

ESHB 1504 - S COMM AMD

By Committee on Law & Justice

OUT OF ORDER 04/17/2019

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

3 "Sec. 1. RCW 9.94A.533 and 2018 c 7 s 8 are each amended to read
4 as follows:

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

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

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

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

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

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

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

14 (e) Notwithstanding any other provision of law, all firearm
15 enhancements under this section are mandatory, shall be served in
16 total confinement, and shall run consecutively to all other
17 sentencing provisions, including other firearm or deadly weapon
18 enhancements, for all offenses sentenced under this chapter. However,
19 whether or not a mandatory minimum term has expired, an offender
20 serving a sentence under this subsection may be:

21 (i) Granted an extraordinary medical placement when authorized
22 under RCW 9.94A.728(1)(c); or

23 (ii) Released under the provisions of RCW 9.94A.730;

24 (f) The firearm enhancements in this section shall apply to all
25 felony crimes except the following: Possession of a machine gun or
26 bump-fire stock, possessing a stolen firearm, drive-by shooting,
27 theft of a firearm, unlawful possession of a firearm in the first and
28 second degree, and use of a machine gun or bump-fire stock in a
29 felony;

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

37 (4) The following additional times shall be added to the standard
38 sentence range for felony crimes committed after July 23, 1995, if
39 the offender or an accomplice was armed with a deadly weapon other
40 than a firearm as defined in RCW 9.41.010 and the offender is being

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

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

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

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

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

31 (e) Notwithstanding any other provision of law, all deadly weapon
32 enhancements under this section are mandatory, shall be served in
33 total confinement, and shall run consecutively to all other
34 sentencing provisions, including other firearm or deadly weapon
35 enhancements, for all offenses sentenced under this chapter. However,
36 whether or not a mandatory minimum term has expired, an offender
37 serving a sentence under this subsection may be:

38 (i) Granted an extraordinary medical placement when authorized
39 under RCW 9.94A.728(1)(c); or

40 (ii) Released under the provisions of RCW 9.94A.730;

1 (f) The deadly weapon enhancements in this section shall apply to
2 all felony crimes except the following: Possession of a machine gun
3 or bump-fire stock, possessing a stolen firearm, drive-by shooting,
4 theft of a firearm, unlawful possession of a firearm in the first and
5 second degree, and use of a machine gun or bump-fire stock in a
6 felony;

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

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

25 (a) Eighteen months for offenses committed under RCW 69.50.401(2)

26 (a) or (b) or 69.50.410;

27 (b) Fifteen months for offenses committed under RCW 69.50.401(2)

28 (c), (d), or (e);

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

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

33 (6) An additional twenty-four months shall be added to the
34 standard sentence range for any ranked offense involving a violation
35 of chapter 69.50 RCW if the offense was also a violation of RCW
36 69.50.435 or 9.94A.827. All enhancements under this subsection shall
37 run consecutively to all other sentencing provisions, for all
38 offenses sentenced under this chapter.

39 (7) An additional two years shall be added to the standard
40 sentence range for vehicular homicide committed while under the

1 influence of intoxicating liquor or any drug as defined by RCW
2 46.61.502 for each prior offense as defined in RCW 46.61.5055.

3 Notwithstanding any other provision of law, all impaired driving
4 enhancements under this subsection are mandatory, shall be served in
5 total confinement, and shall run consecutively to all other
6 sentencing provisions, including other impaired driving enhancements,
7 for all offenses sentenced under this chapter.

8 An offender serving a sentence under this subsection may be
9 granted an extraordinary medical placement when authorized under RCW
10 9.94A.728(1)(c).

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

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

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

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

32 (iv) If the offender is being sentenced for any sexual motivation
33 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
34 the offender has previously been sentenced for any sexual motivation
35 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
36 (iii) of this subsection, all sexual motivation enhancements under
37 this subsection shall be twice the amount of the enhancement listed;

38 (b) Notwithstanding any other provision of law, all sexual
39 motivation enhancements under this subsection are mandatory, shall be
40 served in total confinement, and shall run consecutively to all other

1 sentencing provisions, including other sexual motivation
2 enhancements, for all offenses sentenced under this chapter. However,
3 whether or not a mandatory minimum term has expired, an offender
4 serving a sentence under this subsection may be:

5 (i) Granted an extraordinary medical placement when authorized
6 under RCW 9.94A.728(1)(c); or

7 (ii) Released under the provisions of RCW 9.94A.730;

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

10 (d) If the standard sentence range under this subsection exceeds
11 the statutory maximum sentence for the offense, the statutory maximum
12 sentence shall be the presumptive sentence unless the offender is a
13 persistent offender. If the addition of a sexual motivation
14 enhancement increases the sentence so that it would exceed the
15 statutory maximum for the offense, the portion of the sentence
16 representing the enhancement may not be reduced;

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

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

23 (9) An additional one-year enhancement shall be added to the
24 standard sentence range for the felony crimes of RCW 9A.44.073,
25 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
26 or after July 22, 2007, if the offender engaged, agreed, or offered
27 to engage the victim in the sexual conduct in return for a fee. If
28 the offender is being sentenced for more than one offense, the
29 one-year enhancement must be added to the total period of total
30 confinement for all offenses, regardless of which underlying offense
31 is subject to the enhancement. If the offender is being sentenced for
32 an anticipatory offense for the felony crimes of RCW 9A.44.073,
33 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
34 offender attempted, solicited another, or conspired to engage, agree,
35 or offer to engage the victim in the sexual conduct in return for a
36 fee, an additional one-year enhancement shall be added to the
37 standard sentence range determined under subsection (2) of this
38 section. For purposes of this subsection, "sexual conduct" means
39 sexual intercourse or sexual contact, both as defined in chapter
40 9A.44 RCW.

1 (10)(a) For a person age eighteen or older convicted of any
2 criminal street gang-related felony offense for which the person
3 compensated, threatened, or solicited a minor in order to involve the
4 minor in the commission of the felony offense, the standard sentence
5 range is determined by locating the sentencing grid sentence range
6 defined by the appropriate offender score and the seriousness level
7 of the completed crime, and multiplying the range by one hundred
8 twenty-five percent. If the standard sentence range under this
9 subsection exceeds the statutory maximum sentence for the offense,
10 the statutory maximum sentence is the presumptive sentence unless the
11 offender is a persistent offender.

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

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

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

24 (12) An additional twelve months shall be added to the standard
25 sentence range for an offense that is also a violation of RCW
26 9.94A.831.

27 (13) An additional twelve months shall be added to the standard
28 sentence range for vehicular homicide committed while under the
29 influence of intoxicating liquor or any drug as defined by RCW
30 46.61.520 or for vehicular assault committed while under the
31 influence of intoxicating liquor or any drug as defined by RCW
32 46.61.522, or for any felony driving under the influence (RCW
33 46.61.502(6)) or felony physical control under the influence (RCW
34 46.61.504(6)) for each child passenger under the age of sixteen who
35 is an occupant in the defendant's vehicle. These enhancements shall
36 be mandatory, shall be served in total confinement, and shall run
37 consecutively to all other sentencing provisions, including other
38 minor child enhancements, for all offenses sentenced under this
39 chapter. If the addition of a minor child enhancement increases the
40 sentence so that it would exceed the statutory maximum for the

1 offense, the portion of the sentence representing the enhancement may
2 not be reduced.

3 (14) An additional twelve months shall be added to the standard
4 sentence range for an offense that is also a violation of RCW
5 9.94A.832.

6 **Sec. 2.** RCW 9.94A.729 and 2015 c 134 s 4 are each amended to
7 read as follows:

8 (1)(a) The term of the sentence of an offender committed to a
9 correctional facility operated by the department may be reduced by
10 earned release time in accordance with procedures that shall be
11 developed and adopted by the correctional agency having jurisdiction
12 in which the offender is confined. The earned release time shall be
13 for good behavior and good performance, as determined by the
14 correctional agency having jurisdiction. The correctional agency
15 shall not credit the offender with earned release credits in advance
16 of the offender actually earning the credits.

17 (b) Any program established pursuant to this section shall allow
18 an offender to earn early release credits for presentence
19 incarceration. If an offender is transferred from a county jail to
20 the department, the administrator of a county jail facility shall
21 certify to the department the amount of time spent in custody at the
22 facility and the number of days of early release credits lost or not
23 earned. The department may approve a jail certification from a
24 correctional agency that calculates early release time based on the
25 actual amount of confinement time served by the offender before
26 sentencing when an erroneous calculation of confinement time served
27 by the offender before sentencing appears on the judgment and
28 sentence. The department must adjust an offender's rate of early
29 release listed on the jail certification to be consistent with the
30 rate applicable to offenders in the department's facilities. However,
31 the department is not authorized to adjust the number of presentence
32 early release days that the jail has certified as lost or not earned.

33 (2)(a) An offender who has been convicted of a felony committed
34 after July 23, 1995, that involves any applicable deadly weapon
35 enhancements under RCW 9.94A.533 (3) or (4), or both, shall not
36 receive any good time credits or earned release time for that portion
37 of his or her sentence that results from any deadly weapon
38 enhancements.

1 (b) An offender whose sentence includes any impaired driving
2 enhancements under RCW 9.94A.533(7), minor child enhancements under
3 RCW 9.94A.533(13), or both, shall not receive any good time credits
4 or earned release time for any portion of his or her sentence that
5 results from those enhancements.

6 (3) An offender may earn early release time as follows:

7 (a) In the case of an offender sentenced pursuant to RCW
8 10.95.030(3) or 10.95.035, the offender may not receive any earned
9 early release time during the minimum term of confinement imposed by
10 the court; for any remaining portion of the sentence served by the
11 offender, the aggregate earned release time may not exceed ten
12 percent of the sentence.

13 (b) In the case of an offender convicted of a serious violent
14 offense, or a sex offense that is a class A felony, committed on or
15 after July 1, 1990, and before July 1, 2003, the aggregate earned
16 release time may not exceed fifteen percent of the sentence.

17 (c) In the case of an offender convicted of a serious violent
18 offense, or a sex offense that is a class A felony, committed on or
19 after July 1, 2003, the aggregate earned release time may not exceed
20 ten percent of the sentence.

21 (d) An offender is qualified to earn up to fifty percent of
22 aggregate earned release time if he or she:

23 (i) Is not classified as an offender who is at a high risk to
24 reoffend as provided in subsection (4) of this section;

25 (ii) Is not confined pursuant to a sentence for:

26 (A) A sex offense;

27 (B) A violent offense;

28 (C) A crime against persons as defined in RCW 9.94A.411;

29 (D) A felony that is domestic violence as defined in RCW
30 10.99.020;

31 (E) A violation of RCW 9A.52.025 (residential burglary);

32 (F) A violation of, or an attempt, solicitation, or conspiracy to
33 violate, RCW 69.50.401 by manufacture or delivery or possession with
34 intent to deliver methamphetamine; or

35 (G) A violation of, or an attempt, solicitation, or conspiracy to
36 violate, RCW 69.50.406 (delivery of a controlled substance to a
37 minor);

38 (iii) Has no prior conviction for the offenses listed in (d)(ii)
39 of this subsection;

1 (iv) Participates in programming or activities as directed by the
2 offender's individual reentry plan as provided under RCW 72.09.270 to
3 the extent that such programming or activities are made available by
4 the department; and

5 (v) Has not committed a new felony after July 22, 2007, while
6 under community custody.

