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HOUSE BILL 2021

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State of Washington

67th Legislature

2022 Regular Session

By Representatives Klippert and Graham

Read first time 01/17/22. Referred to Committee on Public Safety.

1 AN ACT Relating to penalties for offenses related to driving or  
2 being in physical control of a motor vehicle while under the  
3 influence of more than one intoxicating substance; amending RCW  
4 46.61.5055 and 46.20.720; reenacting and amending RCW 9.94A.533;  
5 adding a new section to chapter 9.94A RCW; and prescribing penalties.

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

7 **Sec. 1.** RCW 9.94A.533 and 2020 c 330 s 1 and 2020 c 141 s 1 are  
8 each reenacted and amended to read as follows:

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

11 (2) For persons convicted of the anticipatory offenses of  
12 criminal attempt, solicitation, or conspiracy under chapter 9A.28  
13 RCW, the standard sentence range is determined by locating the  
14 sentencing grid sentence range defined by the appropriate offender  
15 score and the seriousness level of the completed crime, and  
16 multiplying the range by (~~seventy-five~~) 75 percent.

17 (3) The following additional times shall be added to the standard  
18 sentence range for felony crimes committed after July 23, 1995, if  
19 the offender or an accomplice was armed with a firearm as defined in  
20 RCW 9.41.010 and the offender is being sentenced for one of the  
21 crimes listed in this subsection as eligible for any firearm

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

13 (a) Five years for any felony defined under any law as a class A  
14 felony or with a statutory maximum sentence of at least (~~twenty~~) 20  
15 years, or both, and not covered under (f) of this subsection;

16 (b) Three years for any felony defined under any law as a class B  
17 felony or with a statutory maximum sentence of (~~ten~~) 10 years, or  
18 both, and not covered under (f) of this subsection;

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

22 (d) If the offender is being sentenced for any firearm  
23 enhancements under (a), (b), and/or (c) of this subsection and the  
24 offender has previously been sentenced for any deadly weapon  
25 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
26 subsection or subsection (4)(a), (b), and/or (c) of this section, or  
27 both, all firearm enhancements under this subsection shall be twice  
28 the amount of the enhancement listed;

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

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

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

39 (f) The firearm enhancements in this section shall apply to all  
40 felony crimes except the following: Possession of a machine gun or

1 bump-fire stock, possessing a stolen firearm, drive-by shooting,  
2 theft of a firearm, unlawful possession of a firearm in the first and  
3 second degree, and use of a machine gun or bump-fire stock in a  
4 felony;

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

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

30 (a) Two years for any felony defined under any law as a class A  
31 felony or with a statutory maximum sentence of at least (~~twenty~~) 20  
32 years, or both, and not covered under (f) of this subsection;

33 (b) One year for any felony defined under any law as a class B  
34 felony or with a statutory maximum sentence of (~~ten~~) 10 years, or  
35 both, and not covered under (f) of this subsection;

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

39 (d) If the offender is being sentenced under (a), (b), and/or (c)  
40 of this subsection for any deadly weapon enhancements and the

1 offender has previously been sentenced for any deadly weapon  
2 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
3 subsection or subsection (3)(a), (b), and/or (c) of this section, or  
4 both, all deadly weapon enhancements under this subsection shall be  
5 twice the amount of the enhancement listed;

6 (e) Notwithstanding any other provision of law, all deadly weapon  
7 enhancements under this section are mandatory, shall be served in  
8 total confinement, and shall run consecutively to all other  
9 sentencing provisions, including other firearm or deadly weapon  
10 enhancements, for all offenses sentenced under this chapter. However,  
11 whether or not a mandatory minimum term has expired, an offender  
12 serving a sentence under this subsection may be:

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

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

16 (f) The deadly weapon enhancements in this section shall apply to  
17 all felony crimes except the following: Possession of a machine gun  
18 or bump-fire stock, possessing a stolen firearm, drive-by shooting,  
19 theft of a firearm, unlawful possession of a firearm in the first and  
20 second degree, and use of a machine gun or bump-fire stock in a  
21 felony;

