
HOUSE BILL 1276

State of Washington 64th Legislature 2015 Regular Session

By Representatives Klippert, Goodman, Hayes, Orwall, Moscoso, Pettigrew, Zeiger, Kilduff, and Fey

Read first time 01/16/15. Referred to Committee on Public Safety.

1 AN ACT Relating to impaired driving; amending RCW 10.21.055,
2 46.20.385, 46.20.740, 46.20.308, 46.20.750, 46.25.120, 46.61.140,
3 46.61.5055, 43.43.395, 9.94A.533, 46.61.520, 68.50.160, 9.94A.589,
4 and 46.61.504; reenacting and amending RCW 46.52.130; adding a new
5 section to chapter 46.61 RCW; and prescribing penalties.

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

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

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

11 (1)(a) When any person charged with (~~or arrested for~~) a
12 violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in
13 which the person has a prior offense as defined in RCW 46.61.5055 and
14 the current offense involves alcohol, is released from custody before
15 arraignment or trial on bail or personal recognizance, the court
16 authorizing the release shall require, as a condition of release(~~(7)~~)
17 that person (~~(to (a))~~): (i) Have a functioning ignition interlock
18 device installed on all motor vehicles operated by the person, with
19 proof of installation filed with the court by the person or the
20 certified interlock provider within five business days of the date of

1 release from custody or as soon thereafter as determined by the court
2 based on availability within the jurisdiction; or ~~((b))~~ (ii) sign
3 an affidavit agreeing not to drive, which shall be filed with the
4 court by the person within five business days of the date of release
5 from custody. The court may additionally require that the person
6 comply with 24/7 sobriety program monitoring, as defined in RCW
7 36.28A.330(~~or both~~)).

8 (b) The court shall immediately notify the department of
9 licensing when an ignition interlock restriction is imposed as a
10 condition of release pursuant to (a) of this subsection. If the court
11 imposes an ignition interlock restriction, the department of
12 licensing shall attach or imprint a notation on the driving record of
13 any person restricted under this section stating that the person may
14 operate only a motor vehicle equipped with a functioning ignition
15 interlock device.

16 (2)(a) Upon acquittal or dismissal of all pending or current
17 charges relating to a violation of RCW 46.61.502, 46.61.504,
18 46.61.520, or 46.61.522, or equivalent local ordinance, the court
19 shall authorize removal of the ignition interlock device and lift any
20 requirement to comply with electronic alcohol/drug monitoring imposed
21 under subsection (1) of this section. Nothing in this section limits
22 the authority of the court or department under RCW 46.20.720.

23 (b) If the court authorizes removal of an ignition interlock
24 device pursuant to (a) of this subsection the court shall immediately
25 notify the department of licensing regarding the lifting of the
26 ignition interlock restriction and the department of licensing shall
27 release any attachment, imprint, or notation on such person's driving
28 record relating to the ignition interlock requirement.

29 (3) When an ignition interlock restriction imposed as a condition
30 of release is canceled, the court shall provide a defendant with a
31 written order confirming release of the restriction. The written
32 order shall serve as proof of release of the restriction until which
33 time the department of licensing updates the driving record.

34 **Ignition interlock driver's license—Application—Eligibility—**
35 **Cancellation—Costs—Rules**

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

1 (1)(a) (~~Beginning January 1, 2009,~~) Any person licensed under
2 this chapter or who has a valid driver's license from another state,
3 who is convicted of: (i) A violation of RCW 46.61.502 or 46.61.504 or
4 an equivalent local or out-of-state statute or ordinance, or (ii) a
5 violation of RCW 46.61.520(1)(a) or an equivalent local or out-of-
6 state statute or ordinance, or (iii) a conviction for a violation of
7 RCW 46.61.520(1) (b) or (c) if the conviction is the result of a
8 charge that was originally filed as a violation of RCW
9 46.61.520(1)(a), or (iv) RCW 46.61.522(1)(b) or an equivalent local
10 or out-of-state statute or ordinance, or (v) RCW 46.61.522(1) (a) or
11 (c) if the conviction is the result of a charge that was originally
12 filed as a violation of RCW 46.61.522(1)(b) committed while under the
13 influence of intoxicating liquor or any drug, or (vi) who has had or
14 will have his or her license suspended, revoked, or denied under RCW
15 46.20.3101, or who is otherwise permitted under subsection (8) of
16 this section, may submit to the department an application for an
17 ignition interlock driver's license. The department, upon receipt of
18 the prescribed fee and upon determining that the petitioner is
19 eligible to receive the license, may issue an ignition interlock
20 driver's license.

21 (b) A person may apply for an ignition interlock driver's license
22 anytime, including immediately after receiving the notices under RCW
23 46.20.308 or after his or her license is suspended, revoked, or
24 denied. (~~A person receiving an ignition interlock driver's license~~
25 ~~waives his or her right to a hearing or appeal under RCW 46.20.308.~~)

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

29 (i) The department shall require the person to maintain the
30 device on all vehicles operated by the person and shall restrict the
31 person to operating only vehicles equipped with the device, for the
32 remainder of the period of suspension, revocation, or denial. Subject
33 to the provisions of RCW 46.20.720(3)(b)(ii), the installation of an
34 ignition interlock device is not necessary on vehicles owned, leased,
35 or rented by a person's employer and on those vehicles whose care
36 and/or maintenance is the temporary responsibility of the employer,
37 and driven at the direction of a person's employer as a requirement
38 of employment during working hours. The person must provide the
39 department with a declaration pursuant to RCW 9A.72.085 from his or
40 her employer stating that the person's employment requires the person

1 to operate a vehicle owned by the employer or other persons during
2 working hours.

3 (ii) Subject to any periodic renewal requirements established by
4 the department under this section and subject to any applicable
5 compliance requirements under this chapter or other law, an ignition
6 interlock driver's license granted upon a suspension or revocation
7 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
8 portion of any concurrent or consecutive suspension or revocation
9 that may be imposed as the result of administrative action and
10 criminal conviction arising out of the same incident.

11 (iii) The time period during which the person is licensed under
12 this section shall apply on a day-for-day basis toward satisfying the
13 period of time the ignition interlock device restriction is required
14 under RCW 46.20.720 (~~and~~), 46.61.5055, 10.05.140, 46.61.500(3), and
15 46.61.5249(4). Beginning with incidents occurring on or after
16 September 1, 2011, when calculating the period of time for the
17 restriction under RCW 46.20.720 (2) or (3), the department must also
18 give the person a day-for-day credit for the time period, beginning
19 from the date of the incident, during which the person kept an
20 ignition interlock device installed on all vehicles the person
21 operates. For the purposes of this subsection (1)(c)(iii), the term
22 "all vehicles" does not include vehicles that would be subject to the
23 employer exception under RCW 46.20.720(3).

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

28 (3) Upon receipt of evidence that a holder of an ignition
29 interlock driver's license granted under this subsection no longer
30 has a functioning ignition interlock device installed on all vehicles
31 operated by the driver, the director shall give written notice by
32 first-class mail to the driver that the ignition interlock driver's
33 license shall be canceled. If at any time before the cancellation
34 goes into effect the driver submits evidence that a functioning
35 ignition interlock device has been installed on all vehicles operated
36 by the driver, the cancellation shall be stayed. If the cancellation
37 becomes effective, the driver may obtain, at no additional charge, a
38 new ignition interlock driver's license upon submittal of evidence
39 that a functioning ignition interlock device has been installed on
40 all vehicles operated by the driver.

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

4 (5) The director shall cancel an ignition interlock driver's
5 license after receiving notice that the holder thereof has been
6 convicted of operating a motor vehicle in violation of its
7 restrictions, no longer meets the eligibility requirements, or has
8 been convicted of or found to have committed a separate offense or
9 any other act or omission that under this chapter would warrant
10 suspension or revocation of a regular driver's license. The
11 department must give notice of the cancellation as provided under RCW
12 46.20.245. A person whose ignition interlock driver's license has
13 been canceled under this section may reapply for a new ignition
14 interlock driver's license if he or she is otherwise qualified under
15 this section and pays the fee required under RCW 46.20.380.

16 (6)(a) Unless costs are waived by the ignition interlock company
17 or the person is indigent under RCW 10.101.010, the applicant shall
18 pay the cost of installing, removing, and leasing the ignition
19 interlock device and shall pay an additional fee of twenty dollars
20 per month. Payments shall be made directly to the ignition interlock
21 company. The company shall remit the additional twenty dollar fee to
22 the department.