7 (e) In no other case shall the aggregate earned release time
8 exceed one-third of the total sentence.

9 (4) The department shall perform a risk assessment of each
10 offender who may qualify for earned early release under subsection
11 (3)(d) of this section utilizing the risk assessment tool recommended
12 by the Washington state institute for public policy. Subsection
13 (3)(d) of this section does not apply to offenders convicted after
14 July 1, 2010.

15 (5)(a) A person who is eligible for earned early release as
16 provided in this section and who will be supervised by the department
17 pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to
18 community custody in lieu of earned release time;

19 (b) The department shall, as a part of its program for release to
20 the community in lieu of earned release, require the offender to
21 propose a release plan that includes an approved residence and living
22 arrangement. All offenders with community custody terms eligible for
23 release to community custody in lieu of earned release shall provide
24 an approved residence and living arrangement prior to release to the
25 community;

26 (c) The department may deny transfer to community custody in lieu
27 of earned release time if the department determines an offender's
28 release plan, including proposed residence location and living
29 arrangements, may violate the conditions of the sentence or
30 conditions of supervision, place the offender at risk to violate the
31 conditions of the sentence, place the offender at risk to reoffend,
32 or present a risk to victim safety or community safety. The
33 department's authority under this section is independent of any
34 court-ordered condition of sentence or statutory provision regarding
35 conditions for community custody;

36 (d) If the department is unable to approve the offender's release
37 plan, the department may do one or more of the following:

38 (i) Transfer an offender to partial confinement in lieu of earned
39 early release for a period not to exceed three months. The three
40 months in partial confinement is in addition to that portion of the

1 offender's term of confinement that may be served in partial
2 confinement as provided in RCW 9.94A.728(~~(5)~~) (1)(e);

3 (ii) Provide rental vouchers to the offender for a period not to
4 exceed three months if rental assistance will result in an approved
5 release plan.

6 A voucher must be provided in conjunction with additional
7 transition support programming or services that enable an offender to
8 participate in services including, but not limited to, substance
9 abuse treatment, mental health treatment, sex offender treatment,
10 educational programming, or employment programming;

11 (e) The department shall maintain a list of housing providers
12 that meets the requirements of RCW 72.09.285. If more than two
13 voucher recipients will be residing per dwelling unit, as defined in
14 RCW 59.18.030, rental vouchers for those recipients may only be paid
15 to a housing provider on the department's list;

16 (f) For each offender who is the recipient of a rental voucher,
17 the department shall gather data as recommended by the Washington
18 state institute for public policy in order to best demonstrate
19 whether rental vouchers are effective in reducing recidivism.

20 (6) An offender serving a term of confinement imposed under RCW
21 9.94A.670(5)(a) is not eligible for earned release credits under this
22 section.

23 **Sec. 3.** RCW 10.21.055 and 2016 c 203 s 16 are each amended to
24 read as follows:

25 (1)(a) When any person charged with a violation of RCW 46.61.502,
26 46.61.504, 46.61.520, or 46.61.522, in which the person has a prior
27 offense as defined in RCW 46.61.5055 and the current offense involves
28 alcohol, is released from custody at arraignment or trial on bail or
29 personal recognizance, the court authorizing the release shall
30 require, as a condition of release that person comply with one of the
31 following four requirements:

32 (i) Have a functioning ignition interlock device installed on all
33 motor vehicles operated by the person, with proof of installation
34 filed with the court by the person or the certified interlock
35 provider within five business days of the date of release from
36 custody or as soon thereafter as determined by the court based on
37 availability within the jurisdiction; or

38 (ii) Comply with 24/7 sobriety program monitoring, as defined in
39 RCW 36.28A.330; or

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

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

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

28 (2)(a) Upon acquittal or dismissal of all pending or current
29 charges relating to a violation of RCW 46.61.502, 46.61.504,
30 46.61.520, or 46.61.522, or equivalent local ordinance, the court
31 shall authorize removal of the ignition interlock device and lift any
32 requirement to comply with electronic alcohol/drug monitoring imposed
33 under subsection (1) of this section. Nothing in this section limits
34 the authority of the court or department under RCW 46.20.720.

35 (b) If the court authorizes removal of an ignition interlock
36 device imposed under this section, the court shall immediately notify
37 the department of licensing regarding the lifting of the ignition
38 interlock restriction and the department of licensing shall release
39 any attachment, imprint, or notation on such person's driving record

1 relating to the ignition interlock requirement imposed under this
2 section.

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

8 **Sec. 4.** RCW 18.360.030 and 2017 c 336 s 16 are each amended to
9 read as follows:

10 (1) The secretary shall adopt rules specifying the minimum
11 qualifications for a medical assistant-certified, medical assistant-
12 hemodialysis technician, medical assistant-phlebotomist, and forensic
13 phlebotomist.

14 ~~((a))~~ The qualifications for a medical assistant-hemodialysis
15 technician must be equivalent to the qualifications for hemodialysis
16 technicians regulated pursuant to chapter 18.135 RCW as of January 1,
17 2012.

18 ~~((b) The qualifications for a forensic phlebotomist must include
19 training consistent with the occupational safety and health
20 administration guidelines and must include between twenty and thirty
21 hours of work in a clinical setting with the completion of more than
22 one hundred successful venipunctures. The secretary may not require
23 more than forty hours of classroom training for initial training,
24 which may include online preclass homework.)~~

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

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

1 **Sec. 5.** RCW 38.52.430 and 2012 c 183 s 6 are each amended to
2 read as follows:

3 A person whose intoxication causes an incident resulting in an
4 appropriate emergency response, and who, in connection with the
5 incident, has been found guilty of or has had their prosecution
6 deferred for (1) driving while under the influence of intoxicating
7 liquor or any drug, RCW 46.61.502; (2) physical control of a motor
8 vehicle while under the influence of intoxicating liquor or any drug,
9 RCW 46.61.504; (3) operating an aircraft under the influence of
10 intoxicants or drugs, RCW 47.68.220; (~~((3))~~) (4) use of a vessel
11 while under the influence of alcohol or drugs, RCW 79A.60.040;
12 (~~((4))~~) (5) vehicular homicide while under the influence of
13 intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (~~((5))~~) (6)
14 vehicular assault while under the influence of intoxicating liquor or
15 any drug, RCW 46.61.522(1)(b), is liable for the expense of an
16 emergency response by a public agency to the incident.

17 The expense of an emergency response is a charge against the
18 person liable for expenses under this section. The charge constitutes
19 a debt of that person and is collectible by the public agency
20 incurring those costs in the same manner as in the case of an
21 obligation under a contract, expressed or implied. Following a
22 conviction of an offense listed in this section, and prior to
23 sentencing, the prosecution may present to the court information
24 setting forth the expenses incurred by the public agency for its
25 emergency response to the incident. Upon a finding by the court that
26 the expenses are reasonable, the court shall order the defendant to
27 reimburse the public agency. The cost reimbursement shall be included
28 in the sentencing order as an additional monetary obligation of the
29 defendant and may not be substituted for any other fine or cost
30 required or allowed by statute. The court may establish a payment
31 schedule for the payment of the cost reimbursement, separate from any
32 payment schedule imposed for other fines and costs. All payments for
33 the cost reimbursement must be remitted directly to the public agency
34 or agencies that incurred the cost associated with the emergency
35 response.

36 In no event shall a person's liability under this section for the
37 expense of an emergency response exceed two thousand five hundred
38 dollars for a particular incident.

39 If more than one public agency makes a claim for payment from an
40 individual for an emergency response to a single incident under the

1 provisions of this section, and the sum of the claims exceeds the
2 amount recovered, the division of the amount recovered shall be
3 determined by an interlocal agreement consistent with the
4 requirements of chapter 39.34 RCW.

5 **Sec. 6.** RCW 46.20.245 and 2005 c 288 s 1 are each amended to
6 read as follows:

7 (1) Whenever the department proposes to withhold the driving
8 privilege of a person or disqualify a person from operating a
9 commercial motor vehicle and this action is made mandatory by the
10 provisions of this chapter or other law, the department must give
11 notice to the person in writing by posting in the United States mail,
12 appropriately addressed, postage prepaid, or by personal service.
13 Notice by mail is given upon deposit in the United States mail.
14 Notice given under this subsection must specify the date upon which
15 the driving privilege is to be withheld which shall not be less than
16 forty-five days after the original notice is given.

17 (2) For persons subject to suspension, revocation, or denial of a
18 driver's license who are eligible for full credit under RCW
19 46.61.5055(9)(b)(ii), the notice in subsection (1) of this section
20 must also notify the person of the obligation to complete the
21 requirements under RCW 46.20.311 and pay the probationary license fee
22 under RCW 46.20.355 by the date specified in the notice in order to
23 avoid license suspension.

24 (3) Within fifteen days after notice has been given to a person
25 under subsection (1) of this section, the person may request in
26 writing an administrative review before the department. If the
27 request is mailed, it must be postmarked within fifteen days after
28 the date the department has given notice. If a person fails to
29 request an administrative review within fifteen days after the date
30 the department gives notice, the person is considered to have
31 defaulted and loses his or her right to an administrative review
32 unless the department finds good cause for a request after the
33 fifteen-day period.

34 (a) An administrative review under this subsection shall consist
35 solely of an internal review of documents and records submitted or
36 available to the department, unless the person requests an interview
37 before the department, in which case all or any part of the
38 administrative review may, at the discretion of the department, be
39 conducted by telephone or other electronic means.

1 (b) The only issues to be addressed in the administrative review
2 are:

3 (i) Whether the records relied on by the department identify the
4 correct person; and

5 (ii) Whether the information transmitted from the court or other
6 reporting agency or entity regarding the person accurately describes
7 the action taken by the court or other reporting agency or entity.

8 (c) For the purposes of this section, the notice received from a
9 court or other reporting agency or entity, regardless of form or
10 format, is prima facie evidence that the information from the court
11 or other reporting agency or entity regarding the person is accurate.
12 A person requesting administrative review has the burden of showing
13 by a preponderance of the evidence that the person is not subject to
14 the withholding of the driving privilege.

15 (d) The action subject to the notification requirements of
16 subsection (1) of this section shall be stayed during the
17 administrative review process.

