicle, either:

36 (i) An alcohol concentration of at least 0.02 but less than the
37 concentration specified in RCW 46.61.502, as shown by analysis of the
38 person's breath or blood made under RCW 46.61.506; or

1 (ii) A THC concentration above 0.00 but less than the
2 concentration specified in RCW 46.61.502, as shown by analysis of the
3 person's blood made under RCW 46.61.506.

4 (2) It is an affirmative defense to a violation of subsection (1)
5 of this section, which the defendant must prove by a preponderance of
6 the evidence, that the defendant consumed a sufficient quantity of
7 alcohol or marijuana after the time of driving or being in physical
8 control and before the administration of an analysis of the person's
9 breath or blood to cause the defendant's alcohol or THC concentration
10 to be in violation of subsection (1) of this section within two hours
11 after driving or being in physical control. The court shall not admit
12 evidence of this defense unless the defendant notifies the
13 prosecution prior to the earlier of: (a) Seven days prior to trial;
14 or (b) the omnibus or pretrial hearing in the case of the defendant's
15 intent to assert the affirmative defense.

16 (3) No person may be convicted under this section for being in
17 physical control of a motor vehicle and it is an affirmative defense
18 to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny
19 the privilege to drive, if, prior to being pursued by a law
20 enforcement officer, the person has moved the vehicle safely off the
21 roadway.

22 (4) Analyses of blood or breath samples obtained more than two
23 hours after the alleged driving or being in physical control may be
24 used as evidence that within two hours of the alleged driving or
25 being in physical control, a person had an alcohol or THC
26 concentration in violation of subsection (1) of this section.

27 ((+4)) (5) A violation of this section is a misdemeanor.

28 **Sec. 15.** RCW 46.20.755 and 2010 c 269 s 5 are each amended to
29 read as follows:

30 If a person is required, as part of the person's judgment and
31 sentence or as a condition of release, to install an ignition
32 interlock device on all motor vehicles operated by the person and the
33 person is under the jurisdiction of the municipality or county
34 probation or supervision department, the probation or supervision
35 department must verify the installation of the ignition interlock
36 device or devices. The municipality or county probation or
37 supervision department satisfies the requirement to verify the
38 installation or installations if the municipality or county probation
39 or supervision department receives written verification by one or

1 more companies doing business in the state that it has installed the
2 required device on a vehicle owned or operated by the person. The
3 municipality or county shall have no further obligation to supervise
4 the use of the ignition interlock device or devices by the person and
5 shall not be civilly liable for any injuries or damages caused by the
6 person for failing to use an ignition interlock device or for driving
7 under the influence of intoxicating liquor or any drug or being in
8 actual physical control of a motor vehicle under the influence of
9 intoxicating liquor or any drug.

10 **Sec. 16.** RCW 36.28A.320 and 2014 c 221 s 913 are each amended to
11 read as follows:

12 There is hereby established in the state treasury the 24/7
13 sobriety account. The account shall be maintained and administered by
14 the criminal justice training commission to reimburse the state for
15 costs associated with establishing and operating the 24/7 sobriety
16 program and the Washington association of sheriffs and police chiefs
17 for ongoing 24/7 sobriety program administration costs. ((The)) An
18 appropriation is not required for expenditures and the account is not
19 subject to allotment procedures under chapter 43.88 RCW. Funds in the
20 account may not lapse and must carry forward from biennium to
21 biennium. Interest earned by the account must be retained in the
22 account. The criminal justice training commission may accept for
23 deposit in the account money from donations, gifts, grants,
24 participation fees, and user fees or payments. ((Expenditures from
25 the account shall be budgeted through the normal budget process.))

26 **Sec. 17.** RCW 36.28A.330 and 2013 2nd sp.s. c 35 s 26 are each
27 amended to read as follows:

28 The definitions in this section apply throughout RCW 36.28A.300
29 through 36.28A.390 unless the context clearly requires otherwise.