23 (b) The department shall deposit the proceeds of the twenty
24 dollar fee into the ignition interlock device revolving account.
25 Expenditures from the account may be used only to administer and
26 operate the ignition interlock device revolving account program. The
27 department shall adopt rules to provide monetary assistance according
28 to greatest need and when funds are available.

29 (7) The department shall adopt rules to implement ignition
30 interlock licensing. The department shall consult with the
31 administrative office of the courts, the state patrol, the Washington
32 association of sheriffs and police chiefs, ignition interlock
33 companies, and any other organization or entity the department deems
34 appropriate.

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

1 (b) A person who does not have any driver's license under this
2 chapter, but who would otherwise be eligible under this section to
3 apply for an ignition interlock license, may submit to the department
4 an application for an ignition interlock license. The department may
5 require the person to take any driver's licensing examination under
6 this chapter and may require the person to also apply and qualify for
7 a temporary restricted driver's license under RCW 46.20.391.

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

9 **Sec. 3.** RCW 46.20.740 and 2010 c 269 s 8 are each amended to
10 read as follows:

11 (1) The department shall attach or imprint a notation on the
12 driving record of any person restricted under RCW 46.20.720,
13 46.61.5055, ~~((or))~~ 10.05.140, or 10.21.055 stating that the person
14 may operate only a motor vehicle equipped with a functioning ignition
15 interlock device. The department shall determine the person's
16 eligibility for licensing based upon written verification by a
17 company doing business in the state that it has installed the
18 required device on a vehicle owned or operated by the person seeking
19 reinstatement. If, based upon notification from the interlock
20 provider or otherwise, the department determines that an ignition
21 interlock required under this section is no longer installed or
22 functioning as required, the department shall suspend the person's
23 license or privilege to drive. Whenever the license or driving
24 privilege of any person is suspended or revoked as a result of
25 noncompliance with an ignition interlock requirement, the suspension
26 shall remain in effect until the person provides notice issued by a
27 company doing business in the state that a vehicle owned or operated
28 by the person is equipped with a functioning ignition interlock
29 device.

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

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

1 **Implied consent—Test refusal—Procedures**

2 **Sec. 4.** RCW 46.20.308 and 2013 2nd sp.s. c 35 s 36 are each
3 amended to read as follows:

4 (1) Any person who operates a motor vehicle within this state is
5 deemed to have given consent, subject to the provisions of RCW
6 46.61.506, to a test or tests of his or her breath for the purpose of
7 determining the alcohol concentration(~~(, THC concentration, or~~
8 ~~presence of any drug)) in his or her breath if arrested for any
9 offense where, at the time of the arrest, the arresting officer has
10 reasonable grounds to believe the person had been driving or was in
11 actual physical control of a motor vehicle while under the influence
12 of intoxicating liquor or any drug or was in violation of RCW
13 46.61.503. (~~Neither consent nor this section precludes a police~~
14 ~~officer from obtaining a search warrant for a person's breath or~~
15 ~~blood.))~~~~

16 (2) The test or tests of breath shall be administered at the
17 direction of a law enforcement officer having reasonable grounds to
18 believe the person to have been driving or in actual physical control
19 of a motor vehicle within this state while under the influence of
20 intoxicating liquor or any drug or the person to have been driving or
21 in actual physical control of a motor vehicle while having alcohol
22 (~~or THC~~) in a concentration in violation of RCW 46.61.503 in his or
23 her system and being under the age of twenty-one. Prior to
24 administering a breath test pursuant to this section, the officer
25 shall inform the person of his or her right under this section to
26 refuse the breath test, and of his or her right to have additional
27 tests administered by any qualified person of his or her choosing as
28 provided in RCW 46.61.506. The officer shall warn the driver, in
29 substantially the following language, that:

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

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

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

38 (i) The driver is age twenty-one or over and the test indicates
39 either that the alcohol concentration of the driver's breath is 0.08

1 or more (~~or that the THC concentration of the driver's blood is 5.00~~
2 ~~or more~~)); or

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

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

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

12 (3) (~~Except as provided in this section, the test administered~~
13 ~~shall be of the breath only. If an individual is unconscious or is~~
14 ~~under arrest for the crime of felony driving under the influence of~~
15 ~~intoxicating liquor or drugs under RCW 46.61.502(6), felony physical~~
16 ~~control of a motor vehicle while under the influence of intoxicating~~
17 ~~liquor or any drug under RCW 46.61.504(6), vehicular homicide as~~
18 ~~provided in RCW 46.61.520, or vehicular assault as provided in RCW~~
19 ~~46.61.522, or if an individual is under arrest for the crime of~~
20 ~~driving while under the influence of intoxicating liquor or drugs as~~
21 ~~provided in RCW 46.61.502, which arrest results from an accident in~~
22 ~~which there has been serious bodily injury to another person, a~~
23 ~~breath or blood test may be administered without the consent of the~~
24 ~~individual so arrested pursuant to a search warrant, a valid waiver~~
25 ~~of the warrant requirement, or when exigent circumstances exist.~~

26 ~~(4))~~ If, following his or her arrest and receipt of warnings
27 under subsection (2) of this section, the person arrested (~~refuses~~)
28 exercises the right, granted herein, by refusing upon the request of
29 a law enforcement officer to submit to a test or tests of his or her
30 breath, no test shall be given except as otherwise authorized by (~~a~~
31 ~~search warrant~~) law.

32 (4) Nothing in subsection (1), (2), or (3) of this section
33 precludes a law enforcement officer from obtaining a person's blood
34 to test for alcohol, marijuana, or any drug, pursuant to a search
35 warrant, a valid waiver of the warrant requirement, when exigent
36 circumstances exist, or under any other authority of law. Any blood
37 drawn for the purpose of determining the person's alcohol or
38 marijuana levels, is drawn pursuant to this section when the officer
39 has probable grounds that the person is in physical control or

1 driving a vehicle under the influence or in violation of RCW
2 46.61.503.

3 (5) If, after arrest and after ((the)) any other applicable
4 conditions and requirements of this section have been satisfied, a
5 test or tests of the person's blood or breath is administered and the
6 test results indicate that the alcohol concentration of the person's
7 breath or blood is 0.08 or more, or the THC concentration of the
8 person's blood is 5.00 or more, if the person is age twenty-one or
9 over, or that the alcohol concentration of the person's breath or
10 blood is 0.02 or more, or the THC concentration of the person's blood
11 is above 0.00, if the person is under the age of twenty-one, or the
12 person refuses to submit to a test, the arresting officer or other
13 law enforcement officer at whose direction any test has been given,
14 or the department, where applicable, if the arrest results in a test
15 of the person's blood, shall:

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

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

25 (c) Serve notice in writing that the license or permit, if any,
26 is a temporary license that is valid for sixty days from the date of
27 arrest or from the date notice has been given in the event notice is
28 given by the department following a blood test, or until the
29 suspension, revocation, or denial of the person's license, permit, or
30 privilege to drive is sustained at a hearing pursuant to subsection
31 (7) of this section, whichever occurs first. No temporary license is
32 valid to any greater degree than the license or permit that it
33 replaces; and

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

38 (i) That the officer had reasonable grounds to believe the
39 arrested person had been driving or was in actual physical control of
40 a motor vehicle within this state while under the influence of

1 intoxicating liquor or drugs, or both, or was under the age of
2 twenty-one years and had been driving or was in actual physical
3 control of a motor vehicle while having an alcohol or THC
4 concentration in violation of RCW 46.61.503;

5 (ii) That after receipt of (~~the~~) any applicable warnings
6 required by subsection (2) of this section the person refused to
7 submit to a test of his or her breath, or a test was administered and
8 the results indicated that the alcohol concentration of the person's
9 breath or blood was 0.08 or more, or the THC concentration of the
10 person's blood was 5.00 or more, if the person is age twenty-one or
11 over, or that the alcohol concentration of the person's breath or
12 blood was 0.02 or more, or the THC concentration of the person's
13 blood was above 0.00, if the person is under the age of twenty-one;
14 and

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

17 (6) The department of licensing, upon the receipt of a sworn
18 report or report under a declaration authorized by RCW 9A.72.085
19 under subsection (5)(d) of this section, shall suspend, revoke, or
20 deny the person's license, permit, or privilege to drive or any
21 nonresident operating privilege, as provided in RCW 46.20.3101, such
22 suspension, revocation, or denial to be effective beginning sixty
23 days from the date of arrest or from the date notice has been given
24 in the event notice is given by the department following a blood
25 test, or when sustained at a hearing pursuant to subsection (7) of
26 this section, whichever occurs first.