18 (e) Judicial review of a department order affirming the action
19 subject to the notification requirements of subsection (1) of this
20 section after an administrative review shall be available in the same
21 manner as provided in RCW 46.20.308(~~(+9)~~) (8). The department shall
22 certify its record to the court within thirty days after service upon
23 the department of the petition for judicial review. The action
24 subject to the notification requirements of subsection (1) of this
25 section shall not automatically be stayed during the judicial review.
26 If judicial relief is sought for a stay or other temporary remedy
27 from the department's action, the court shall not grant relief unless
28 the court finds that the appellant is likely to prevail in the appeal
29 and that without a stay the appellant will suffer irreparable injury.

30 (~~(+3)~~) (4) The department may adopt rules that are considered
31 necessary or convenient by the department for purposes of
32 administering this section, including, but not limited to, rules
33 regarding expedited procedures for issuing orders and expedited
34 notice procedures.

35 (~~(+4)~~) (5) This section does not apply where an opportunity for
36 an informal settlement, driver improvement interview, or formal
37 hearing is otherwise provided by law or rule of the department.

38 **Sec. 7.** RCW 46.20.3101 and 2016 c 203 s 18 are each amended to
39 read as follows:

1 Pursuant to RCW 46.20.308, the department shall suspend, revoke,
2 or deny the arrested person's license, permit, or privilege to drive
3 as follows:

4 (1) In the case of a person who has refused a test or tests:

5 (a) For a first refusal within seven years, where there has not
6 been a previous incident within seven years that resulted in
7 administrative action under this section, revocation or denial for
8 one year;

9 (b) For a second or subsequent refusal within seven years, or for
10 a first refusal where there has been one or more previous incidents
11 within seven years that have resulted in administrative action under
12 this section, revocation or denial for two years or until the person
13 reaches age twenty-one, whichever is longer.

14 (2) In the case of an incident where a person has submitted to or
15 been administered a test or tests indicating that the alcohol
16 concentration of the person's breath or blood was 0.08 or more, or
17 that the THC concentration of the person's blood was 5.00 or more:

18 (a) For a first incident within seven years, where there has not
19 been a previous incident within seven years that resulted in
20 administrative action under this section, suspension for ninety days,
21 unless the person successfully completes or is enrolled in a pretrial
22 24/7 sobriety program;

23 (b) For a second or subsequent incident within seven years,
24 revocation or denial for two years.

25 (3) In the case of an incident where a person under age twenty-
26 one has submitted to or been administered a test or tests indicating
27 that the alcohol concentration of the person's breath or blood was
28 0.02 or more, or that the THC concentration of the person's blood was
29 above 0.00:

30 (a) For a first incident within seven years, suspension or denial
31 for ninety days;

32 (b) For a second or subsequent incident within seven years,
33 revocation or denial for one year or until the person reaches age
34 twenty-one, whichever is longer.

35 (4) The department shall grant credit on a day-for-day basis for
36 ~~((any portion of))~~ a suspension, revocation, or denial ~~((already~~
37 ~~served))~~ imposed under this section for any portion of a suspension,
38 revocation, or denial ~~((imposed))~~ already served under RCW 46.61.5055
39 arising out of the same incident. If a person has already served a
40 suspension, revocation, or denial under RCW 46.61.5055 for a period

1 equal to or greater than the period imposed under this section, the
2 department shall provide notice of full credit, shall provide for no
3 further suspension or revocation under this section, and shall impose
4 no additional reissue fees for this credit.

5 **Sec. 8.** RCW 46.20.355 and 1998 c 209 s 3 and 1998 c 41 s 5 are
6 each reenacted and amended to read as follows:

7 (1) Upon receipt of an abstract indicating a deferred prosecution
8 has been granted under RCW 10.05.060, or upon receipt of a notice of
9 conviction of RCW 46.61.502 or 46.61.504, the department of licensing
10 shall order the person to surrender any nonprobationary Washington
11 state driver's license that may be in his or her possession. The
12 department shall revoke the license, permit, or privilege to drive of
13 any person who fails to surrender it as required by this section for
14 one year, unless the license has been previously surrendered to the
15 department, a law enforcement officer, or a court, or the person has
16 completed an affidavit of lost, stolen, destroyed, or previously
17 surrendered license, such revocation to take effect thirty days after
18 notice is given of the requirement for license surrender.

19 (2) The department shall place a person's driving privilege in
20 probationary status as required by RCW 10.05.060 or 46.61.5055 for a
21 period of five years from the date the probationary status is
22 required to go into effect.

23 (3) Following receipt of an abstract indicating a deferred
24 prosecution has been granted under RCW 10.05.060, or upon
25 reinstatement or reissuance of a driver's license suspended or
26 revoked as the result of a conviction of RCW 46.61.502 or 46.61.504,
27 the department shall require the person to obtain a probationary
28 license in order to operate a motor vehicle in the state of
29 Washington, except as otherwise exempt under RCW 46.20.025. The
30 department shall not issue the probationary license unless the person
31 is otherwise qualified for licensing, and the person must renew the
32 probationary license on the same cycle as the person's regular
33 license would have been renewed until the expiration of the five-year
34 probationary status period imposed under subsection (2) of this
35 section.

36 (4) If a person is eligible for full credit under RCW
37 46.61.5055(9)(b)(ii) and, by the date specified in the notice issued
38 under RCW 46.20.245, has completed the requirements under RCW
39 46.20.311 and paid the fee under subsection (5) of this section, the

1 department shall issue a probationary license on the date specified
2 in the notice with no further action required of the person.

3 (5) For each original issue or renewal of a probationary license
4 under this section, the department shall charge a fee of fifty
5 dollars in addition to any other licensing fees required. Except for
6 when renewing a probationary license, the department shall waive the
7 requirement to obtain an additional probationary license and the
8 fifty dollar fee if the person has a probationary license in his or
9 her possession at the time a new probationary license is required.

10 ~~((5))~~ (6) A probationary license shall enable the department
11 and law enforcement personnel to determine that the person is on
12 probationary status. The fact that a person's driving privilege is in
13 probationary status or that the person has been issued a probationary
14 license shall not be a part of the person's record that is available
15 to insurance companies.

16 **Sec. 9.** RCW 46.20.720 and 2017 c 336 s 5 are each amended to
17 read as follows:

18 (1) **Ignition interlock restriction.** The department shall require
19 that a person may drive only a motor vehicle equipped with a
20 functioning ignition interlock device:

21 (a) **Pretrial release.** Upon receipt of notice from a court that an
22 ignition interlock device restriction has been imposed under RCW
23 10.21.055;

24 (b) **Ignition interlock driver's license.** As required for issuance
25 of an ignition interlock driver's license under RCW 46.20.385;

26 (c) **Deferred prosecution.** Upon receipt of notice from a court
27 that the person is participating in a deferred prosecution program
28 under RCW 10.05.020 for a violation of:

29 (i) RCW 46.61.502 or 46.61.504 or an equivalent local ordinance;
30 or

31 (ii) RCW 46.61.5249 or 46.61.500 or an equivalent local ordinance
32 if the person would be required under RCW 46.61.5249(4) or
33 46.61.500(3) (a) or (b) to install an ignition interlock device on
34 all vehicles operated by the person in the event of a conviction;

35 (d) **Post conviction.** After any applicable period of mandatory
36 suspension, revocation, or denial of driving privileges:

37 (i) Due to a conviction of a violation of RCW 46.61.502 or
38 46.61.504 or an equivalent local or out-of-state statute or
39 ordinance; or

1 (ii) Due to a conviction of a violation of RCW 46.61.5249 or
2 46.61.500 or an equivalent local ordinance if the person is required
3 under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an
4 ignition interlock device on all vehicles operated by the person; or

5 (e) **Court order.** Upon receipt of an order by a court having
6 jurisdiction that a person charged or convicted of any offense
7 involving the use, consumption, or possession of alcohol while
8 operating a motor vehicle may drive only a motor vehicle equipped
9 with a functioning ignition interlock. The court shall establish a
10 specific calibration setting at which the ignition interlock will
11 prevent the vehicle from being started. The court shall also
12 establish the period of time for which ignition interlock use will be
13 required.

14 (2) **Calibration.** Unless otherwise specified by the court for a
15 restriction imposed under subsection (1)(e) of this section, the
16 ignition interlock device shall be calibrated to prevent the motor
17 vehicle from being started when the breath sample provided has an
18 alcohol concentration of (~~0.025~~) 0.020 or more.

19 (3) **Duration of restriction.** A restriction imposed under:

20 (a) Subsection (1)(a) of this section shall remain in effect
21 until:

22 (i) The court has authorized the removal of the device under RCW
23 10.21.055; or

24 (ii) The department has imposed a restriction under subsection
25 (1)(b), (c), or (d) of this section arising out of the same incident.

26 (b) Subsection (1)(b) of this section remains in effect during
27 the validity of any ignition interlock driver's license that has been
28 issued to the person.

29 (c) Subsection (1)(c)(i) or (d)(i) of this section shall be for
30 no less than:

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

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

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

37 The restriction of a person who is convicted of a violation of
38 RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and who
39 committed the offense while ((a)) one or more passengers under the

1 age of sixteen (~~was~~) were in the vehicle shall be extended for an
2 additional (~~six-month~~) period as required by RCW 46.61.5055(6) (a).

3 (d) Subsection (1)(c)(ii) or (d)(ii) of this section shall be for
4 a period of no less than six months.

5 (e) The period of restriction under (c) or (d) of this subsection
6 shall be extended by one hundred eighty days whenever the department
7 receives notice that the restricted person has been convicted under
8 RCW 46.20.740 or 46.20.750.

9 (f) Subsection (1)(e) of this section shall remain in effect for
10 the period of time specified by the court.

11 (g) The period of restriction under (c) and (d) of this
12 subsection based on incidents occurring on or after June 9, 2016,
13 must be tolled for any period in which the person does not have an
14 ignition interlock device installed on a vehicle owned or operated by
15 the person unless the person receives a determination from the
16 department that the person is unable to operate an ignition interlock
17 device due to a physical disability. The department's determination
18 that a person is unable to operate an ignition interlock device must
19 be reasonable and be based upon good and substantial evidence. This
20 determination is subject to review by a court of competent
21 jurisdiction. The department may charge a person seeking a medical
22 exemption under this subsection a reasonable fee for the assessment.

23 (4) **Requirements for removal.** A restriction imposed under
24 subsection (1)(c) or (d) of this section shall remain in effect until
25 the department receives a declaration from the person's ignition
26 interlock device vendor, in a form provided or approved by the
27 department, certifying that there have been none of the following
28 incidents in the one hundred eighty consecutive days prior to the
29 date of release:

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

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

38 (c) Failure to pass any random retest with a breath alcohol
39 concentration of (~~0.025~~) 0.020 or lower unless a subsequent test
40 performed within ten minutes registers a breath alcohol concentration

1 lower than ((~~0.025~~)) 0.020, and the digital image confirms the same
2 person provided both samples; or

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

6 (5) **Day-for-day credit.** (a) The time period during which a person
7 has an ignition interlock device installed in order to meet the
8 requirements of subsection (1)(b) of this section shall apply on a
9 day-for-day basis toward satisfying the period of time the ignition
10 interlock device restriction is imposed under subsection (1)(c) or
11 (d) of this section arising out of the same incident.