30 (1) "24/7 ~~((electronic alcohol/drug monitoring))~~ sobriety
31 program" means ~~((the monitoring by the use of any electronic~~
32 ~~instrument that is capable of determining and monitoring the presence~~
33 ~~of alcohol or drugs in a person's body and includes any associated~~
34 ~~equipment a participant needs in order for the device to properly~~
35 ~~perform. Monitoring may also include mandatory urine analysis tests~~
36 ~~as ordered by the court)) a program in which a participant submits to
37 testing of the participant's blood, breath, urine, or other bodily
38 substance to determine the presence of alcohol or any drug as defined~~

1 in RCW 46.61.540. Testing must take place at a location or locations
2 designated by the participating agency, or, with the concurrence of
3 the Washington association of sheriffs and police chiefs, by an
4 alternate method.

5 (2) "Participant" means a person who has ~~((one or more prior~~
6 ~~convictions for))~~ been charged with or convicted of a violation of
7 RCW 46.61.502 ~~((or)),~~ 46.61.504, or those crimes listed in RCW
8 46.61.5055(14), in which the use of alcohol or drugs as defined in
9 RCW 46.61.540 was a contributing factor in the commission of the
10 crime and who has been ordered by a court to participate in the 24/7
11 sobriety program.

12 (3) "Participating agency" means ~~((a sheriff's office or a~~
13 ~~designated entity named by a sheriff that has agreed to participate~~
14 ~~in the 24/7 sobriety program by enrolling participants, administering~~
15 ~~one or more of the tests, and submitting reports to the Washington~~
16 ~~association of sheriffs and police chiefs))~~ any entity located in the
17 state of Washington that has a written agreement with the Washington
18 association of sheriffs and police chiefs to participate in the 24/7
19 sobriety program, and includes, but is not limited to, a sheriff, a
20 police chief, any other local, regional, or state corrections or
21 probation entity, and any other entity designated by a sheriff,
22 police chief, or any other local, regional, or state corrections or
23 probation entity to perform testing in the 24/7 sobriety program.

24 (4) "Participation agreement" means a written document executed
25 by a participant agreeing to participate in the 24/7 sobriety program
26 in a form approved by the Washington association of sheriffs and
27 police chiefs that contains the following information:

- 28 (a) The type, frequency, and time period of testing;
29 (b) The location of testing;
30 (c) The fees and payment procedures required for testing; and
31 (d) The responsibilities and obligations of the participant under
32 the 24/7 sobriety program.

33 ~~((5) "24/7 sobriety program" means a twenty four hour and seven~~
34 ~~day a week sobriety program in which a participant submits to the~~
35 ~~testing of the participant's blood, breath, urine, or other bodily~~
36 ~~substances in order to determine the presence of alcohol, marijuana,~~
37 ~~or any controlled substance in the participant's body.))~~

38 **Sec. 18.** RCW 36.28A.370 and 2013 2nd sp.s. c 35 s 30 are each
39 amended to read as follows:

1 ~~(1) ((Funds in the 24/7 sobriety account shall be distributed as~~
2 ~~follows:~~

3 ~~(a)) Any daily user fee, installation fee, deactivation fee,~~
4 ~~enrollment fee, or monitoring fee ((collected under the 24/7 sobriety~~
5 ~~program shall)) must be collected by the ((sheriff or chief, or an~~
6 ~~entity designated by the sheriff or chief, and deposited with the~~
7 ~~county or city treasurer of the proper county or city, the proceeds~~
8 ~~of which shall be applied)) participating agency and used ((only)) to
9 defray the ((recurring)) participating agency's costs of the 24/7
10 sobriety program ((including maintaining equipment, funding support
11 services, and ensuring compliance; and)).~~