27 (7) A person receiving notification under subsection (5)(b) of
28 this section may, within twenty days after the notice has been given,
29 request in writing a formal hearing before the department. The person
30 shall pay a fee of three hundred seventy-five dollars as part of the
31 request. If the request is mailed, it must be postmarked within
32 twenty days after receipt of the notification. Upon timely receipt of
33 such a request for a formal hearing, including receipt of the
34 required three hundred seventy-five dollar fee, the department shall
35 afford the person an opportunity for a hearing. The department may
36 waive the required three hundred seventy-five dollar fee if the
37 person is an indigent as defined in RCW 10.101.010. Except as
38 otherwise provided in this section, the hearing is subject to and
39 shall be scheduled and conducted in accordance with RCW 46.20.329 and
40 46.20.332. The hearing shall be conducted in the county of the

1 arrest, except that all or part of the hearing may, at the discretion
2 of the department, be conducted by telephone or other electronic
3 means. The hearing shall be held within sixty days following the
4 arrest or following the date notice has been given in the event
5 notice is given by the department following a blood test, unless
6 otherwise agreed to by the department and the person, in which case
7 the action by the department shall be stayed, and any valid temporary
8 license (~~(marked)~~) under subsection (5) of this section extended, if
9 the person is otherwise eligible for licensing. For the purposes of
10 this section, the scope of the hearing shall cover the issues of
11 whether a law enforcement officer had reasonable grounds to believe
12 the person had been driving or was in actual physical control of a
13 motor vehicle within this state while under the influence of
14 intoxicating liquor or any drug or had been driving or was in actual
15 physical control of a motor vehicle within this state while having
16 alcohol in his or her system in a concentration of 0.02 or more, or
17 THC in his or her system in a concentration above 0.00, if the person
18 was under the age of twenty-one, whether the person was placed under
19 arrest, and (a) whether the person refused to submit to the test or
20 tests upon request of the officer after having been informed that
21 such refusal would result in the revocation of the person's license,
22 permit, or privilege to drive, or (b) if a test or tests were
23 administered, whether the applicable requirements of this section
24 were satisfied before the administration of the test or tests,
25 whether the person submitted to the test or tests, or whether a test
26 was administered (~~(without express consent)~~) pursuant to a search
27 warrant, a valid waiver of the warrant requirement, when exigent
28 circumstances exist, or under any other authority of law as permitted
29 under this section, and whether the test or tests indicated that the
30 alcohol concentration of the person's breath or blood was 0.08 or
31 more, or the THC concentration of the person's blood was 5.00 or
32 more, if the person was age twenty-one or over at the time of the
33 arrest, or that the alcohol concentration of the person's breath or
34 blood was 0.02 or more, or the THC concentration of the person's
35 blood was above 0.00, if the person was under the age of twenty-one
36 at the time of the arrest. Where a person is found to be in actual
37 physical control of a motor vehicle while under the influence of
38 intoxicating liquor or any drug or was in actual physical control of
39 a motor vehicle if the person was age twenty-one or under at the time
40 of the arrest, or while having alcohol in his or her system in a

1 concentration of 0.02 or more, or THC in his or her system in a
2 concentration above 0.00, the person may petition the hearing officer
3 to apply the affirmative defense found in RCW 46.61.504(3) and
4 46.61.503(3). The driver shall have the burden to prove the
5 affirmative defense by a preponderance of the evidence. The sworn
6 report or report under a declaration authorized by RCW 9A.72.085
7 submitted by a law enforcement officer is prima facie evidence that
8 the officer had reasonable grounds to believe the person had been
9 driving or was in actual physical control of a motor vehicle within
10 this state while under the influence of intoxicating liquor or drugs,
11 or both, or the person had been driving or was in actual physical
12 control of a motor vehicle within this state while having alcohol in
13 his or her system in a concentration of 0.02 or more, or THC in his
14 or her system in a concentration above 0.00, and was under the age of
15 twenty-one and that the officer complied with the requirements of
16 this section.

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

32 (8) If the suspension, revocation, or denial is sustained after
33 such a hearing, the person whose license, privilege, or permit is
34 suspended, revoked, or denied has the right to file a petition in the
35 superior court of the county of arrest to review the final order of
36 revocation by the department in the same manner as an appeal from a
37 decision of a court of limited jurisdiction. Notice of appeal must be
38 filed within thirty days after the date the final order is served or
39 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
40 1.1, or other statutes or rules referencing de novo review, the

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

26 (9)(a) If a person whose driver's license, permit, or privilege
27 to drive has been or will be suspended, revoked, or denied under
28 subsection (6) of this section, other than as a result of a breath
29 test refusal, and who has not committed an offense for which he or
30 she was granted a deferred prosecution under chapter 10.05 RCW,
31 petitions a court for a deferred prosecution on criminal charges
32 arising out of the arrest for which action has been or will be taken
33 under subsection (6) of this section, or notifies the department of
34 licensing of the intent to seek such a deferred prosecution, then the
35 license suspension or revocation shall be stayed pending entry of the
36 deferred prosecution. The stay shall not be longer than one hundred
37 fifty days after the date charges are filed, or two years after the
38 date of the arrest, whichever time period is shorter. If the court
39 stays the suspension, revocation, or denial, it may impose conditions
40 on such stay. If the person is otherwise eligible for licensing, the

1 department shall issue a temporary license, or extend any valid
2 temporary license under subsection (5) of this section, for the
3 period of the stay. If a deferred prosecution treatment plan is not
4 recommended in the report made under RCW 10.05.050, or if treatment
5 is rejected by the court, or if the person declines to accept an
6 offered treatment plan, or if the person violates any condition
7 imposed by the court, then the court shall immediately direct the
8 department to cancel the stay and any temporary ((marked)) license or
9 extension of a temporary license issued under this subsection.

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

19 (c) The provisions of (b) of this subsection relating to a stay
20 of a suspension, revocation, or denial and the cancellation of any
21 suspension, revocation, or denial do not apply to the suspension,
22 revocation, denial, or disqualification of a person's commercial
23 driver's license or privilege to operate a commercial motor vehicle.

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

30 **Circumventing ignition interlock—Penalty**

31 **Sec. 5.** RCW 46.20.750 and 2005 c 200 s 2 are each amended to
32 read as follows:

33 (1) A person who is restricted to the use of a vehicle equipped
34 with an ignition interlock device (~~((and who tampers with the device
35 or directs, authorizes, or requests another to tamper with the
36 device, in order to circumvent the device by modifying, detaching,
37 disconnecting, or otherwise disabling it,))~~) is guilty of a gross
38 misdemeanor if the restricted driver:

1 (a) Tamper with the device by modifying, detaching,
2 disconnecting, or otherwise disabling it to allow the restricted
3 driver to operate the vehicle;

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

7 (c) Has, directs, authorizes, or requests another person to
8 tamper with the device by modifying, detaching, disconnecting, or
9 otherwise disabling it to allow the restricted driver to operate the
10 vehicle; or

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

14 (2) A person who knowingly assists another person who is
15 restricted to the use of a vehicle equipped with an ignition
16 interlock device to circumvent the device or to start and operate
17 that vehicle (~~in violation of a court order~~) is guilty of a gross
18 misdemeanor. The provisions of this subsection do not apply if the
19 starting of a motor vehicle, or the request to start a motor vehicle,
20 equipped with an ignition interlock device is done for the purpose of
21 safety or mechanical repair of the device or the vehicle and the
22 person subject to the court order does not operate the vehicle.

23 (3) Any sentence imposed for a violation of subsection (1) of
24 this section shall be served consecutively with any sentence imposed
25 under RCW 46.20.740, 46.61.502, 46.61.504, 46.61.5055,
26 46.61.520(1)(a), or 46.61.522(1)(b).