12 (b) The department must also give the person a day-for-day credit
13 for any time period, beginning from the date of the incident, during
14 which the person kept an ignition interlock device installed on all
15 vehicles the person operates, other than those subject to the
16 employer exemption under subsection (6) of this section.

17 (c) If the day-for-day credit granted under this subsection
18 equals or exceeds the period of time the ignition interlock device
19 restriction is imposed under subsection (1)(c) or (d) of this section
20 arising out of the same incident, and the person has already met the
21 requirements for removal of the device under subsection (4) of this
22 section, the department may waive the requirement that a device be
23 installed or that the person again meet the requirements for removal.

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

34 (b) The employer exemption does not apply when the employer's
35 vehicle is assigned exclusively to the restricted driver and used
36 solely for commuting to and from employment.

37 (7) **Ignition interlock device revolving account.** In addition to
38 any other costs associated with the use of an ignition interlock
39 device imposed on the person restricted under this section, the
40 person shall pay an additional fee of twenty dollars per month.

1 Payments must be made directly to the ignition interlock company. The
2 company shall remit the additional fee to the department to be
3 deposited into the ignition interlock device revolving account,
4 except that the company may retain twenty-five cents per month of the
5 additional fee to cover the expenses associated with administering
6 the fee. The department may waive the monthly fee if the person is
7 indigent under RCW 10.101.010.

8 (8) **Foreign jurisdiction.** For a person restricted under this
9 section who is residing outside of the state of Washington, the
10 department may accept verification of installation of an ignition
11 interlock device by an ignition interlock company authorized to do
12 business in the jurisdiction in which the person resides, provided
13 the device meets any applicable requirements of that jurisdiction.
14 The department may waive the monthly fee required by subsection (7)
15 of this section if collection of the fee would be impractical in the
16 case of a person residing in another jurisdiction.

17 **Sec. 10.** RCW 46.20.740 and 2015 2nd sp.s. c 3 s 4 are each
18 amended to read as follows:

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

37 (2) It is a gross misdemeanor for a person with such a notation
38 on his or her driving record to operate a motor vehicle that is not
39 so equipped, unless the notation resulted from a restriction imposed

1 as a condition of release and the restriction has been released by
2 the court prior to driving. Any time a person is convicted under this
3 section, the court shall immediately notify the department for
4 purposes of RCW 46.20.720(3)(e).

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

8 **Sec. 11.** RCW 46.20.750 and 2015 2nd sp.s. c 3 s 6 are each
9 amended to read as follows:

10 (1) A person who is restricted to the use of a vehicle equipped
11 with an ignition interlock device is guilty of a gross misdemeanor if
12 the restricted driver:

13 (a) Tamper with the device by modifying, detaching,
14 disconnecting, or otherwise disabling it to allow the restricted
15 driver to operate the vehicle;

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

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

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

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

35 (3) Any sentence imposed for a violation of subsection (1) of
36 this section shall be served consecutively with any sentence imposed
37 under RCW 46.20.740, 46.61.502, 46.61.504, 46.61.5055,
38 46.61.520(1)(a), or 46.61.522(1)(b).

1 (4) Any time a person is convicted under subsection (1) of this
2 section, the court shall immediately notify the department for
3 purposes of RCW 46.20.720(3)(e).

4 **Sec. 12.** RCW 46.55.113 and 2011 c 167 s 6 are each amended to
5 read as follows:

6 (1) Whenever the driver of a vehicle is arrested for a violation
7 of RCW 46.20.342 or 46.20.345, the vehicle is subject to summary
8 impoundment, pursuant to the terms and conditions of an applicable
9 local ordinance or state agency rule at the direction of a law
10 enforcement officer.

11 (2) In addition, a police officer may take custody of a vehicle,
12 at his or her discretion, and provide for its prompt removal to a
13 place of safety under any of the following circumstances:

14 (a) Whenever a police officer finds a vehicle standing upon the
15 roadway in violation of any of the provisions of RCW 46.61.560, the
16 officer may provide for the removal of the vehicle or require the
17 driver or other person in charge of the vehicle to move the vehicle
18 to a position off the roadway;

19 (b) Whenever a police officer finds a vehicle unattended upon a
20 highway where the vehicle constitutes an obstruction to traffic or
21 jeopardizes public safety;

22 (c) Whenever a police officer finds an unattended vehicle at the
23 scene of an accident or when the driver of a vehicle involved in an
24 accident is physically or mentally incapable of deciding upon steps
25 to be taken to protect his or her property;

26 (d) Whenever the driver of a vehicle is arrested and taken into
27 custody by a police officer;

28 (e) Whenever a police officer discovers a vehicle that the
29 officer determines to be a stolen vehicle;

30 (f) Whenever a vehicle without a special license plate, placard,
31 or decal indicating that the vehicle is being used to transport a
32 person with disabilities under RCW 46.19.010 is parked in a stall or
33 space clearly and conspicuously marked under RCW 46.61.581 which
34 space is provided on private property without charge or on public
35 property;

36 (g) Upon determining that a person is operating a motor vehicle
37 without a valid and, if required, a specially endorsed driver's
38 license or with a license that has been expired for ninety days or
39 more;

1 (h) When a vehicle is illegally occupying a truck, commercial
2 loading zone, restricted parking zone, bus, loading, hooded-meter,
3 taxi, street construction or maintenance, or other similar zone
4 where, by order of the director of transportation or chiefs of police
5 or fire or their designees, parking is limited to designated classes
6 of vehicles or is prohibited during certain hours, on designated days
7 or at all times, if the zone has been established with signage for at
8 least twenty-four hours and where the vehicle is interfering with the
9 proper and intended use of the zone. Signage must give notice to the
10 public that a vehicle will be removed if illegally parked in the
11 zone;

12 (i) When a vehicle with an expired registration of more than
13 forty-five days is parked on a public street;

14 (j) Upon determining that a person restricted to use of only a
15 motor vehicle equipped with a functioning ignition interlock device
16 is operating a motor vehicle that is not equipped with such a device
17 in violation of RCW 46.20.740(2).

18 (3) When an arrest is made for a violation of RCW 46.20.342, if
19 the vehicle is a commercial vehicle or farm transport vehicle and the
20 driver of the vehicle is not the owner of the vehicle, before the
21 summary impoundment directed under subsection (1) of this section,
22 the police officer shall attempt in a reasonable and timely manner to
23 contact the owner of the vehicle and may release the vehicle to the
24 owner if the owner is reasonably available, as long as the owner was
25 not in the vehicle at the time of the stop and arrest and the owner
26 has not received a prior release under this subsection or RCW
27 46.55.120(1) ~~((a))~~ (b) (ii).

28 (4) Nothing in this section may derogate from the powers of
29 police officers under the common law. For the purposes of this
30 section, a place of safety may include the business location of a
31 registered tow truck operator.

32 (5) For purposes of this section "farm transport vehicle" means a
33 motor vehicle owned by a farmer and that is being actively used in
34 the transportation of the farmer's or another farmer's farm, orchard,
35 aquatic farm, or dairy products, including livestock and plant or
36 animal wastes, from point of production to market or disposal, or
37 supplies or commodities to be used on the farm, orchard, aquatic
38 farm, or dairy, and that has a gross vehicle weight rating of 7,258
39 kilograms (16,001 pounds) or more.

1 **Sec. 13.** RCW 46.61.500 and 2012 c 183 s 11 are each amended to
2 read as follows:

3 (1) Any person who drives any vehicle in willful or wanton
4 disregard for the safety of persons or property is guilty of reckless
5 driving. Violation of the provisions of this section is a gross
6 misdemeanor punishable by imprisonment for up to three hundred sixty-
7 four days and by a fine of not more than five thousand dollars.

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

12 (b) When a reckless driving conviction is a result of a charge
13 that was originally filed as a violation of RCW 46.61.502 or
14 46.61.504, or an equivalent local ordinance, the department shall
15 grant credit on a day-for-day basis for any portion of a suspension,
16 revocation, or denial already served under an administrative action
17 arising out of the same incident. In the case of a person whose day-
18 for-day credit is for a period equal to or greater than the period of
19 suspension required under this section, the department shall provide
20 notice of full credit, shall provide for no further suspension under
21 this section, and shall impose no additional reissue fees for this
22 credit. During any period of suspension, revocation, or denial due to
23 a conviction for reckless driving as the result of a charge
24 originally filed as a violation of RCW 46.61.502 or 46.61.504, any
25 person who has obtained an ignition interlock driver's license under
26 RCW 46.20.385 may continue to drive a motor vehicle pursuant to the
27 provision of the ignition interlock driver's license without
28 obtaining a separate temporary restricted driver's license under RCW
29 46.20.391.

30 (3)(a) Except as provided under (b) of this subsection, a person
31 convicted of reckless driving who has one or more prior offenses as
32 defined in RCW 46.61.5055(14) within seven years shall be required,
33 under RCW 46.20.720, to install an ignition interlock device on all
34 vehicles operated by the person if the conviction is the result of a
35 charge that was originally filed as a violation of RCW 46.61.502,
36 46.61.504, or an equivalent local ordinance.

37 (b) A person convicted of reckless driving shall be required,
38 under RCW 46.20.720, to install an ignition interlock device on all
39 vehicles operated by the person if the conviction is the result of a
40 charge that was originally filed as a violation of RCW 46.61.520

1 committed while under the influence of intoxicating liquor or any
2 drug or RCW 46.61.522 committed while under the influence of
3 intoxicating liquor or any drug.

4 **Sec. 14.** RCW 46.61.503 and 2015 2nd sp.s. c 3 s 14 are each
5 amended to read as follows:

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

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

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

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

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

19 (2) It is an affirmative defense to a violation of subsection (1)
20 of this section, which the defendant must prove by a preponderance of
21 the evidence, that the defendant consumed a sufficient quantity of
22 alcohol or marijuana after the time of driving or being in physical
23 control and before the administration of an analysis of the person's
24 breath or blood to cause the defendant's alcohol or THC concentration
25 to be in violation of subsection (1) of this section within two hours
26 after driving or being in physical control. The court shall not admit
27 evidence of this defense unless the defendant notifies the
28 prosecution prior to the earlier of: (a) Seven days prior to trial;
29 or (b) the omnibus or pretrial hearing in the case of the defendant's
30 intent to assert the affirmative defense.

31 (3) No person may be convicted under this section for being in
32 physical control of a motor vehicle and it is an affirmative defense
33 to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny
34 the privilege to drive, if, prior to being pursued by a law
35 enforcement officer, the person has moved the vehicle safely off the
36 roadway as described in RCW 46.61.504(2).

37 (4) Analyses of blood or breath samples obtained more than two
38 hours after the alleged driving or being in physical control may be
39 used as evidence that within two hours of the alleged driving or

1 being in physical control, a person had an alcohol or THC
2 concentration in violation of subsection (1) of this section.