12 ~~((b)) (2) Any participation fee must be collected ((in the~~
13 ~~administration of testing under)) by the participating agency and~~
14 ~~deposited in the state 24/7 sobriety ((program)) account to cover~~
15 ~~24/7 sobriety program administration costs incurred by the Washington~~
16 ~~association of sheriffs and police chiefs ((shall be collected by the~~
17 ~~sheriff or chief, or an entity designated by the sheriff or chief,~~
18 ~~and deposited in the 24/7 sobriety account)).~~

19 ~~((2)) (3) All applicable fees shall be paid by the participant~~
20 ~~contemporaneously or in advance of the time when the fee becomes due;~~
21 ~~however, cities and counties may subsidize or pay any applicable~~
22 ~~fees.~~

23 ~~(4) A city or county may accept donations, gifts, grants, and~~
24 ~~other assistance to defray the participating agency's costs of the~~
25 ~~24/7 sobriety program.~~

26 **Sec. 19.** RCW 36.28A.390 and 2013 2nd sp.s. c 35 s 32 are each
27 amended to read as follows:

28 (1) A general authority Washington peace officer, as defined in
29 RCW 10.93.020, who has probable cause to believe that a participant
30 has violated the terms of participation in the 24/7 sobriety program
31 may immediately take the participant into custody and cause him or
32 her to be held until an appearance before a judge on the next
33 judicial day.

34 (2) A participant who violates the terms of participation in the
35 24/7 sobriety program or does not pay the required fees or associated
36 costs pretrial or posttrial shall, at a minimum:

37 (a) Receive a written warning notice for a first violation;

1 (b) Serve (~~(a term)~~) the lesser of two days imprisonment or if
2 posttrial, the entire remaining sentence imposed by the court for a
3 second violation;

4 (c) Serve (~~(a term of up to)~~) the lesser of five days
5 imprisonment or if posttrial, the entire remaining sentence imposed
6 by the court for a third violation;

7 (d) Serve (~~(a term of up to)~~) the lesser of ten days imprisonment
8 or if posttrial, the entire remaining sentence imposed by the court
9 for a fourth violation; and

10 (e) For a fifth or subsequent violation pretrial, the participant
11 shall abide by the order of the court. For posttrial participants,
12 the participant shall serve the entire remaining sentence imposed by
13 the court.

14 (~~((2) A sheriff or chief, or the designee of a sheriff or chief,~~
15 ~~who has probable cause to believe that a participant has violated the~~
16 ~~terms of participation in the 24/7 sobriety program or has not paid~~
17 ~~the required fees or associated costs shall immediately take the~~
18 ~~participant into custody and cause him or her to be held until an~~
19 ~~appearance before a judge on the next judicial day.)) (3) The court~~
20 may remove a participant from the 24/7 sobriety program at any time
21 for noncompliance with the terms of participation.

22 **Sec. 20.** RCW 10.21.015 and 2014 c 24 s 1 are each amended to
23 read as follows:

24 (1) Under this chapter, "pretrial release program" is any
25 program, either run directly by a county or city, or by a private or
26 public entity through contract with a county or city, into whose
27 custody an offender is released prior to trial and which agrees to
28 supervise the offender. As used in this section, "supervision"
29 includes, but is not limited to, work release, day monitoring, (~~(or)~~)
30 electronic monitoring, or participation in a 24/7 sobriety program.

31 (2) A pretrial release program may not agree to supervise, or
32 accept into its custody, an offender who is currently awaiting trial
33 for a violent offense or sex offense, as defined in RCW 9.94A.030,
34 who has been convicted of one or more violent offenses or sex
35 offenses in the ten years before the date of the current offense,
36 unless the offender's release before trial was secured with a payment
37 of bail.