27 **Commercial vehicles—Test for alcohol or drugs—Disqualification for**
28 **refusal of test or positive test—Procedures**

29 **Sec. 6.** RCW 46.25.120 and 2013 2nd sp.s. c 35 s 12 are each
30 amended to read as follows:

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

36 (2) A test or tests may be administered at the direction of a law
37 enforcement officer, who after stopping or detaining the commercial
38 motor vehicle driver, has probable cause to believe that driver was

1 driving a commercial motor vehicle while having alcohol in his or her
2 system or while under the influence of any drug.

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

8 (4) A law enforcement officer who at the time of stopping or
9 detaining a commercial motor vehicle driver has probable cause to
10 believe that driver was driving a commercial motor vehicle while
11 having alcohol, marijuana, or any drug in his or her system or while
12 under the influence of alcohol, marijuana, or any drug may obtain a
13 breath or blood test pursuant to a search warrant, a valid waiver of
14 the warrant requirement, when exigent circumstances exist, or under
15 any other authority of law.

16 (5) If the person refuses testing, or (~~submits to~~) a test is
17 administered that discloses an alcohol concentration of 0.04 or more
18 or any measurable amount of THC concentration, the law enforcement
19 officer shall submit a sworn report to the department certifying that
20 the test was requested pursuant to subsection (1) of this section or
21 a breath or blood test was administered pursuant to subsection (4) of
22 this section and that the person refused to submit to testing, or
23 (~~submitted to~~) a test was administered that disclosed an alcohol
24 concentration of 0.04 or more or any measurable amount of THC
25 concentration.

26 (~~(+5)~~) (6) Upon receipt of the sworn report of a law enforcement
27 officer under subsection (~~(+4)~~) (5) of this section, the department
28 shall disqualify the driver from driving a commercial motor vehicle
29 under RCW 46.25.090, subject to the hearing provisions of RCW
30 46.20.329 and 46.20.332. The hearing shall be conducted in the county
31 of the arrest. For the purposes of this section, the hearing shall
32 cover the issues of whether a law enforcement officer had reasonable
33 grounds to believe the person had been driving or was in actual
34 physical control of a commercial motor vehicle within this state
35 while having alcohol in the person's system or while under the
36 influence of any drug, whether the person refused to submit to the
37 test or tests upon request of the officer after having been informed
38 that the refusal would result in the disqualification of the person
39 from driving a commercial motor vehicle, if applicable, and, if the
40 test was administered, whether the results indicated an alcohol

1 concentration of 0.04 percent or more or any measurable amount of THC
2 concentration. The department shall order that the disqualification
3 of the person either be rescinded or sustained. Any decision by the
4 department disqualifying a person from driving a commercial motor
5 vehicle is stayed and does not take effect while a formal hearing is
6 pending under this section or during the pendency of a subsequent
7 appeal to superior court so long as there is no conviction for a
8 moving violation or no finding that the person has committed a
9 traffic infraction that is a moving violation during the pendency of
10 the hearing and appeal. If the disqualification of the person is
11 sustained after the hearing, the person who is disqualified may file
12 a petition in the superior court of the county of arrest to review
13 the final order of disqualification by the department in the manner
14 provided in RCW 46.20.334.

15 ~~((+6))~~ (7) If a motor carrier or employer who is required to
16 have a testing program under 49 C.F.R. 382 knows that a commercial
17 driver in his or her employ has refused to submit to testing under
18 this section and has not been disqualified from driving a commercial
19 motor vehicle, the employer may notify law enforcement or his or her
20 medical review officer or breath alcohol technician that the driver
21 has refused to submit to the required testing.

22 ~~((+7))~~ (8) The hearing provisions of this section do not apply
23 to those persons disqualified from driving a commercial motor vehicle
24 under RCW 46.25.090(7).

25 **Open container law for marijuana**

26 NEW SECTION. **Sec. 7.** A new section is added to chapter 46.61
27 RCW to read as follows:

28 (1) Except as provided in subsection (2) of this section, it is a
29 traffic infraction:

30 (a) For the registered owner of a motor vehicle, or the driver if
31 the registered owner is not then present in the vehicle, to keep in a
32 motor vehicle when the vehicle is upon a highway a bag or other
33 receptacle containing marijuana unless the container is kept in the
34 trunk of the vehicle or in some other area of the vehicle not
35 normally occupied by the driver or passengers if the vehicle does not
36 have a trunk. A utility compartment or glove compartment is deemed to
37 be within the area occupied by the driver and passengers;

1 (b) To smoke or ingest marijuana in a motor vehicle when the
2 vehicle is upon the public highway;

3 (c) To incorrectly label the original container of marijuana and
4 to then violate (a) of this subsection; or

5 (d) To place marijuana in a container specifically labeled by the
6 manufacturer of the container as containing a nonmarijuana substance
7 and to then violate (a) of this subsection.

8 (2) It is not a traffic infraction for an adult driver, age
9 twenty-one years old or older, to possess marijuana in a motor
10 vehicle while the vehicle is upon a highway provided the marijuana is
11 fully sealed in the same labeled, commercial packaging that contained
12 the marijuana at the time of purchase from a marijuana retailer
13 licensed under RCW 69.50.325(3). For the purposes of this subsection
14 (2), "sealed" means that the package remains unopened, none of the
15 original contents removed, and the original seal is unbroken and
16 intact.

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

27 **Driving on roadways laned for traffic**

28 **Sec. 8.** RCW 46.61.140 and 1965 ex.s. c 155 s 23 are each amended
29 to read as follows:

30 Whenever any roadway has been divided into two or more clearly
31 marked lanes for traffic the following rules in addition to all
32 others consistent herewith shall apply:

33 (1) A vehicle shall be driven (~~as nearly as practicable~~)
34 entirely within a single lane and shall not be moved from such lane
35 until the driver has first ascertained that such movement can be made
36 with safety.

37 (2) Upon a roadway which is divided into three lanes and provides
38 for two-way movement of traffic, a vehicle shall not be driven in the

1 center lane except when overtaking and passing another vehicle
2 traveling in the same direction when such center lane is clear of
3 traffic within a safe distance, or in preparation for making a left
4 turn or where such center lane is at the time allocated exclusively
5 to traffic moving in the same direction that the vehicle is
6 proceeding and such allocation is designated by official traffic-
7 control devices.

8 (3) Official traffic-control devices may be erected directing
9 slow moving or other specified traffic to use a designated lane or
10 designating those lanes to be used by traffic moving in a particular
11 direction regardless of the center of the roadway and drivers of
12 vehicles shall obey the directions of every such device.

13 (4) Official traffic-control devices may be installed prohibiting
14 the changing of lanes on sections of roadway and drivers of vehicles
15 shall obey the directions of every such device.

16 (5) It is an affirmative defense to a violation of this section,
17 which the driver must establish by a preponderance of the evidence,
18 that the vehicle crossed into another lane as a result of an act,
19 omission, or occurrence outside of the driver's immediate control and
20 only to the minimum extent reasonably necessary under the
21 circumstances.

22 Alcohol and drug violators—Penalty schedule

23 **Sec. 9.** RCW 46.61.5055 and 2014 c 100 s 1 are each amended to
24 read as follows:

25 (1) **No prior offenses in seven years.** Except as provided in RCW
26 46.61.502(6) or 46.61.504(~~(+6+)~~) (7), a person who is convicted of a
27 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
28 within seven years shall be punished as follows:

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

34 (i) By imprisonment for not less than one day nor more than three
35 hundred sixty-four days. Twenty-four consecutive hours of the
36 imprisonment may not be suspended unless the court finds that the
37 imposition of this mandatory minimum sentence would impose a
38 substantial risk to the offender's physical or mental well-being.