3 (5) A violation of this section is a misdemeanor.

4 **Sec. 15.** RCW 46.61.504 and 2017 c 335 s 2 are each amended to
5 read as follows:

6 (1) A person is guilty of being in actual physical control of a
7 motor vehicle while under the influence of intoxicating liquor or any
8 drug if the person has actual physical control of a vehicle within
9 this state:

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

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

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

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

22 (2) (a) The fact that a person charged with a violation of this
23 section is or has been entitled to use a drug under the laws of this
24 state does not constitute a defense against any charge of violating
25 this section. No person may be convicted under this section and it is
26 an affirmative defense to any action pursuant to RCW 46.20.308 to
27 suspend, revoke, or deny the privilege to drive if, prior to being
28 pursued by a law enforcement officer, the person has moved the
29 vehicle safely off the roadway. A vehicle is safely off the roadway
30 if:

31 (i) The suspected impaired person is not in the driver's seat of
32 the vehicle;

33 (ii) The vehicle is not parked in an area designated for through
34 traffic or in any place not authorized for motor vehicle traffic or
35 parking; and

36 (iii) The vehicle's engine is off.

37 (b) For purposes of (a)(i) of this subsection, the requirement
38 that the suspected impaired person is not in the driver's seat of the

1 vehicle does not apply to an individual who has current approved
2 disability parking privileges from the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **Sec. 16.** RCW 46.61.5055 and 2018 c 201 s 9009 are each amended
18 to read as follows:

19 (1) **No prior offenses in seven years.** Except as provided in RCW
20 46.61.502(6) or 46.61.504(6), a person who is convicted of a
21 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
22 within seven years shall be punished as follows:

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

28 (i) By imprisonment for not less than one day nor more than three
29 hundred sixty-four days. Twenty-four consecutive hours of the
30 imprisonment may not be suspended unless the court finds that the
31 imposition of this mandatory minimum sentence would impose a
32 substantial risk to the offender's physical or mental well-being.
33 Whenever the mandatory minimum sentence is suspended, the court shall
34 state in writing the reason for granting the suspension and the facts
35 upon which the suspension is based. In lieu of the mandatory minimum
36 term of imprisonment required under this subsection (1)(a)(i), the
37 court may order not less than fifteen days of electronic home
38 monitoring or a ninety-day period of 24/7 sobriety program
39 monitoring. The court may consider the offender's pretrial 24/7

1 sobriety program monitoring as fulfilling a portion of posttrial
2 sentencing. The offender shall pay the cost of electronic home
3 monitoring. The county or municipality in which the penalty is being
4 imposed shall determine the cost. The court may also require the
5 offender's electronic home monitoring device or other separate
6 alcohol monitoring device to include an alcohol detection
7 breathalyzer, and the court may restrict the amount of alcohol the
8 offender may consume during the time the offender is on electronic
9 home monitoring; and

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

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

19 (i) By imprisonment for not less than two days nor more than
20 three hundred sixty-four days. Forty-eight consecutive hours of the
21 imprisonment may not be suspended unless the court finds that the
22 imposition of this mandatory minimum sentence would impose a
23 substantial risk to the offender's physical or mental well-being.
24 Whenever the mandatory minimum sentence is suspended, the court shall
25 state in writing the reason for granting the suspension and the facts
26 upon which the suspension is based. In lieu of the mandatory minimum
27 term of imprisonment required under this subsection (1)(b)(i), the
28 court may order not less than thirty days of electronic home
29 monitoring or a one hundred twenty day period of 24/7 sobriety
30 program monitoring. The court may consider the offender's pretrial
31 24/7 sobriety program testing as fulfilling a portion of posttrial
32 sentencing. The offender shall pay the cost of electronic home
33 monitoring. The county or municipality in which the penalty is being
34 imposed shall determine the cost. The court may also require the
35 offender's electronic home monitoring device to include an alcohol
36 detection breathalyzer or other separate alcohol monitoring device,
37 and the court may restrict the amount of alcohol the offender may
38 consume during the time the offender is on electronic home
39 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), 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 term of imprisonment and
16 electronic home monitoring under this subsection (2)(a)(i), the court
17 may order a minimum of four days in jail and either one hundred
18 eighty days of electronic home monitoring or a one hundred twenty-day
19 period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300
20 through 36.28A.390. The court may consider the offender's pretrial
21 24/7 sobriety program monitoring as fulfilling a portion of posttrial
22 sentencing. The court shall order an expanded alcohol assessment and
23 treatment, if deemed appropriate by the assessment. The offender
24 shall pay for the cost of the electronic monitoring. The county or
25 municipality where the penalty is being imposed shall determine the
26 cost. The court may also require the offender's electronic home
27 monitoring device include an alcohol detection breathalyzer or other
28 separate alcohol monitoring device, and may restrict the amount of
29 alcohol the offender may consume during the time the offender is on
30 electronic home monitoring. Thirty days of imprisonment and sixty
31 days of electronic home monitoring may not be suspended unless the
32 court finds that the imposition of this mandatory minimum sentence
33 would impose a substantial risk to the offender's physical or mental
34 well-being. Whenever the mandatory minimum sentence is suspended, the
35 court shall state in writing the reason for granting the suspension
36 and the facts upon which the suspension is based; and

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

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

6 (i) By imprisonment for not less than forty-five days nor more
7 than three hundred sixty-four days and ninety days of electronic home
8 monitoring. In lieu of the mandatory minimum term of imprisonment and
9 electronic home monitoring under this subsection (2)(b)(i), the court
10 may order a minimum of six days in jail and either six months of
11 electronic home monitoring or a one hundred twenty-day period of 24/7
12 sobriety program monitoring pursuant to RCW 36.28A.300 through
13 36.28A.390. The court may consider the offender's pretrial 24/7
14 sobriety program monitoring as fulfilling a portion of posttrial
15 sentencing. The court shall order an expanded alcohol assessment and
16 treatment, if deemed appropriate by the assessment. The offender
17 shall pay for the cost of the electronic monitoring. The county or
18 municipality where the penalty is being imposed shall determine the
19 cost. The court may also require the offender's electronic home
20 monitoring device include an alcohol detection breathalyzer or other
21 separate alcohol monitoring device, and may restrict the amount of
22 alcohol the offender may consume during the time the offender is on
23 electronic home monitoring. Forty-five days of imprisonment and
24 ninety days of electronic home monitoring may not be suspended unless
25 the court finds that the imposition of this mandatory minimum
26 sentence would impose a substantial risk to the offender's physical
27 or mental well-being. Whenever the mandatory minimum sentence is
28 suspended, the court shall state in writing the reason for granting
29 the suspension and the facts upon which the suspension is based; and

30 (ii) By a fine of not less than seven hundred fifty dollars nor
31 more than five thousand dollars. Seven hundred fifty dollars of the
32 fine may not be suspended unless the court finds the offender to be
33 indigent.

34 (3) **Two prior offenses in seven years.** Except as provided in RCW
35 46.61.502(6) or 46.61.504(6), a person who is convicted of a
36 violation of RCW 46.61.502 or 46.61.504 and who has two prior
37 offenses within seven years shall be punished as follows:

38 (a) **Penalty for alcohol concentration less than 0.15.** In the case
39 of a person whose alcohol concentration was less than 0.15, or for
40 whom for reasons other than the person's refusal to take a test

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

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

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

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

33 (i) By imprisonment for not less than one hundred twenty days nor
34 more than three hundred sixty-four days, if available in that county
35 or city, a six-month period of 24/7 sobriety program monitoring
36 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty
37 days of electronic home monitoring. In lieu of the mandatory minimum
38 term of one hundred fifty days of electronic home monitoring, the
39 court may order at least an additional ten days in jail. The offender
40 shall pay for the cost of the electronic monitoring. The court shall

1 order an expanded alcohol assessment and treatment, if deemed
2 appropriate by the assessment. The county or municipality where the
3 penalty is being imposed shall determine the cost. The court may also
4 require the offender's electronic home monitoring device include an
5 alcohol detection breathalyzer or other separate alcohol monitoring
6 device, and may restrict the amount of alcohol the offender may
7 consume during the time the offender is on electronic home
8 monitoring. One hundred twenty days of imprisonment and one hundred
9 fifty days of electronic home monitoring may not be suspended unless
10 the court finds that the imposition of this mandatory minimum
11 sentence would impose a substantial risk to the offender's physical
12 or mental well-being. Whenever the mandatory minimum sentence is
13 suspended, the court shall state in writing the reason for granting
14 the suspension and the facts upon which the suspension is based; and

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

19 (4) **Three or more prior offenses in ((ten)) fifteen years.** A
20 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
21 shall be punished under chapter 9.94A RCW if:

22 (a) The person has three or more prior offenses within ((ten))
23 fifteen years; or

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

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

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

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

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

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

38 (b) **Monitoring devices.** If the court orders that a person refrain
39 from consuming any alcohol, the court may order the person to submit
40 to alcohol monitoring through an alcohol detection breathalyzer

1 device, transdermal sensor device, or other technology designed to
2 detect alcohol in a person's system. The person shall pay for the
3 cost of the monitoring, unless the court specifies that the cost of
4 monitoring will be paid with funds that are available from an
5 alternative source identified by the court. The county or
6 municipality where the penalty is being imposed shall determine the
7 cost.

8 (c) **24/7 sobriety program monitoring.** In any county or city where
9 a 24/7 sobriety program is available and verified by the Washington
10 association of sheriffs and police chiefs, the court shall:

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

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

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

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

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

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

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

39 (d) In any case in which the person has two prior offense within
40 seven years, and except as provided in RCW 46.61.502(6) or

1 46.61.504(6), order an additional ten days of imprisonment and a fine
2 of not less than three thousand dollars and not more than ten
3 thousand dollars. One thousand dollars of the fine may not be
4 suspended unless the court finds the offender to be indigent.

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

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

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

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

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

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

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

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

31 (i) Where there has been no prior offense within seven years, be
32 suspended or denied by the department for ninety days or until the
33 person is evaluated by an alcoholism agency or probation department
34 pursuant to RCW 46.20.311 and the person completes or is enrolled in
35 a ninety-day period of 24/7 sobriety program monitoring. In no
36 circumstances shall the license suspension be for fewer than two
37 days;

38 (ii) Where there has been one prior offense within seven years,
39 be revoked or denied by the department for two years or until the
40 person is evaluated by an alcoholism agency or probation department

1 pursuant to RCW 46.20.311 and the person completes or is enrolled in
2 a six-month period of 24/7 sobriety program monitoring. In no
3 circumstances shall the license suspension be for less than one year;
4 or

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

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

9 (i) Where there has been no prior offense within seven years, be
10 revoked or denied by the department for one year or until the person
11 is evaluated by an alcoholism agency or probation department pursuant
12 to RCW 46.20.311 and the person completes or is enrolled in a one
13 hundred twenty day period of 24/7 sobriety program monitoring. In no
14 circumstances shall the license revocation be for fewer than four
15 days;

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

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

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

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

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

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

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

34 Upon receipt of a notice from the court under RCW 36.28A.390 that
35 a participant has been removed from a 24/7 sobriety program, the
36 department must resume any suspension, revocation, or denial that had
37 been terminated early under this subsection due to participation in
38 the program, granting credit on a day-for-day basis for any portion
39 of a suspension, revocation, or denial already served under RCW
40 46.20.3101 or this section arising out of the same incident.