1 NEW SECTION. **Sec. 21.** A new section is added to chapter 18.130
2 RCW to read as follows:

3 It is not professional misconduct for a physician licensed under
4 chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57
5 RCW; registered nurse, licensed practical nurse, or advanced
6 registered nurse practitioner licensed under chapter 18.79 RCW;
7 physician assistant licensed under chapter 18.71A RCW; osteopathic
8 physician assistant licensed under chapter 18.57A RCW; advanced
9 emergency medical technician or paramedic licensed under chapter
10 18.73 RCW; until July 1, 2016, health care assistant certified under
11 chapter 18.135 RCW; or medical assistant-certified or medical
12 assistant-phlebotomist certified under chapter 18.360 RCW, or
13 hospital, or duly licensed clinical laboratory employing or utilizing
14 services of such licensed or certified health care provider, to
15 collect a blood sample without a person's consent when the physician
16 licensed under chapter 18.71 RCW; osteopathic physician licensed
17 under chapter 18.57 RCW; registered nurse, licensed practical nurse,
18 or advanced registered nurse practitioner licensed under chapter
19 18.79 RCW; physician assistant licensed under chapter 18.71A RCW;
20 osteopathic physician assistant licensed under chapter 18.57A RCW;
21 advanced emergency medical technician or paramedic licensed under
22 chapter 18.73 RCW; until July 1, 2016, health care assistant
23 certified under chapter 18.135 RCW; or medical assistant-certified or
24 medical assistant-phlebotomist certified under chapter 18.360 RCW, or
25 hospital, or duly licensed clinical laboratory employing or utilizing
26 services of such licensed or certified health care provider
27 withdrawing blood was directed by a law enforcement officer to do so
28 for the purpose of a blood test under the provisions of a search
29 warrant or exigent circumstances: PROVIDED, That nothing in this
30 section shall relieve a physician licensed under chapter 18.71 RCW;
31 osteopathic physician licensed under chapter 18.57 RCW; registered
32 nurse, licensed practical nurse, or advanced registered nurse
33 practitioner licensed under chapter 18.79 RCW; physician assistant
34 licensed under chapter 18.71A RCW; osteopathic physician assistant
35 licensed under chapter 18.57A RCW; advanced emergency medical
36 technician or paramedic licensed under chapter 18.73 RCW; until July
37 1, 2016, health care assistant certified under chapter 18.135 RCW; or
38 medical assistant-certified or medical assistant-phlebotomist
39 certified under chapter 18.360 RCW, or hospital, or duly licensed
40 clinical laboratory employing or utilizing services of such licensed

1 or certified health care provider withdrawing blood from professional
2 discipline arising from the use of improper procedures or from
3 failing to exercise the required standard of care.

4 **Sec. 22.** RCW 46.61.506 and 2013 c 3 s 37 are each amended to
5 read as follows:

6 (1) Upon the trial of any civil or criminal action or proceeding
7 arising out of acts alleged to have been committed by any person
8 while driving or in actual physical control of a vehicle while under
9 the influence of intoxicating liquor or any drug, if the person's
10 alcohol concentration is less than 0.08 or the person's THC
11 concentration is less than 5.00, it is evidence that may be
12 considered with other competent evidence in determining whether the
13 person was under the influence of intoxicating liquor or any drug.

14 (2)(a) The breath analysis of the person's alcohol concentration
15 shall be based upon grams of alcohol per two hundred ten liters of
16 breath.

17 (b) The blood analysis of the person's THC concentration shall be
18 based upon nanograms per milliliter of whole blood.

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

23 (3) Analysis of the person's blood or breath to be considered
24 valid under the provisions of this section or RCW 46.61.502 or
25 46.61.504 shall have been performed according to methods approved by
26 the state toxicologist and by an individual possessing a valid permit
27 issued by the state toxicologist for this purpose. The state
28 toxicologist is directed to approve satisfactory techniques or
29 methods, to supervise the examination of individuals to ascertain
30 their qualifications and competence to conduct such analyses, and to
31 issue permits which shall be subject to termination or revocation at
32 the discretion of the state toxicologist.