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

29 (5) The following additional times shall be added to the standard  
30 sentence range if the offender or an accomplice committed the offense  
31 while in a county jail or state correctional facility and the  
32 offender is being sentenced for one of the crimes listed in this  
33 subsection. If the offender or an accomplice committed one of the  
34 crimes listed in this subsection while in a county jail or state  
35 correctional facility, and the offender is being sentenced for an  
36 anticipatory offense under chapter 9A.28 RCW to commit one of the  
37 crimes listed in this subsection, the following additional times  
38 shall be added to the standard sentence range determined under  
39 subsection (2) of this section:

- 1 (a) Eighteen months for offenses committed under RCW 69.50.401(2)  
2 (a) or (b) or 69.50.410;  
3 (b) Fifteen months for offenses committed under RCW 69.50.401(2)  
4 (c), (d), or (e);  
5 (c) Twelve months for offenses committed under RCW 69.50.4013.

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

9 (6) An additional (~~twenty-four~~) 24 months shall be added to the  
10 standard sentence range for any ranked offense involving a violation  
11 of chapter 69.50 RCW if the offense was also a violation of RCW  
12 69.50.435 or 9.94A.827. All enhancements under this subsection shall  
13 run consecutively to all other sentencing provisions, for all  
14 offenses sentenced under this chapter.

15 (7) An additional two years shall be added to the standard  
16 sentence range for vehicular homicide committed while under the  
17 influence of intoxicating liquor or any drug as defined by RCW  
18 46.61.502 for each prior offense as defined in RCW 46.61.5055.

19 Notwithstanding any other provision of law, all impaired driving  
20 enhancements under this subsection are mandatory, shall be served in  
21 total confinement, and shall run consecutively to all other  
22 sentencing provisions, including other impaired driving enhancements,  
23 for all offenses sentenced under this chapter.

24 An offender serving a sentence under this subsection may be  
25 granted an extraordinary medical placement when authorized under RCW  
26 9.94A.728(1)(c).

27 (8)(a) The following additional times shall be added to the  
28 standard sentence range for felony crimes committed on or after July  
29 1, 2006, if the offense was committed with sexual motivation, as that  
30 term is defined in RCW 9.94A.030. If the offender is being sentenced  
31 for more than one offense, the sexual motivation enhancement must be  
32 added to the total period of total confinement for all offenses,  
33 regardless of which underlying offense is subject to a sexual  
34 motivation enhancement. If the offender committed the offense with  
35 sexual motivation and the offender is being sentenced for an  
36 anticipatory offense under chapter 9A.28 RCW, the following  
37 additional times shall be added to the standard sentence range  
38 determined under subsection (2) of this section based on the felony  
39 crime of conviction as classified under RCW 9A.28.020:

1 (i) Two years for any felony defined under the law as a class A  
2 felony or with a statutory maximum sentence of at least (~~twenty~~) 20  
3 years, or both;

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

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

9 (iv) If the offender is being sentenced for any sexual motivation  
10 enhancements under (a)(i), (ii), and/or (iii) of this subsection and  
11 the offender has previously been sentenced for any sexual motivation  
12 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or  
13 (iii) of this subsection, all sexual motivation enhancements under  
14 this subsection shall be twice the amount of the enhancement listed;

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

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

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

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

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

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

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

1 (9) An additional one-year enhancement shall be added to the  
2 standard sentence range for the felony crimes of RCW 9A.44.073,  
3 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on  
4 or after July 22, 2007, if the offender engaged, agreed, or offered  
5 to engage the victim in the sexual conduct in return for a fee. If  
6 the offender is being sentenced for more than one offense, the  
7 one-year enhancement must be added to the total period of total  
8 confinement for all offenses, regardless of which underlying offense  
9 is subject to the enhancement. If the offender is being sentenced for  
10 an anticipatory offense for the felony crimes of RCW 9A.44.073,  
11 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the  
12 offender attempted, solicited another, or conspired to engage, agree,  
13 or offer to engage the victim in the sexual conduct in return for a  
14 fee, an additional one-year enhancement shall be added to the  
15 standard sentence range determined under subsection (2) of this  
16 section. For purposes of this subsection, "sexual conduct" means  
17 sexual intercourse or sexual contact, both as defined in chapter  
18 9A.44 RCW.