1 Upon its own motion or upon motion by a person, a court may find,
2 on the record, that notice to the department under RCW 46.20.270 has
3 been delayed for three years or more as a result of a clerical or
4 court error. If so, the court may order that the person's license,
5 permit, or nonresident privilege shall not be revoked, suspended, or
6 denied for that offense. The court shall send notice of the finding
7 and order to the department and to the person. Upon receipt of the
8 notice from the court, the department shall not revoke, suspend, or
9 deny the license, permit, or nonresident privilege of the person for
10 that offense.

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

14 (10) **Probation of driving privilege.** After expiration of any
15 period of suspension, revocation, or denial of the offender's
16 license, permit, or privilege to drive required by this section, the
17 department shall place the offender's driving privilege in
18 probationary status pursuant to RCW 46.20.355.

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

1 an ignition interlock device on the probationer's motor vehicle,
2 alcohol or drug treatment, supervised probation, or other conditions
3 that may be appropriate. The sentence may be imposed in whole or in
4 part upon violation of a condition of probation during the suspension
5 period.

6 (b) For each violation of mandatory conditions of probation under
7 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall
8 order the convicted person to be confined for thirty days, which
9 shall not be suspended or deferred.

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

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

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

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

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

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

39 Whenever the combination of jail time and electronic home
40 monitoring or alternative sentence would exceed three hundred sixty-

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

5 (13) **Extraordinary medical placement.** An offender serving a
6 sentence under this section, whether or not a mandatory minimum term
7 has expired, may be granted an extraordinary medical placement by the
8 jail administrator subject to the standards and limitations set forth
9 in RCW 9.94A.728(1) (c).

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

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

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

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

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

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

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

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

28 (vii) A conviction for a violation of RCW 47.68.220 or an
29 equivalent local ordinance committed in a careless or reckless manner
30 if the conviction is the result of a charge that was originally filed
31 as a violation of RCW 47.68.220 or an equivalent local ordinance
32 while under the influence of intoxicating liquor or any drug;

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

35 (ix) A conviction for a violation of RCW 46.10.490(2) or an
36 equivalent local ordinance;

37 (x) A conviction for a violation of RCW 46.61.520 committed while
38 under the influence of intoxicating liquor or any drug, or a
39 conviction for a violation of RCW 46.61.520 committed in a reckless
40 manner or with the disregard for the safety of others if the

1 conviction is the result of a charge that was originally filed as a
2 violation of RCW 46.61.520 committed while under the influence of
3 intoxicating liquor or any drug;

4 (xi) A conviction for a violation of RCW 46.61.522 committed
5 while under the influence of intoxicating liquor or any drug, or a
6 conviction for a violation of RCW 46.61.522 committed in a reckless
7 manner or with the disregard for the safety of others if the
8 conviction is the result of a charge that was originally filed as a
9 violation of RCW 46.61.522 committed while under the influence of
10 intoxicating liquor or any drug;

11 (xii) A conviction for a violation of RCW 46.61.5249, 46.61.500,
12 or 9A.36.050 or an equivalent local ordinance, if the conviction is
13 the result of a charge that was originally filed as a violation of
14 RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of
15 RCW 46.61.520 or 46.61.522;

16 (xiii) An out-of-state conviction for a violation that would have
17 been a violation of (a)(i), (ii), (x), (xi), or (xii) of this
18 subsection if committed in this state;

19 (xiv) A deferred prosecution under chapter 10.05 RCW granted in a
20 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
21 equivalent local ordinance;

22 (xv) A deferred prosecution under chapter 10.05 RCW granted in a
23 prosecution for a violation of RCW 46.61.5249, or an equivalent local
24 ordinance, if the charge under which the deferred prosecution was
25 granted was originally filed as a violation of RCW 46.61.502 or
26 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
27 46.61.522;

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

34 (xvii) A deferred sentence imposed in a prosecution for a
35 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
36 equivalent local ordinance, if the charge under which the deferred
37 sentence was imposed was originally filed as a violation of RCW
38 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
39 violation of RCW 46.61.520 or 46.61.522;

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

5 (b) "Treatment" means substance use disorder treatment licensed
6 or certified by the department of health;

7 (c) "Within seven years" means that the arrest for a prior
8 offense occurred within seven years before or after the arrest for
9 the current offense; and

10 (d) "Within ~~((ten))~~ fifteen years" means that the arrest for a
11 prior offense occurred within ~~((ten))~~ fifteen years before or after
12 the arrest for the current offense.

13 (15) All fines imposed by this section apply to adult offenders
14 only.

15 **Sec. 17.** RCW 46.61.5055 and 2019 c ... s 16 (section 16 of this
16 act) are each amended to read as follows:

17 (1) **No prior offenses in seven years.** Except as provided in RCW
18 46.61.502(6) or 46.61.504(6), a person who is convicted of a
19 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
20 within seven years shall be punished as follows:

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

26 (i) By imprisonment for not less than ~~((one-day))~~ twenty-four
27 consecutive hours nor more than three hundred sixty-four days.
28 ~~((Twenty-four consecutive hours of the imprisonment may not be~~
29 ~~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.))~~ In lieu of the mandatory minimum term of
35 imprisonment required under this subsection (1)(a)(i), the court, in
36 its discretion, may order not less than fifteen days of electronic
37 home monitoring or a ninety-day period of 24/7 sobriety program
38 monitoring. The court may consider the offender's pretrial 24/7
39 sobriety program monitoring as fulfilling a portion of posttrial

1 sentencing. The offender shall pay the cost of electronic home
2 monitoring. The county or municipality in which the penalty is being
3 imposed shall determine the cost. The court may also require the
4 offender's electronic home monitoring device or other separate
5 alcohol monitoring device to include an alcohol detection
6 breathalyzer, and the court may restrict the amount of alcohol the
7 offender may consume during the time the offender is on electronic
8 home monitoring; and

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

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

18 (i) By imprisonment for not less than (~~two days~~) forty-eight
19 consecutive hours nor more than three hundred sixty-four days.
20 (~~Forty-eight consecutive hours of the imprisonment may not be~~
21 ~~suspended unless the court finds that the imposition of this~~
22 ~~mandatory minimum sentence would impose a substantial risk to the~~
23 ~~offender's physical or mental well-being. Whenever the mandatory~~
24 ~~minimum sentence is suspended, the court shall state in writing the~~
25 ~~reason for granting the suspension and the facts upon which the~~
26 ~~suspension is based.)) In lieu of the mandatory minimum term of
27 imprisonment required under this subsection (1)(b)(i), the court, in
28 its discretion, may order not less than thirty days of electronic
29 home monitoring or a one hundred twenty day period of 24/7 sobriety
30 program monitoring. The court may consider the offender's pretrial
31 24/7 sobriety program testing as fulfilling a portion of posttrial
32 sentencing. The offender shall pay the cost of electronic home
33 monitoring. The county or municipality in which the penalty is being
34 imposed shall determine the cost. The court may also require the
35 offender's electronic home monitoring device to include an alcohol
36 detection breathalyzer or other separate alcohol monitoring device,
37 and the court may restrict the amount of alcohol the offender may
38 consume during the time the offender is on electronic home
39 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), 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. Thirty days of imprisonment and sixty days of electronic
16 home monitoring may not be suspended unless the court finds that the
17 imposition of this mandatory minimum sentence would impose a
18 substantial risk to the offender's physical or mental well-being. If
19 the offender shows that the imposition of this mandatory minimum
20 sentence would impose a substantial risk to the offender's physical
21 or mental well-being, in lieu of the mandatory term of imprisonment
22 and electronic home monitoring under this subsection (2)(a)(i), the
23 court may order a minimum of ((four days in jail and)) either one
24 hundred eighty days of electronic home monitoring or a one hundred
25 twenty-day period of 24/7 sobriety program monitoring pursuant to RCW
26 36.28A.300 through 36.28A.390. Whenever the mandatory minimum
27 sentence is suspended, the court shall state in writing the reason
28 for granting the suspension and the facts upon which the suspension
29 is based. The court may consider the offender's pretrial 24/7
30 sobriety program monitoring as fulfilling a portion of posttrial
31 sentencing. The court shall order an expanded alcohol assessment and
32 treatment, if deemed appropriate by the assessment. The offender
33 shall pay for the cost of the electronic monitoring. The county or
34 municipality where the penalty is being imposed shall determine the
35 cost. The court may also require the offender's electronic home
36 monitoring device include an alcohol detection breathalyzer or other
37 separate alcohol monitoring device, and may restrict the amount of
38 alcohol the offender may consume during the time the offender is on
39 electronic home monitoring(~~. Thirty days of imprisonment and sixty~~
40 ~~days of electronic home monitoring may not be suspended unless the~~

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

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

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

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

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

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

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

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

21 (i) By imprisonment for not less than ninety days nor more than
22 three hundred sixty-four days, if available in that county or city, a
23 six-month period of 24/7 sobriety program monitoring pursuant to RCW
24 36.28A.300 through 36.28A.390, and one hundred twenty days of
25 electronic home monitoring. Ninety days of imprisonment and one
26 hundred twenty days of electronic home monitoring may not be
27 suspended unless the court finds that the imposition of this
28 mandatory minimum sentence would impose a substantial risk to the
29 offender's physical or mental well-being. If the offender shows that
30 the imposition of this mandatory minimum sentence would impose a
31 substantial risk to the offender's physical or mental well-being, in
32 lieu of the mandatory minimum term of ninety days of imprisonment and
33 one hundred twenty days of electronic home monitoring, the court may
34 order ((at least an additional eight days in jail)) three hundred
35 sixty days of electronic home monitoring or a three hundred sixty-day
36 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through
37 36.28A.390. Whenever the mandatory minimum sentence is suspended, the
38 court shall state in writing the reason for granting the suspension
39 and the facts upon which the suspension is based. The court shall
40 order an expanded alcohol assessment and treatment, if deemed

1 appropriate by the assessment. The offender shall pay for the cost of
2 the electronic monitoring. The county or municipality where the
3 penalty is being imposed shall determine the cost. The court may also
4 require the offender's electronic home monitoring device include an
5 alcohol detection breathalyzer or other separate alcohol monitoring
6 device, and may restrict the amount of alcohol the offender may
7 consume during the time the offender is on electronic home
8 monitoring(~~(. Ninety days of imprisonment and one hundred twenty days~~
9 ~~of electronic home monitoring may not be suspended unless the court~~
10 ~~finds that the imposition of this mandatory minimum sentence would~~
11 ~~impose a substantial risk to the offender's physical or mental well-~~
12 ~~being. Whenever the mandatory minimum sentence is suspended, the~~
13 ~~court shall state in writing the reason for granting the suspension~~
14 ~~and the facts upon which the suspension is based)); and~~