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

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

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

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

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

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

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

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

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

20 (b) For purposes of this section, "prima facie evidence" is
21 evidence of sufficient circumstances that would support a logical and
22 reasonable inference of the facts sought to be proved. In assessing
23 whether there is sufficient evidence of the foundational facts, the
24 court or administrative tribunal is to assume the truth of the
25 prosecution's or department's evidence and all reasonable inferences
26 from it in a light most favorable to the prosecution or department.

27 (c) Nothing in this section shall be deemed to prevent the
28 subject of the test from challenging the reliability or accuracy of
29 the test, the reliability or functioning of the instrument, or any
30 maintenance procedures. Such challenges, however, shall not preclude
31 the admissibility of the test once the prosecution or department has
32 made a prima facie showing of the requirements contained in (a) of
33 this subsection. Instead, such challenges may be considered by the
34 trier of fact in determining what weight to give to the test result.

35 (5) When a blood test is administered under the provisions of RCW
36 46.20.308, the withdrawal of blood for the purpose of determining its
37 alcoholic or drug content may be performed only by a physician(~~(, a~~
38 ~~registered nurse, a licensed practical nurse, a nursing assistant as~~
39 ~~defined in chapter 18.88A RCW, a physician assistant as defined in~~
40 ~~chapter 18.71A RCW, a first responder as defined in chapter 18.73~~

1 ~~RCW, an emergency medical technician as defined in chapter 18.73 RCW,~~
2 ~~a health care assistant as defined in chapter 18.135 RCW, or any~~
3 ~~technician trained in withdrawing blood)) licensed under chapter
4 18.71 RCW; an osteopathic physician licensed under chapter 18.57 RCW;
5 a registered nurse, licensed practical nurse, or advanced registered
6 nurse practitioner licensed under chapter 18.79 RCW; a physician
7 assistant licensed under chapter 18.71A RCW; an osteopathic physician
8 assistant licensed under chapter 18.57A RCW; an advanced emergency
9 medical technician or paramedic licensed under chapter 18.73 RCW;
10 until July 1, 2016, a health care assistant certified under chapter
11 18.135 RCW; or a medical assistant-certified or medical assistant-
12 phlebotomist certified under chapter 18.360 RCW. This limitation
13 shall not apply to the taking of breath specimens.~~

14 (6) The person tested may have a (~~(physician))~~ licensed or
15 certified health care provider listed in subsection (5) of this
16 section, or a qualified technician, chemist, (~~(registered nurse,))~~ or
17 other qualified person of his or her own choosing administer one or
18 more tests in addition to any administered at the direction of a law
19 enforcement officer. The test will be admissible if the person
20 establishes the general acceptability of the testing technique or
21 method. The failure or inability to obtain an additional test by a
22 person shall not preclude the admission of evidence relating to the
23 test or tests taken at the direction of a law enforcement officer.

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

28 **Sec. 23.** RCW 46.61.508 and 1977 ex.s. c 143 s 1 are each amended
29 to read as follows:

30 No physician(~~(, registered nurse, qualified technician))~~ licensed
31 under chapter 18.71 RCW; osteopathic physician licensed under chapter
32 18.57 RCW; registered nurse, licensed practical nurse, or advanced
33 registered nurse practitioner licensed under chapter 18.79 RCW;
34 physician assistant licensed under chapter 18.71A RCW; osteopathic
35 physician assistant licensed under chapter 18.57A RCW; advanced
36 emergency medical technician or paramedic licensed under chapter
37 18.73 RCW; until July 1, 2016, health care assistant certified under
38 chapter 18.135 RCW; or medical assistant-certified or medical
39 assistant-phlebotomist certified under chapter 18.360 RCW, or

1 hospital, or duly licensed clinical laboratory employing or utilizing
2 services of such (~~physician, registered nurse, or qualified~~
3 ~~technician~~)) licensed or certified health care provider, shall incur
4 any civil or criminal liability as a result of the act of withdrawing
5 blood from any person when directed by a law enforcement officer to
6 do so for the purpose of a blood test under the provisions of a
7 search warrant, a waiver of the search warrant requirement, exigent
8 circumstances, any other authority of law, or RCW 46.20.308, as now
9 or hereafter amended: PROVIDED, That nothing in this section shall
10 relieve (~~any physician, registered nurse, qualified technician~~)
11 such licensed or certified health care provider, or hospital or duly
12 licensed clinical laboratory from civil liability arising from the
13 use of improper procedures or failing to exercise the required
14 standard of care.