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

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

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

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

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

4 (2) **One prior offense in seven years.** Except as provided in RCW
5 46.61.502(6) or 46.61.504(~~(+6+)~~) (7), a person who is convicted of a
6 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
7 within seven years shall be punished as follows:

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

13 (i) By imprisonment for not less than thirty days nor more than
14 three hundred sixty-four days and sixty days of electronic home
15 monitoring. In lieu of the mandatory minimum term of sixty days
16 electronic home monitoring, the court may order at least an
17 additional four 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. Thirty
28 days of imprisonment and sixty days of electronic home monitoring may
29 not be suspended unless the court finds that the imposition of this
30 mandatory minimum sentence would impose a substantial risk to the
31 offender's physical or mental well-being. Whenever the mandatory
32 minimum sentence is suspended, the court shall state in writing the
33 reason for granting the suspension and the facts upon which the
34 suspension is based; and

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

38 (b) **Penalty for alcohol concentration at least 0.15.** In the case
39 of a person whose alcohol concentration was at least 0.15, or for
40 whom by reason of the person's refusal to take a test offered

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

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

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

29 (3) **Two or three prior offenses in seven years.** Except as
30 provided in RCW 46.61.502(6) or 46.61.504(~~(+6+)~~) (7), a person who is
31 convicted of a violation of RCW 46.61.502 or 46.61.504 and who has
32 two or three prior offenses within seven years shall be punished as
33 follows:

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

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

1 six-month period of 24/7 sobriety program monitoring pursuant to RCW
2 36.28A.300 through 36.28A.390, and one hundred twenty days of
3 electronic home monitoring. In lieu of the mandatory minimum term of
4 one hundred twenty days of electronic home monitoring, the court may
5 order at least an additional eight days in jail. The court shall
6 order an expanded alcohol assessment and treatment, if deemed
7 appropriate by the assessment. The offender shall pay for the cost of
8 the electronic monitoring. 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. Ninety days of imprisonment and one hundred twenty days
15 of electronic home monitoring may not be suspended unless the court
16 finds that the imposition of this mandatory minimum sentence would
17 impose a substantial risk to the offender's physical or mental well-
18 being. Whenever the mandatory minimum sentence is suspended, the
19 court shall state in writing the reason for granting the suspension
20 and the facts upon which the suspension is based; and

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

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

29 (i) By imprisonment for not less than one hundred twenty days nor
30 more than three hundred sixty-four days, if available in that county
31 or city, a six-month period of 24/7 sobriety program monitoring
32 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty
33 days of electronic home monitoring. In lieu of the mandatory minimum
34 term of one hundred fifty days of electronic home monitoring, the
35 court may order at least an additional ten days in jail. The offender
36 shall pay for the cost of the electronic monitoring. The court shall
37 order an expanded alcohol assessment and treatment, if deemed
38 appropriate by the assessment. The county or municipality where the
39 penalty is being imposed shall determine the cost. The court may also
40 require the offender's electronic home monitoring device include an

1 alcohol detection breathalyzer or other separate alcohol monitoring
2 device, and may restrict the amount of alcohol the offender may
3 consume during the time the offender is on electronic home
4 monitoring. One hundred twenty days of imprisonment and one hundred
5 fifty days of electronic home monitoring may not be suspended unless
6 the court finds that the imposition of this mandatory minimum
7 sentence would impose a substantial risk to the offender's physical
8 or mental well-being. Whenever the mandatory minimum sentence is
9 suspended, the court shall state in writing the reason for granting
10 the suspension and the facts upon which the suspension is based; and

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

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

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

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

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

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

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

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

28 (5) **Monitoring.**

29 (a) **Ignition interlock device.** The court shall require any person
30 convicted of a violation of RCW 46.61.502 or 46.61.504 or an
31 equivalent local ordinance to comply with the rules and requirements
32 of the department regarding the installation and use of a functioning
33 ignition interlock device installed on all motor vehicles operated by
34 the person.

35 (b) **Monitoring devices.** If the court orders that a person refrain
36 from consuming any alcohol, the court may order the person to submit
37 to alcohol monitoring through an alcohol detection breathalyzer
38 device, transdermal sensor device, or other technology designed to
39 detect alcohol in a person's system. The person shall pay for the
40 cost of the monitoring, unless the court specifies that the cost of

1 monitoring will be paid with funds that are available from an
2 alternative source identified by the court. The county or
3 municipality where the penalty is being imposed shall determine the
4 cost.

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

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

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

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

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

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

25 (b) In any case in which the person has no prior offenses within
26 seven years, and except as provided in RCW 46.61.502(6) or
27 46.61.504(~~((+6))~~) (7), order an additional twenty-four hours of
28 imprisonment and a fine of not less than one thousand dollars and not
29 more than five thousand dollars. One thousand dollars of the fine may
30 not be suspended unless the court finds the offender to be indigent;

31 (c) In any case in which the person has one prior offense within
32 seven years, and except as provided in RCW 46.61.502(6) or
33 46.61.504(~~((+6))~~) (7), order an additional five days of imprisonment
34 and a fine of not less than two thousand dollars and not more than
35 five thousand dollars. One thousand dollars of the fine may not be
36 suspended unless the court finds the offender to be indigent;

37 (d) In any case in which the person has two or three prior
38 offenses within seven years, and except as provided in RCW
39 46.61.502(6) or 46.61.504(~~((+6))~~) (7), order an additional ten days of
40 imprisonment and a fine of not less than three thousand dollars and

1 not more than ten thousand dollars. One thousand dollars of the fine
2 may not be suspended unless the court finds the offender to be
3 indigent.

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

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

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

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

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

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

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

25 (a) **Penalty for alcohol concentration less than 0.15.** If the
26 person's alcohol concentration was less than 0.15, or if for reasons
27 other than the person's refusal to take a test offered under RCW
28 46.20.308 there is no test result indicating the person's alcohol
29 concentration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (11) **Conditions of probation.** (a) In addition to any
38 nonsuspendable and nondeferrable jail sentence required by this
39 section, whenever the court imposes up to three hundred sixty-four
40 days in jail, the court shall also suspend but shall not defer a

1 period of confinement for a period not exceeding five years. The
2 court shall impose conditions of probation that include: (i) Not
3 driving a motor vehicle within this state without a valid license to
4 drive ~~((and))~~; (ii) not driving a motor vehicle within this state
5 without proof of liability insurance or other financial
6 responsibility for the future pursuant to RCW 46.30.020; ~~((+ii))~~
7 (iii) not driving or being in physical control of a motor vehicle
8 within this state while having an alcohol concentration of 0.08 or
9 more or a THC concentration of 5.00 nanograms per milliliter of whole
10 blood or higher, within two hours after driving; ~~((and-(iii)))~~ (iv)
11 not refusing to submit to a test of his or her breath or blood to
12 determine alcohol or drug concentration upon request of a law
13 enforcement officer who has reasonable grounds to believe the person
14 was driving or was in actual physical control of a motor vehicle
15 within this state while under the influence of intoxicating liquor or
16 drug; and (v) not driving a motor vehicle in this state without a
17 functioning ignition interlock device as required by the department
18 under RCW 46.20.720(3). The court may impose conditions of probation
19 that include nonrepetition, installation of an ignition interlock
20 device on the probationer's motor vehicle, alcohol or drug treatment,
21 supervised probation, or other conditions that may be appropriate.
22 The sentence may be imposed in whole or in part upon violation of a
23 condition of probation during the suspension period.

24 (b) For each violation of mandatory conditions of probation under
25 (a)(i), (ii), ~~((or))~~ (iii), (vi), or (v) of this subsection, or for a
26 violation of RCW 46.20.342(1) (a) or (b), the court shall order the
27 convicted person to be confined for thirty days, which shall not be
28 suspended or deferred.

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

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

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

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

8 (c) The court determines that there is reason to believe that the
9 offender would violate the conditions of the electronic home
10 monitoring penalty.

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

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

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

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

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

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

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

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

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

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

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

8 ~~((vii))~~ (vii) A conviction for a violation of RCW 47.68.220 or
9 an equivalent local ordinance committed in a careless or reckless
10 manner if the conviction is the result of a charge that was
11 originally filed as a violation of RCW 47.68.220 or an equivalent
12 local ordinance while under the influence of intoxicating liquor or
13 any drug;

14 (viii) A conviction for a violation of RCW 46.61.503 or an
15 equivalent local ordinance;

16 (ix) A conviction for a violation of RCW 79A.60.060(2)(b) or an
17 equivalent local ordinance;

18 (x) A conviction for a violation of RCW 79A.60.060(2)(a) or an
19 equivalent local ordinance if the conviction is the result of a
20 charge that was originally filed as a violation of RCW
21 79A.60.060(2)(b) or an equivalent local ordinance;

22 (xi) A conviction for a violation of RCW 79A.60.050(1)(a) or an
23 equivalent local ordinance;

24 (xii) A conviction for a violation of RCW 79A.60.050(1) (b) or
25 (c), or an equivalent local ordinance if the conviction is the result
26 of a charge that was originally filed as a violation of RCW
27 79A.60.050(1)(a) or an equivalent local ordinance;