15 (ii) By a fine of not less than one thousand dollars nor more
16 than five thousand dollars. One thousand dollars of the fine may not
17 be suspended unless the court finds the offender to be 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 one hundred twenty days nor
24 more than three hundred sixty-four days, if available in that county
25 or city, a six-month period of 24/7 sobriety program monitoring
26 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty
27 days of electronic home monitoring. One hundred twenty days of
28 imprisonment and one hundred fifty days of electronic home monitoring
29 may not be suspended unless the court finds that the imposition of
30 this mandatory minimum sentence would impose a substantial risk to
31 the offender's physical or mental well-being. If the offender shows
32 that the imposition of this mandatory minimum sentence would impose a
33 substantial risk to the offender's physical or mental well-being, in
34 lieu of the mandatory minimum term of one hundred twenty days of
35 imprisonment and one hundred fifty days of electronic home
36 monitoring, the court may order ((at least an additional ten days in
37 jail)) three hundred sixty days of electronic home monitoring or a
38 three hundred sixty-day period of 24/7 sobriety monitoring pursuant
39 to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum
40 sentence is suspended, the court shall state in writing the reason

1 for granting the suspension and the facts upon which the suspension
2 is based. The offender shall pay for the cost of the electronic
3 monitoring. The court shall order an expanded alcohol assessment and
4 treatment, if deemed appropriate by the assessment. The county or
5 municipality where the penalty is being imposed shall determine the
6 cost. The court may also require the offender's electronic home
7 monitoring device include an alcohol detection breathalyzer or other
8 separate alcohol monitoring device, and may restrict the amount of
9 alcohol the offender may consume during the time the offender is on
10 electronic home monitoring(~~(. One hundred twenty days of imprisonment~~
11 ~~and one hundred fifty days of electronic home monitoring may not be~~
12 ~~suspended unless the court finds that the imposition of this~~
13 ~~mandatory minimum sentence would impose a substantial risk to the~~
14 ~~offender's physical or mental well-being. Whenever the mandatory~~
15 ~~minimum sentence is suspended, the court shall state in writing the~~
16 ~~reason for granting the suspension and the facts upon which the~~
17 ~~suspension is based)); and~~

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

22 (4) **Three or more prior offenses in fifteen years.** A person who
23 is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be
24 punished under chapter 9.94A RCW if:

25 (a) The person has three or more prior offenses within fifteen
26 years; or

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

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

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

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

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

35 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall
36 require any person convicted of a violation of RCW 46.61.502 or
37 46.61.504 or an equivalent local ordinance to comply with the rules
38 and requirements of the department regarding the installation and use
39 of a functioning ignition interlock device installed on all motor
40 vehicles operated by the person.

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

11 (c) **24/7 sobriety program monitoring.** In any county or city where
12 a 24/7 sobriety program is available and verified by the Washington
13 association of sheriffs and police chiefs, the court shall:

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

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

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

24 (6) **Penalty for having a minor passenger in vehicle.** If a person
25 who is convicted of a violation of RCW 46.61.502 or 46.61.504
26 committed the offense while ((a)) one or more passengers under the
27 age of sixteen ((was)) were in the vehicle, the court shall:

28 (a) Order the use of an ignition interlock or other device for an
29 additional ((six)) twelve months for each passenger under the age of
30 sixteen when the person is subject to the penalties under subsection
31 (1)(a), (2)(a), or (3)(a) of this section; and order the use of an
32 ignition interlock device for an additional eighteen months for each
33 passenger under the age of sixteen when the person is subject to the
34 penalties under subsection (1)(b), (2)(b), (3)(b), or (4) of this
35 section;

36 (b) In any case in which the person has no prior offenses within
37 seven years, and except as provided in RCW 46.61.502(6) or
38 46.61.504(6), order an additional twenty-four hours of imprisonment
39 to be served consecutively for each passenger under the age of
40 sixteen, and a fine of not less than one thousand dollars and not

1 more than five thousand dollars for each passenger under the age of
2 sixteen. One thousand dollars of the fine for each passenger under
3 the age of sixteen may not be suspended unless the court finds the
4 offender to be indigent;

5 (c) In any case in which the person has one prior offense within
6 seven years, and except as provided in RCW 46.61.502(6) or
7 46.61.504(6), order an additional five days of imprisonment to be
8 served consecutively for each passenger under the age of sixteen, and
9 a fine of not less than two thousand dollars and not more than five
10 thousand dollars for each passenger under the age of sixteen. One
11 thousand dollars of the fine for each passenger under the age of
12 sixteen may not be suspended unless the court finds the offender to
13 be indigent;

14 (d) In any case in which the person has two prior offenses within
15 seven years, and except as provided in RCW 46.61.502(6) or
16 46.61.504(6), order an additional ten days of imprisonment to be
17 served consecutively for each passenger under the age of sixteen, and
18 a fine of not less than three thousand dollars and not more than ten
19 thousand dollars for each passenger under the age of sixteen. One
20 thousand dollars of the fine for each passenger under the age of
21 sixteen may not be suspended unless the court finds the offender to
22 be indigent.

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

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

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

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

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

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

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

5 ~~((a))~~ (i) **Penalty for alcohol concentration less than 0.15.** If
6 the person's alcohol concentration was less than 0.15, or if for
7 reasons other than the person's refusal to take a test offered under
8 RCW 46.20.308 there is no test result indicating the person's alcohol
9 concentration:

10 ~~((i))~~ (A) Where there has been no prior offense within seven
11 years, be suspended or denied by the department for ninety days or
12 until the person is evaluated by an alcoholism agency or probation
13 department pursuant to RCW 46.20.311 and the person completes or is
14 enrolled in a ninety-day period of 24/7 sobriety program monitoring.
15 In no circumstances shall the license suspension be for fewer than
16 two days;

17 ~~((ii))~~ (B) Where there has been one prior offense within seven
18 years, be revoked or denied by the department for two years or until
19 the person is evaluated by an alcoholism agency or probation
20 department pursuant to RCW 46.20.311 and the person completes or is
21 enrolled in a six-month period of 24/7 sobriety program monitoring.
22 In no circumstances shall the license suspension be for less than one
23 year; or

24 ~~((iii))~~ (C) Where there have been two or more prior offenses
25 within seven years, be revoked or denied by the department for three
26 years;

27 ~~((b))~~ (ii) **Penalty for alcohol concentration at least 0.15.** If
28 the person's alcohol concentration was at least 0.15:

29 ~~((i))~~ (A) Where there has been no prior offense within seven
30 years, be revoked or denied by the department for one year or until
31 the person is evaluated by an alcoholism agency or probation
32 department pursuant to RCW 46.20.311 and the person completes or is
33 enrolled in a one hundred twenty day period of 24/7 sobriety program
34 monitoring. In no circumstances shall the license revocation be for
35 fewer than four days;

36 ~~((ii))~~ (B) Where there has been one prior offense within seven
37 years, be revoked or denied by the department for nine hundred days;
38 or

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

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

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

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

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

15 (b)(i) The department shall grant credit on a day-for-day basis
16 for (~~any portion of~~) a suspension, revocation, or denial (~~already~~
17 ~~served~~) imposed under this subsection (9) for any portion of a
18 suspension, revocation, or denial (~~imposed~~) already served under
19 RCW 46.20.3101 arising out of the same incident.

20 (ii) If a person has already served a suspension, revocation, or
21 denial under RCW 46.20.3101 for a period equal to or greater than the
22 period imposed under this subsection (9), the department shall
23 provide notice of full credit, shall provide for no further
24 suspension or revocation under this subsection provided the person
25 has completed the requirements under RCW 46.20.311 and paid the
26 probationary license fee under RCW 46.20.355 by the date specified in
27 the notice under RCW 46.20.245, and shall impose no additional
28 reissue fees for this credit.

29 (c) Upon receipt of a notice from the court under RCW 36.28A.390
30 that a participant has been removed from a 24/7 sobriety program, the
31 department must resume any suspension, revocation, or denial that had
32 been terminated early under this subsection due to participation in
33 the program, granting credit on a day-for-day basis for any portion
34 of a suspension, revocation, or denial already served under RCW
35 46.20.3101 or this section arising out of the same incident.

36 (d) Upon its own motion or upon motion by a person, a court may
37 find, on the record, that notice to the department under RCW
38 46.20.270 has been delayed for three years or more as a result of a
39 clerical or court error. If so, the court may order that the person's
40 license, permit, or nonresident privilege shall not be revoked,

1 suspended, or denied for that offense. The court shall send notice of
2 the finding and order to the department and to the person. Upon
3 receipt of the notice from the court, the department shall not
4 revoke, suspend, or deny the license, permit, or nonresident
5 privilege of the person for that offense.

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

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

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

1 (b) For each violation of mandatory conditions of probation under
2 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall
3 order the convicted person to be confined for thirty days, which
4 shall not be suspended or deferred.

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

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

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

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

24 (c) The court determines that there is reason to believe that the
25 offender would violate the conditions of the electronic home
26 monitoring penalty.

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

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

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

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

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

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

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

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

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

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

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

24 (vii) A conviction for a violation of RCW 47.68.220 or an
25 equivalent local ordinance committed in a careless or reckless manner
26 if the conviction is the result of a charge that was originally filed
27 as a violation of RCW 47.68.220 or an equivalent local ordinance
28 while under the influence of intoxicating liquor or any drug;

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

31 (ix) A conviction for a violation of RCW 46.10.490(2) or an
32 equivalent local ordinance;

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

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

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

13 (xiii) An out-of-state conviction for a violation that would have
14 been a violation of (a)(i), (ii), (x), (xi), or (xii) of this
15 subsection if committed in this state;

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

19 (xv) A deferred prosecution under chapter 10.05 RCW granted in a
20 prosecution for a violation of RCW 46.61.5249, or an equivalent local
21 ordinance, if the charge under which the deferred prosecution was
22 granted was originally filed as a violation of RCW 46.61.502 or
23 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
24 46.61.522;

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

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

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

1 (b) "Treatment" means substance use disorder treatment licensed
2 or certified by the department of health;

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 fifteen years" means that the arrest for a prior
7 offense occurred within fifteen years before or after the arrest for
8 the current offense.

9 (15) All fines imposed by this section apply to adult offenders
10 only.