15 **Sec. 24.** RCW 46.61.504 and 2013 c 3 s 35 are each amended to
16 read as follows:

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

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

25 (b) The person has, within two hours after being in actual
26 physical control of a vehicle, a THC concentration of 5.00 or higher
27 as shown by analysis of the person's blood made under RCW 46.61.506;
28 or

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

31 (d) While the person is under the combined influence of or
32 affected by intoxicating liquor and any drug.

33 (2) The fact that a person charged with a violation of this
34 section is or has been entitled to use a drug under the laws of this
35 state does not constitute a defense against any charge of violating
36 this section. No person may be convicted under this section and it is
37 an affirmative defense to any action pursuant to RCW 46.20.308 to
38 suspend, revoke, or deny the privilege to drive if, prior to being

1 pursued by a law enforcement officer, the person has moved the
2 vehicle safely off the roadway.

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

14 (b) It is an affirmative defense to a violation of subsection
15 (1)(b) of this section, which the defendant must prove by a
16 preponderance of the evidence, that the defendant consumed a
17 sufficient quantity of marijuana after the time of being in actual
18 physical control of the vehicle and before the administration of an
19 analysis of the person's blood to cause the defendant's THC
20 concentration to be 5.00 or more within two hours after being in
21 control of the vehicle. The court shall not admit evidence of this
22 defense unless the defendant notifies the prosecution prior to the
23 omnibus or pretrial hearing in the case of the defendant's intent to
24 assert the affirmative defense.

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

34 (b) Analyses of blood samples obtained more than two hours after
35 the alleged being in actual physical control of a vehicle may be used
36 as evidence that within two hours of the alleged being in control of
37 the vehicle, a person had a THC concentration of 5.00 or more in
38 violation of subsection (1)(b) of this section, and in any case in
39 which the analysis shows a THC concentration above 0.00 may be used

1 as evidence that a person was under the influence of or affected by
2 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

10 (i) Vehicular homicide while under the influence of intoxicating
11 liquor or any drug, RCW 46.61.520(1)(a);

12 (ii) Vehicular assault while under the influence of intoxicating
13 liquor or any drug, RCW 46.61.522(1)(b);

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

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

17 **Sec. 25.** RCW 18.360.030 and 2012 c 153 s 4 are each amended to
18 read as follows:

19 (1) The secretary shall adopt rules specifying the minimum
20 qualifications for a medical assistant-certified, medical assistant-
21 hemodialysis technician, and medical assistant-phlebotomist. The
22 qualifications for a medical assistant-hemodialysis technician must
23 be equivalent to the qualifications for hemodialysis technicians
24 regulated pursuant to chapter 18.135 RCW as of January 1, 2012.

25 (2) The secretary shall adopt rules that establish the minimum
26 requirements necessary for a health care practitioner, clinic, or
27 group practice to endorse a medical assistant as qualified to perform
28 the duties authorized by this chapter and be able to file an
29 attestation of that endorsement with the department.

30 (3) The medical quality assurance commission, the board of
31 osteopathic medicine and surgery, the podiatric medical board, the
32 nursing care quality assurance commission, the board of naturopathy,
33 and the optometry board shall each review and identify other
34 specialty assistive personnel not included in this chapter and the
35 tasks they perform. The department of health shall compile the
36 information from each disciplining authority listed in this
37 subsection and submit the compiled information to the legislature no
38 later than December 15, 2012.