28 (xiii) A conviction for a violation of RCW 46.09.470(2) or an
29 equivalent local ordinance;

30 ~~((xiv))~~ (xiv) A conviction for a violation of RCW 46.10.490(2)
31 or an equivalent local ordinance;

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

39 ~~((xvi))~~ (xvi) A conviction for a violation of RCW 46.61.522
40 committed while under the influence of intoxicating liquor or any

1 drug, or a conviction for a violation of RCW 46.61.522 committed in a
2 reckless manner or with the disregard for the safety of others if the
3 conviction is the result of a charge that was originally filed as a
4 violation of RCW 46.61.522 committed while under the influence of
5 intoxicating liquor or any drug;

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

11 ~~((xi))~~ (xviii) An out-of-state conviction for a violation that
12 would have been a violation of (a)(i), (ii), ~~((viii))~~ (xv),
13 ~~((ix))~~ (xvi), or ~~((x))~~ (xvii) of this subsection if committed in
14 this state;

15 ~~((xii))~~ (xix) A deferred prosecution under chapter 10.05 RCW
16 granted in a prosecution for a violation of RCW 46.61.502, 46.61.504,
17 or an equivalent local ordinance;

18 ~~((xiii))~~ (xx) A deferred prosecution under chapter 10.05 RCW
19 granted in a prosecution for a violation of RCW 46.61.5249, or an
20 equivalent local ordinance, if the charge under which the deferred
21 prosecution was granted was originally filed as a violation of RCW
22 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
23 46.61.520 or 46.61.522;

24 ~~((xiv))~~ (xxi) A deferred prosecution granted in another state
25 for a violation of driving or having physical control of a vehicle
26 while under the influence of intoxicating liquor or any drug if the
27 out-of-state deferred prosecution is equivalent to the deferred
28 prosecution under chapter 10.05 RCW, including a requirement that the
29 defendant participate in a chemical dependency treatment program; or

30 ~~((xv))~~ (xxii) A deferred sentence imposed in a prosecution for
31 a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
32 equivalent local ordinance, if the charge under which the deferred
33 sentence was imposed was originally filed as a violation of RCW
34 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
35 violation of RCW 46.61.520 or 46.61.522;

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

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

3 (c) "Within seven years" means that the arrest for a prior
4 offense occurred within seven years before or after the arrest for
5 the current offense; and

6 (d) "Within ten years" means that the arrest for a prior offense
7 occurred within ten years before or after the arrest for the current
8 offense.

9 **Ignition interlock devices—Standards—Compliance**

10 **Sec. 10.** RCW 43.43.395 and 2013 2nd sp.s. c 35 s 9 are each
11 amended to read as follows:

12 (1) The state patrol shall by rule provide standards for the
13 certification, installation, repair, maintenance, monitoring,
14 inspection, and removal of ignition interlock devices, as defined
15 under RCW 46.04.215, and equipment as outlined under this section,
16 and may inspect the records and equipment of manufacturers and
17 vendors during regular business hours for compliance with statutes
18 and rules and may suspend or revoke certification for any
19 noncompliance.

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

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

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

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

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

11 (ii) Technology capable of taking a photo identification of the
12 user giving the breath sample and recording on the photo the time the
13 breath sample was given; and

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

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

20 (i) Meet or exceed the minimum test standards according to rules
21 adopted by the state patrol. Only a notarized statement from a
22 laboratory that is accredited and certified by ISO, the international
23 organization of standardization under the current edition of the ISO
24 17025 standard for testing and calibration laboratories, and is
25 capable of performing the tests specified will be accepted as proof
26 of meeting or exceeding the standards. The notarized statement must
27 include the name and signature of the person in charge of the tests
28 under the certification statement. The state patrol must adopt by
29 rule the required language of the certification statement that must,
30 at a minimum, outline that the testing meets or exceeds all
31 specifications listed in the federal register adopted in rule by the
32 state patrol; and

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

35 **Adjustments to standard sentences**

36 **Sec. 11.** RCW 9.94A.533 and 2013 c 270 s 2 are each amended to
37 read as follows:

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

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

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

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

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

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

35 (d) If the offender is being sentenced for any firearm
36 enhancements under (a), (b), and/or (c) of this subsection and the
37 offender has previously been sentenced for any deadly weapon
38 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
39 subsection or subsection (4)(a), (b), and/or (c) of this section, or

1 both, all firearm enhancements under this subsection shall be twice
2 the amount of the enhancement listed;

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

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

17 (g) If the standard sentence range under this section exceeds the
18 statutory maximum sentence for the offense, the statutory maximum
19 sentence shall be the presumptive sentence unless the offender is a
20 persistent offender. If the addition of a firearm enhancement
21 increases the sentence so that it would exceed the statutory maximum
22 for the offense, the portion of the sentence representing the
23 enhancement may not be reduced.

24 (4) The following additional times shall be added to the standard
25 sentence range for felony crimes committed after July 23, 1995, if
26 the offender or an accomplice was armed with a deadly weapon other
27 than a firearm as defined in RCW 9.41.010 and the offender is being
28 sentenced for one of the crimes listed in this subsection as eligible
29 for any deadly weapon enhancements based on the classification of the
30 completed felony crime. If the offender is being sentenced for more
31 than one offense, the deadly weapon enhancement or enhancements must
32 be added to the total period of confinement for all offenses,
33 regardless of which underlying offense is subject to a deadly weapon
34 enhancement. If the offender or an accomplice was armed with a deadly
35 weapon other than a firearm as defined in RCW 9.41.010 and the
36 offender is being sentenced for an anticipatory offense under chapter
37 9A.28 RCW to commit one of the crimes listed in this subsection as
38 eligible for any deadly weapon enhancements, the following additional
39 times shall be added to the standard sentence range determined under

1 subsection (2) of this section based on the felony crime of
2 conviction as classified under RCW 9A.28.020:

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

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

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

12 (d) If the offender is being sentenced under (a), (b), and/or (c)
13 of this subsection for any deadly weapon enhancements and the
14 offender has previously been sentenced for any deadly weapon
15 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
16 subsection or subsection (3)(a), (b), and/or (c) of this section, or
17 both, all deadly weapon enhancements under this subsection shall be
18 twice the amount of the enhancement listed;

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

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

33 (g) If the standard sentence range under this section exceeds the
34 statutory maximum sentence for the offense, the statutory maximum
35 sentence shall be the presumptive sentence unless the offender is a
36 persistent offender. If the addition of a deadly weapon enhancement
37 increases the sentence so that it would exceed the statutory maximum
38 for the offense, the portion of the sentence representing the
39 enhancement may not be reduced.

1 (5) The following additional times shall be added to the standard
2 sentence range if the offender or an accomplice committed the offense
3 while in a county jail or state correctional facility and the
4 offender is being sentenced for one of the crimes listed in this
5 subsection. If the offender or an accomplice committed one of the
6 crimes listed in this subsection while in a county jail or state
7 correctional facility, and the offender is being sentenced for an
8 anticipatory offense under chapter 9A.28 RCW to commit one of the
9 crimes listed in this subsection, the following additional times
10 shall be added to the standard sentence range determined under
11 subsection (2) of this section:

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

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

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

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

20 (6) An additional twenty-four months shall be added to the
21 standard sentence range for any ranked offense involving a violation
22 of chapter 69.50 RCW if the offense was also a violation of RCW
23 69.50.435 or 9.94A.827. All enhancements under this subsection shall
24 run consecutively to all other sentencing provisions, for all
25 offenses sentenced under this chapter.

26 (7) An additional two years shall be added to the standard
27 sentence range for vehicular homicide committed while under the
28 influence of intoxicating liquor or any drug as defined by RCW
29 46.61.502 for each prior offense as defined in RCW 46.61.5055. All
30 enhancements under this subsection shall be mandatory, shall be
31 served in total confinement, ~~((and))~~ shall run consecutively to all
32 other sentencing provisions, and shall be served without any good
33 time credits or earned release time.