11 **Sec. 18.** RCW 46.61.502 and 2017 c 335 s 1 are each amended to
12 read as follows:

13 (1) A person is guilty of driving while under the influence of
14 intoxicating liquor, marijuana, or any drug if the person drives a
15 vehicle within this state:

16 (a) And the person has, within two hours after driving, an
17 alcohol concentration of 0.08 or higher as shown by analysis of the
18 person's breath or blood made under RCW 46.61.506; or

19 (b) The person has, within two hours after driving, a THC
20 concentration of 5.00 or higher as shown by analysis of the person's
21 blood made under RCW 46.61.506; or

22 (c) While the person is under the influence of or affected by
23 intoxicating liquor, marijuana, or any drug; or

24 (d) While the person is under the combined influence of or
25 affected by intoxicating liquor, marijuana, and any drug.

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

30 (3)(a) It is an affirmative defense to a violation of subsection
31 (1)(a) of this section, which the defendant must prove by a
32 preponderance of the evidence, that the defendant consumed a
33 sufficient quantity of alcohol after the time of driving and before
34 the administration of an analysis of the person's breath or blood to
35 cause the defendant's alcohol concentration to be 0.08 or more within
36 two hours after driving. The court shall not admit evidence of this
37 defense unless the defendant notifies the prosecution prior to the
38 omnibus or pretrial hearing in the case of the defendant's intent to
39 assert the affirmative defense.

1 (b) It is an affirmative defense to a violation of subsection
2 (1)(b) of this section, which the defendant must prove by a
3 preponderance of the evidence, that the defendant consumed a
4 sufficient quantity of marijuana after the time of driving and before
5 the administration of an analysis of the person's blood to cause the
6 defendant's THC concentration to be 5.00 or more within two hours
7 after driving. The court shall not admit evidence of this defense
8 unless the defendant notifies the prosecution prior to the omnibus or
9 pretrial hearing in the case of the defendant's intent to assert the
10 affirmative defense.

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

19 (b) Analyses of blood samples obtained more than two hours after
20 the alleged driving may be used as evidence that within two hours of
21 the alleged driving, a person had a THC concentration of 5.00 or more
22 in violation of subsection (1)(b) of this section, and in any case in
23 which the analysis shows a THC concentration above 0.00 may be used
24 as evidence that a person was under the influence of or affected by
25 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

30 (a) The person has three or more prior offenses within (~~ten~~)
31 fifteen years as defined in RCW 46.61.5055; or

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

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

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

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

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

1 **Sec. 19.** RCW 46.61.504 and 2017 c 335 s 2 are each amended to
2 read as follows:

3 (1) A person is guilty of being in actual physical control of a
4 motor vehicle while under the influence of intoxicating liquor or any
5 drug if the person has actual physical control of a vehicle within
6 this state:

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

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

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

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

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

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

38 (b) It is an affirmative defense to a violation of subsection
39 (1)(b) of this section, which the defendant must prove by a
40 preponderance of the evidence, that the defendant consumed a

1 sufficient quantity of marijuana after the time of being in actual
2 physical control of the vehicle and before the administration of an
3 analysis of the person's blood to cause the defendant's THC
4 concentration to be 5.00 or more within two hours after being in
5 control of the vehicle. The court shall not admit evidence of this
6 defense unless the defendant notifies the prosecution prior to the
7 omnibus or pretrial hearing in the case of the defendant's intent to
8 assert the affirmative defense.

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

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

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

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

30 (a) The person has three or more prior offenses within (~~ten~~)
31 fifteen years as defined in RCW 46.61.5055; or

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

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

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

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

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

1 **Sec. 20.** RCW 9.94A.525 and 2017 c 272 s 3 are each amended to
2 read as follows:

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

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

7 (1) A prior conviction is a conviction which exists before the
8 date of sentencing for the offense for which the offender score is
9 being computed. Convictions entered or sentenced on the same date as
10 the conviction for which the offender score is being computed shall
11 be deemed "other current offenses" within the meaning of RCW
12 9.94A.589.

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

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

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

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

36 (e) If the present conviction is felony driving while under the
37 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
38 felony physical control of a vehicle while under the influence of
39 intoxicating liquor or any drug (RCW 46.61.504(6)), all predicate
40 crimes for the offense as defined by RCW 46.61.5055(14) shall be

1 included in the offender score, and prior convictions for felony
2 driving while under the influence of intoxicating liquor or any drug
3 (RCW 46.61.502(6)) or felony physical control of a vehicle while
4 under the influence of intoxicating liquor or any drug (RCW
5 46.61.504(6)) shall always be included in the offender score. All
6 other convictions of the defendant shall be scored according to this
7 section.

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

14 (g) This subsection applies to both adult and juvenile prior
15 convictions.

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

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

28 (5) (a) In the case of multiple prior convictions, for the purpose
29 of computing the offender score, count all convictions separately,
30 except:

31 (i) Prior offenses which were found, under RCW 9.94A.589(1) (a),
32 to encompass the same criminal conduct, shall be counted as one
33 offense, the offense that yields the highest offender score. The
34 current sentencing court shall determine with respect to other prior
35 adult offenses for which sentences were served concurrently or prior
36 juvenile offenses for which sentences were served consecutively,
37 whether those offenses shall be counted as one offense or as separate
38 offenses using the "same criminal conduct" analysis found in RCW
39 9.94A.589(1) (a), and if the court finds that they shall be counted as
40 one offense, then the offense that yields the highest offender score

1 shall be used. The current sentencing court may presume that such
2 other prior offenses were not the same criminal conduct from
3 sentences imposed on separate dates, or in separate counties or
4 jurisdictions, or in separate complaints, indictments, or
5 informations;

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

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

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

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

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

34 (9) If the present conviction is for a serious violent offense,
35 count three points for prior adult and juvenile convictions for
36 crimes in this category, two points for each prior adult and juvenile
37 violent conviction (not already counted), one point for each prior
38 adult nonviolent felony conviction, and 1/2 point for each prior
39 juvenile nonviolent felony conviction.

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

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

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

26 (13) If the present conviction is for manufacture of
27 methamphetamine count three points for each adult prior manufacture
28 of methamphetamine conviction and two points for each juvenile
29 manufacture of methamphetamine offense. If the present conviction is
30 for a drug offense and the offender has a criminal history that
31 includes a sex offense or serious violent offense, count three points
32 for each adult prior felony drug offense conviction and two points
33 for each juvenile drug offense. All other adult and juvenile felonies
34 are scored as in subsection (8) of this section if the current drug
35 offense is violent, or as in subsection (7) of this section if the
36 current drug offense is nonviolent.

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

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

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

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

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

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

25 (20) If the present conviction is for Theft of a Motor Vehicle,
26 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without
27 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
28 priors as in subsections (7) through (18) of this section; however
29 count one point for prior convictions of Vehicle Prowling 2, and
30 three points for each adult and juvenile prior Theft 1 (of a motor
31 vehicle), Theft 2 (of a motor vehicle), Possession of Stolen Property
32 1 (of a motor vehicle), Possession of Stolen Property 2 (of a motor
33 vehicle), Theft of a Motor Vehicle, Possession of a Stolen Vehicle,
34 Taking a Motor Vehicle Without Permission 1, or Taking a Motor
35 Vehicle Without Permission 2 conviction.

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

1 (a) Count two points for each adult prior conviction where
2 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
3 after August 1, 2011, for any of the following offenses: A felony
4 violation of a no-contact or protection order RCW 26.50.110, felony
5 Harassment (RCW 9A.46.020(2)(b)), felony Stalking (RCW
6 9A.46.110(5)(b)), Burglary 1 (RCW 9A.52.020), Kidnapping 1 (RCW
7 9A.40.020), Kidnapping 2 (RCW 9A.40.030), Unlawful imprisonment (RCW
8 9A.40.040), Robbery 1 (RCW 9A.56.200), Robbery 2 (RCW 9A.56.210),
9 Assault 1 (RCW 9A.36.011), Assault 2 (RCW 9A.36.021), Assault 3 (RCW
10 9A.36.031), Arson 1 (RCW 9A.48.020), or Arson 2 (RCW 9A.48.030);

11 (b) Count two points for each adult prior conviction where
12 domestic violence as defined in RCW 9.94A.030 was pleaded and proven
13 after July 23, 2017, for any of the following offenses: Assault of a
14 child in the first degree, RCW 9A.36.120; Assault of a child in the
15 second degree, RCW 9A.36.130; Assault of a child in the third degree,
16 RCW 9A.36.140; Criminal Mistreatment in the first degree, RCW
17 9A.42.020; or Criminal Mistreatment in the second degree, RCW
18 9A.42.030;

19 (c) Count one point for each second and subsequent juvenile
20 conviction where domestic violence as defined in RCW 9.94A.030 was
21 pleaded and proven after August 1, 2011, for the offenses listed in
22 (a) of this subsection; and

23 (d) Count one point for each adult prior conviction for a
24 repetitive domestic violence offense as defined in RCW 9.94A.030,
25 where domestic violence as defined in RCW 9.94A.030, was pleaded and
26 proven after August 1, 2011.

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

1 NEW SECTION. **Sec. 21.** (1) Within existing resources, the
2 Washington association of sheriffs and police chiefs shall review
3 current laws and regulations regarding the sentencing structure for
4 impaired driving offenses in an effort to reduce fatalities from
5 individuals driving under the influence. The review must include
6 looking at lookback periods, number of previous offenses, and other
7 possible recommendations to reduce these fatalities. The Washington
8 association of sheriffs and police chiefs shall provide its
9 recommendations to the governor and appropriate committees of the
10 legislature by December 1, 2019.

11 (2) This section expires June 30, 2020.

12 NEW SECTION. **Sec. 22.** RCW 43.43.3951 (Ignition interlock
13 devices—Limited exemption for companies not using devices employing
14 fuel cell technology) and 2010 c 268 s 3 are each repealed.

15 NEW SECTION. **Sec. 23.** Sections 2, 3, 6 through 11, 13, and 17
16 of this act take effect January 1, 2020."

ESHB 1504 - S COMM AMD

By Committee on Law & Justice

OUT OF ORDER 04/17/2019

17 On page 1, line 1 of the title, after "driving;" strike the
18 remainder of the title and insert "amending RCW 9.94A.533, 9.94A.729,
19 10.21.055, 18.360.030, 38.52.430, 46.20.245, 46.20.3101, 46.20.720,
20 46.20.740, 46.20.750, 46.55.113, 46.61.500, 46.61.503, 46.61.504,
21 46.61.5055, 46.61.5055, 46.61.502, 46.61.504, and 9.94A.525;
22 reenacting and amending RCW 46.20.355; creating a new section;
23 repealing RCW 43.43.3951; prescribing penalties; providing an
24 effective date; and providing an expiration date."

EFFECT: (1) Revises the lookback provision for prior offenses from a ten-year lookback to a fifteen-year lookback when a person has three or more prior convictions for driving under the influence or physical control of a motor vehicle under the influence.

(2) Excludes a driver who has disability parking privileges from the Department of Licensing from the requirement of moving out of the

driver's seat for purposes of an affirmative defense to physical control of a vehicle under the influence.

--- **END** ---