1 (4)(a) The secretary shall adopt rules specifying requirements
2 for delegation, training, and supervision for a medical assistant-
3 phlebotomist who is also a local, state, federal, or tribal law
4 enforcement employee or correctional employee, and whose practice is
5 limited to collecting venipuncture blood samples for forensic testing
6 under the provisions of RCW 46.20.308 or pursuant to a search
7 warrant, a valid waiver of the warrant requirement, when exigent
8 circumstances exist, or under any other authority of law. The rules
9 shall provide standards for the minimum number of venipuncture
10 collections necessary to maintain endorsement for collecting blood
11 samples for forensic testing. The rules shall provide standards for
12 location, conditions, and supervision of venipuncture collections.

13 (b) Until July 1, 2020, pursuant to (a) of this subsection, the
14 rules shall include, but are not limited to:

15 (i) Requiring each medical assistant-phlebotomist to perform
16 fifty venipuncture collections during the first year of
17 certification;

18 (ii) Requiring mandatory annual ongoing training in order for
19 such person to maintain certification as a medical assistant-
20 phlebotomist; and

21 (iii) Requiring that any venipuncture blood samples collected for
22 forensic testing take place at a site that provides for antiseptic
23 techniques and that all such sites are inspected annually by the
24 department."

25 Correct the title.

EFFECT: (1) Requires the court to order a repeat DUI offender, as a condition of release at arraignment, to: (a) Have an ignition interlock device installed; (b) comply with 24/7 sobriety program monitoring; (c) have an ignition interlock device installed and comply with 24/7 sobriety monitoring; or (d) have an ignition interlock device on all motor vehicles operated by the person, agree (by signing a sworn statement) not to operate any vehicle without an ignition interlock device as required by the court, and participate in 24/7 sobriety program monitoring or alcohol monitoring at the expense of the person.

(2) Reinstates the 24/7 sobriety program as a pilot program instead of a permanent program and defines a "24/7 participant" as a person who has been charged or convicted of an offense where alcohol or drugs was a contributing factor.

(3) Eliminates the affirmative defense established to a traffic infraction for a lane travel violation that provided that a driver's vehicle may cross into another lane as a result of an act, omission, or occurrence outside of the driver's immediate control but only to the minimum extent reasonably necessary under the circumstances.

(4) Requires the secretary of the department of health (DOH) to adopt rules specifying requirements for delegation, training, and supervision for medical assistant-phlebotomists who are also law enforcement employees or correctional employees, and whose practice is limited to collecting venipuncture samples for forensic testing or pursuant to a search warrant.

(a) At a minimum, the DOH rules must provide: (i) Standards for the minimum number of venipuncture collections necessary to maintain endorsement for collecting blood samples for forensic testing; and (ii) standards for location, conditions, and supervision of venipuncture collections.

(b) In addition, until July 1, 2020, the rules must include: (i) Requiring each medical assistant-phlebotomist to perform fifty venipuncture collections during the first year of his or her certification; (ii) requiring annual ongoing training for maintaining certification as a medical assistant-phlebotomist; and (iii) requiring that venipuncture blood samples collected for testing take place at a site that provides for antiseptic techniques and that all such sites are inspected annually by the DOH.

(5) Stipulates that it is not professional misconduct for a physician, osteopathic physician, registered nurse, licensed practical nurse, advanced registered nurse practitioner, physician assistant, osteopathic physician assistant, advanced emergency medical technician or paramedic, health care assistant, medical assistant-certified or medical assistant-phlebotomist, or hospital, or duly licensed clinical laboratory employing or utilizing services of such licensed or certified health care provider, to collect a blood sample without a person's consent when these professionals are directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant or exigent circumstances. Such identified professionals are not subject to civil or criminal liability for withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant or exigent circumstances or a waiver of the search warrant requirement. Provides that this does not relieve these professionals from professional discipline arising from the use of improper procedures or from failing to exercise the required standard of care.

(6) Adds an intent section to the act and makes other technical corrections and clarifications.

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