34 (8)(a) The following additional times shall be added to the
35 standard sentence range for felony crimes committed on or after July
36 1, 2006, if the offense was committed with sexual motivation, as that
37 term is defined in RCW 9.94A.030. If the offender is being sentenced
38 for more than one offense, the sexual motivation enhancement must be
39 added to the total period of total confinement for all offenses,
40 regardless of which underlying offense is subject to a sexual

1 motivation enhancement. If the offender committed the offense with
2 sexual motivation and the offender is being sentenced for an
3 anticipatory offense under chapter 9A.28 RCW, the following
4 additional times shall be added to the standard sentence range
5 determined under subsection (2) of this section based on the felony
6 crime of conviction as classified under RCW 9A.28.020:

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

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

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

15 (iv) If the offender is being sentenced for any sexual motivation
16 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
17 the offender has previously been sentenced for any sexual motivation
18 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
19 (iii) of this subsection, all sexual motivation enhancements under
20 this subsection shall be twice the amount of the enhancement listed;

21 (b) Notwithstanding any other provision of law, all sexual
22 motivation enhancements under this subsection are mandatory, shall be
23 served in total confinement, and shall run consecutively to all other
24 sentencing provisions, including other sexual motivation
25 enhancements, for all offenses sentenced under this chapter. However,
26 whether or not a mandatory minimum term has expired, an offender
27 serving a sentence under this subsection may be granted an
28 extraordinary medical placement when authorized under RCW
29 9.94A.728(3);

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

32 (d) If the standard sentence range under this subsection exceeds
33 the statutory maximum sentence for the offense, the statutory maximum
34 sentence shall be the presumptive sentence unless the offender is a
35 persistent offender. If the addition of a sexual motivation
36 enhancement increases the sentence so that it would exceed the
37 statutory maximum for the offense, the portion of the sentence
38 representing the enhancement may not be reduced;

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

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

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

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

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

39 (c) The increased penalty specified in (a) of this subsection is
40 unavailable in the event that the prosecution gives notice that it

1 will seek an exceptional sentence based on an aggravating factor
2 under RCW 9.94A.535.

3 (11) An additional twelve months and one day shall be added to
4 the standard sentence range for a conviction of attempting to elude a
5 police vehicle as defined by RCW 46.61.024, if the conviction
6 included a finding by special allegation of endangering one or more
7 persons under RCW 9.94A.834. The enhancement under this subsection
8 shall be mandatory, shall be served in total confinement, and shall
9 run consecutively with all other sentencing provisions, and shall be
10 served without any good time credits or earned release time.

11 (12) An additional twelve months shall be added to the standard
12 sentence range for an offense that is also a violation of RCW
13 9.94A.831.

14 (13) An additional twelve months shall be added to the standard
15 sentence range for vehicular homicide committed while under the
16 influence of intoxicating liquor or any drug as defined by RCW
17 46.61.520 or for vehicular assault committed while under the
18 influence of intoxicating liquor or any drug as defined by RCW
19 46.61.522, or for any felony driving under the influence (RCW
20 46.61.502(6)) or felony physical control under the influence (RCW
21 46.61.504(~~(+6)~~)) (7) for each child passenger under the age of
22 sixteen who is an occupant in the defendant's vehicle. These
23 enhancements shall be mandatory, shall be served in total
24 confinement, ~~((and))~~ shall run consecutively to all other sentencing
25 provisions, and shall be served without any good time credits or
26 earned release time. If the addition of a minor child enhancement
27 increases the sentence so that it would exceed the statutory maximum
28 for the offense, the portion of the sentence representing the
29 enhancement may not be reduced.

30 (14) An additional twelve months shall be added to the standard
31 sentence range for an offense that is also a violation of RCW
32 9.94A.832.

33 **Vehicular homicide—Penalty**

34 **Sec. 12.** RCW 46.61.520 and 1998 c 211 s 2 are each amended to
35 read as follows:

36 (1) When the death of any person ensues within three years as a
37 proximate result of injury proximately caused by the driving of any

1 vehicle by any person, the driver is guilty of vehicular homicide if
2 the driver was operating a motor vehicle:

3 (a) While under the influence of intoxicating liquor or any drug,
4 as defined by RCW 46.61.502; or

5 (b) In a reckless manner; or

6 (c) With disregard for the safety of others.

7 (2) Vehicular homicide is a class A felony punishable under
8 chapter 9A.20 RCW, except that, for a conviction under subsection
9 (1)(a) of this section, an additional two years shall be added to the
10 sentence for each prior offense as defined in RCW 46.61.5055.
11 Pursuant to RCW 9.94A.533(7), the enhancement shall be mandatory,
12 shall be served in total confinement, shall run consecutively to all
13 other sentencing provisions and shall be served without any good time
14 credits or earned release time.

15 **~~Abstract of driving record—Access—Fee—Violations~~**

16 **Sec. 13.** RCW 46.52.130 and 2012 c 74 s 6 and 2012 c 73 s 1 are
17 each reenacted and amended to read as follows:

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

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

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

24 (i) The total number of vehicles involved;

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

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

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

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

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

34 (d) Any reports of failure to appear in response to a traffic
35 citation or failure to respond to a notice of infraction served upon
36 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.

32 (C) Upon request of the person named in the abstract provided
33 under this subsection, and upon that same person furnishing copies of
34 court records ruling that the person was not at fault in a motor
35 vehicle accident, the department must indicate on any abstract
36 provided under this subsection that the person was not at fault in
37 the motor vehicle accident.

38 (ii) In addition to the methods described in (b)(i) of this
39 subsection, the director may enter into a contractual agreement with
40 an employer or its agent for the purpose of reviewing the driving

1 records of existing employees for changes to the record during
2 specified periods of time. The department shall establish a fee for
3 this service, which must be deposited in the highway safety fund. The
4 fee for this service must be set at a level that will not result in a
5 net revenue loss to the state. Any information provided under this
6 subsection must be treated in the same manner and is subject to the
7 same restrictions as driving record abstracts.

8 (c) **Volunteer organizations.** (i) An abstract of the full driving
9 record maintained by the department may be furnished to a volunteer
10 organization or an agent for a volunteer organization for which the
11 named individual has submitted an application for a position that
12 would require driving by the individual at the direction of the
13 volunteer organization.

14 (ii) Release of an abstract of the driving record of a
15 prospective volunteer requires a statement signed by: (A) The
16 prospective volunteer that authorizes the release of the record; and
17 (B) the volunteer organization attesting that the information is
18 necessary for purposes related to driving by the individual at the
19 direction of the volunteer organization. If the volunteer
20 organization authorizes an agent to obtain this information on their
21 behalf, this must be noted in the statement.

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

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

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

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

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

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

36 (A) Not contain any information related to actions committed by
37 law enforcement officers or firefighters, as both terms are defined
38 in RCW 41.26.030, or by Washington state patrol officers, while
39 driving official vehicles in the performance of their occupational

1 duty. This does not apply to any situation where the vehicle was used
2 in the commission of a misdemeanor or felony;

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

7 (C) Exclude any deferred prosecution under RCW 10.05.060, except
8 that if a person is removed from a deferred prosecution under RCW
9 10.05.090, the abstract must show the deferred prosecution as well as
10 the removal.

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

15 (iv) Any insurance company or its agent, for underwriting
16 purposes relating to the operation of commercial motor vehicles, may
17 not use any information contained in the abstract relative to any
18 person's operation of motor vehicles while not engaged in such
19 employment. Any insurance company or its agent, for underwriting
20 purposes relating to the operation of noncommercial motor vehicles,
21 may not use any information contained in the abstract relative to any
22 person's operation of commercial motor vehicles.

23 (v) The director may enter into a contractual agreement with an
24 insurance company or its agent for the limited purpose of reviewing
25 the driving records of existing policyholders for changes to the
26 record during specified periods of time. The department shall
27 establish a fee for this service, which must be deposited in the
28 highway safety fund. The fee for this service must be set at a level
29 that will not result in a net revenue loss to the state. Any
30 information provided under this subsection must be treated in the
31 same manner and is subject to the same restrictions as driving record
32 abstracts.

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

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

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

6 (g) Attorneys—City attorneys ((and)), county prosecuting
7 attorneys, and named individual's attorney of record. An abstract of
8 the full driving record maintained by the department, including
9 whether a recorded violation is an alcohol-related offense, as
10 defined in RCW 46.01.260(2), that was originally charged as a
11 violation of either RCW 46.61.502 or 46.61.504, may be furnished to
12 city attorneys ((~~or~~)), county prosecuting attorneys, or the named
13 individual's attorney of record. City attorneys ((and)), county
14 prosecuting attorneys, or the named individual's attorney of record
15 may provide the driving record to alcohol/drug assessment or
16 treatment agencies approved by the department of social and health
17 services to which the named individual has applied or been assigned
18 for evaluation or treatment.

19 (h) **State colleges, universities, or agencies, or units of local**
20 **government.** An abstract of the full driving record maintained by the
21 department may be furnished to (i) state colleges, universities, or
22 agencies for employment and risk management purposes or (ii) units of
23 local government authorized to self-insure under RCW 48.62.031 for
24 employment and risk management purposes.

25 (i) **Superintendent of public instruction.** An abstract of the full
26 driving record maintained by the department may be furnished to the
27 superintendent of public instruction for review of public school bus
28 driver records. The superintendent or superintendent's designee may
29 discuss information on the driving record with an authorized
30 representative of the employing school district for employment and
31 risk management purposes.

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

38 (4) **Fee.** The director shall collect a thirteen dollar fee for
39 each abstract of a person's driving record furnished by the
40 department. Fifty percent of the fee must be deposited in the highway

1 safety fund, and fifty percent of the fee must be deposited according
2 to RCW 46.68.038.

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

5 (b) Any intentional violation of this section is a class C
6 felony.

7 **Right to control disposition of remains—Liability of funeral**
8 **establishment or cemetery authority—Liability for cost**

9 **Sec. 14.** RCW 68.50.160 and 2012 c 5 s 1 are each amended to read
10 as follows:

11 (1) A person has the right to control the disposition of his or
12 her own remains without the predeath or postdeath consent of another
13 person. A valid written document expressing the decedent's wishes
14 regarding the place or method of disposition of his or her remains,
15 signed by the decedent in the presence of a witness, is sufficient
16 legal authorization for the procedures to be accomplished.

17 (2) Prearrangements that are prepaid, or filed with a licensed
18 funeral establishment or cemetery authority, under RCW 18.39.280
19 through 18.39.345 and chapter 68.46 RCW are not subject to
20 cancellation or substantial revision by survivors. Absent actual
21 knowledge of contrary legal authorization under this section, a
22 licensed funeral establishment or cemetery authority shall not be
23 held criminally nor civilly liable for acting upon such
24 prearrangements.

25 (3) If the decedent has not made a prearrangement as set forth in
26 subsection (2) of this section or the costs of executing the
27 decedent's wishes regarding the disposition of the decedent's remains
28 exceeds a reasonable amount or directions have not been given by the
29 decedent, the right to control the disposition of the remains of a
30 deceased person vests in, and the duty of disposition and the
31 liability for the reasonable cost of preparation, care, and
32 disposition of such remains devolves upon the following in the order
33 named:

34 (a) The person designated by the decedent as authorized to direct
35 disposition as listed on the decedent's United States department of
36 defense record of emergency data, DD form 93, or its successor form,
37 if the decedent died while serving in military service as described

1 in 10 U.S.C. Sec. 1481(a) (1)-(8) in any branch of the United States
2 armed forces, United States reserve forces, or national guard;

3 (b) The designated agent of the decedent as directed through a
4 written document signed and dated by the decedent in the presence of
5 a witness. The direction of the designated agent is sufficient to
6 direct the type, place, and method of disposition;

7 (c) The surviving spouse or state registered domestic partner;

8 (d) The majority of the surviving adult children of the decedent;

9 (e) The surviving parents of the decedent;

10 (f) The majority of the surviving siblings of the decedent;

11 (g) A court-appointed guardian for the person at the time of the
12 person's death.

13 (4) If any person to whom the right of control has vested
14 pursuant to subsection (3) of this section has been arrested or
15 charged with first or second degree murder (~~((\otimes))~~), first degree
16 manslaughter, or vehicular homicide in connection with the decedent's
17 death, the right of control is relinquished and passed on in
18 accordance with subsection (3) of this section.

19 (5) If a cemetery authority as defined in RCW 68.04.190 or a
20 funeral establishment licensed under chapter 18.39 RCW has made a
21 good faith effort to locate the person cited in subsection (3)(a)
22 through (g) of this section or the legal representative of the
23 decedent's estate, the cemetery authority or funeral establishment
24 shall have the right to rely on an authority to bury or cremate the
25 human remains, executed by the most responsible party available, and
26 the cemetery authority or funeral establishment may not be held
27 criminally or civilly liable for burying or cremating the human
28 remains. In the event any government agency or charitable
29 organization provides the funds for the disposition of any human
30 remains, the cemetery authority or funeral establishment may not be
31 held criminally or civilly liable for cremating the human remains.

32 (6) The liability for the reasonable cost of preparation, care,
33 and disposition devolves jointly and severally upon all kin of the
34 decedent in the same degree of kindred, in the order listed in
35 subsection (3) of this section, and upon the estate of the decedent.

36 **Sec. 15.** RCW 9.94A.589 and 2002 c 175 s 7 are each amended to
37 read as follows:

38 (1)(a) Except as provided in (b) (~~((\otimes))~~), (c), or (d) of this
39 subsection, whenever a person is to be sentenced for two or more

1 current offenses, the sentence range for each current offense shall
2 be determined by using all other current and prior convictions as if
3 they were prior convictions for the purpose of the offender score:
4 PROVIDED, That if the court enters a finding that some or all of the
5 current offenses encompass the same criminal conduct then those
6 current offenses shall be counted as one crime. Sentences imposed
7 under this subsection shall be served concurrently. Consecutive
8 sentences may only be imposed under the exceptional sentence
9 provisions of RCW 9.94A.535. "Same criminal conduct," as used in this
10 subsection, means two or more crimes that require the same criminal
11 intent, are committed at the same time and place, and involve the
12 same victim. This definition applies in cases involving vehicular
13 assault or vehicular homicide even if the victims occupied the same
14 vehicle.

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

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

38 (d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6),
39 or 46.61.5055(4) shall be served consecutively with any sentences
40 imposed under RCW 46.20.740 and 46.20.750.

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

5 (b) Whenever a second or later felony conviction results in
6 community supervision with conditions not currently in effect, under
7 the prior sentence or sentences of community supervision the court
8 may require that the conditions of community supervision contained in
9 the second or later sentence begin during the immediate term of
10 community supervision and continue throughout the duration of the
11 consecutive term of community supervision.

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

20 (4) Whenever any person granted probation under RCW 9.95.210 or
21 9.92.060, or both, has the probationary sentence revoked and a prison
22 sentence imposed, that sentence shall run consecutively to any
23 sentence imposed pursuant to this chapter, unless the court
24 pronouncing the subsequent sentence expressly orders that they be
25 served concurrently.

26 (5) In the case of consecutive sentences, all periods of total
27 confinement shall be served before any partial confinement, community
28 restitution, community supervision, or any other requirement or
29 conditions of any of the sentences. Except for exceptional sentences
30 as authorized under RCW 9.94A.535, if two or more sentences that run
31 consecutively include periods of community supervision, the aggregate
32 of the community supervision period shall not exceed twenty-four
33 months.

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

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

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

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

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

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

13 (2) The fact that a person charged with a violation of this
14 section is or has been entitled to use a drug under the laws of this
15 state does not constitute a defense against any charge of violating
16 this section. No person may be convicted under this section and it is
17 an affirmative defense to any action pursuant to RCW 46.20.308 to
18 suspend, revoke, or deny the privilege to drive if, prior to being
19 pursued by a law enforcement officer, the person has moved the
20 vehicle safely off the roadway.

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

32 (b) It is an affirmative defense to a violation of subsection
33 (1)(b) of this section, which the defendant must prove by a
34 preponderance of the evidence, that the defendant consumed a
35 sufficient quantity of marijuana after the time of being in actual
36 physical control of the vehicle and before the administration of an
37 analysis of the person's blood to cause the defendant's THC
38 concentration to be 5.00 or more within two hours after being in
39 control of the vehicle. The court shall not admit evidence of this
40 defense unless the defendant notifies the prosecution prior to the

1 omnibus or pretrial hearing in the case of the defendant's intent to
2 assert the affirmative defense.

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

12 (b) Analyses of blood samples obtained more than two hours after
13 the alleged being in actual physical control of a vehicle may be used
14 as evidence that within two hours of the alleged being in control of
15 the vehicle, a person had a THC concentration of 5.00 or more in
16 violation of subsection (1)(b) of this section, and in any case in
17 which the analysis shows a THC concentration above 0.00 may be used
18 as evidence that a person was under the influence of or affected by
19 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

--- END ---