19 (10)(a) For a person age (~~eighteen~~) 18 or older convicted of  
20 any criminal street gang-related felony offense for which the person  
21 compensated, threatened, or solicited a minor in order to involve the  
22 minor in the commission of the felony offense, the standard sentence  
23 range is determined by locating the sentencing grid sentence range  
24 defined by the appropriate offender score and the seriousness level  
25 of the completed crime, and multiplying the range by (~~one hundred~~  
26 ~~twenty-five~~) 125 percent. If the standard sentence range under this  
27 subsection exceeds the statutory maximum sentence for the offense,  
28 the statutory maximum sentence is the presumptive sentence unless the  
29 offender is a persistent offender.

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

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

37 (11) An additional (~~twelve~~) 12 months and one day shall be  
38 added to the standard sentence range for a conviction of attempting  
39 to elude a police vehicle as defined by RCW 46.61.024, if the

1 conviction included a finding by special allegation of endangering  
2 one or more persons under RCW 9.94A.834.

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

6 (13) An additional (~~twelve~~) 12 months shall be added to the  
7 standard sentence range for vehicular homicide committed while under  
8 the influence of intoxicating liquor or any drug as defined by RCW  
9 46.61.520 or for vehicular assault committed while under the  
10 influence of intoxicating liquor or any drug as defined by RCW  
11 46.61.522, or for any felony driving under the influence (RCW  
12 46.61.502(6)) or felony physical control under the influence (RCW  
13 46.61.504(6)) for each child passenger under the age of (~~sixteen~~)  
14 16 who is an occupant in the defendant's vehicle. These enhancements  
15 shall be mandatory, shall be served in total confinement, and shall  
16 run consecutively to all other sentencing provisions, including other  
17 minor child enhancements, for all offenses sentenced under this  
18 chapter. If the addition of a minor child enhancement increases the  
19 sentence so that it would exceed the statutory maximum for the  
20 offense, the portion of the sentence representing the enhancement  
21 shall be mandatory, shall be served in total confinement, and shall  
22 run consecutively to all other sentencing provisions.

23 (14) An additional (~~twelve~~) 12 months shall be added to the  
24 standard sentence range for an offense that is also a violation of  
25 RCW 9.94A.832.

26 (15) An additional 12 months shall be added to the standard  
27 sentence range for vehicular homicide committed while under the  
28 influence of intoxicating liquor or any drug under RCW 46.61.520,  
29 vehicular assault committed while under the influence of intoxicating  
30 liquor or any drug under RCW 46.61.522, felony driving under the  
31 influence under RCW 46.61.502(6), or felony physical control under  
32 the influence under RCW 46.61.504(6), if the defendant was under the  
33 influence of a combination of intoxicating liquor and any drug or a  
34 combination of more than one drug at the time of the offense. This  
35 enhancement shall be mandatory, shall be served in total confinement,  
36 and shall run consecutively to all other sentencing provisions for  
37 all offenses sentenced under this chapter. If the addition of an  
38 enhancement under this subsection increases the sentence so that it  
39 would exceed the statutory maximum for the offense, the portion of  
40 the sentence representing the enhancement shall not be reduced.



1        (16) Regardless of any provisions in this section, if a person is  
2 being sentenced in adult court for a crime committed under age  
3 (~~eighteen~~) 18, the court has full discretion to depart from  
4 mandatory sentencing enhancements and to take the particular  
5 circumstances surrounding the defendant's youth into account.

6        **Sec. 2.** RCW 46.61.5055 and 2020 c 330 s 15 are each amended to  
7 read as follows:

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

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

17        (i) By imprisonment for not less than (~~twenty-four~~) 24  
18 consecutive hours nor more than (~~three hundred sixty-four~~) 364  
19 days. In lieu of the mandatory minimum term of imprisonment required  
20 under this subsection (1)(a)(i), the court, in its discretion, may  
21 order not less than (~~fifteen~~) 15 days of electronic home monitoring  
22 or a (~~ninety-day~~) 90-day period of 24/7 sobriety program  
23 monitoring. The court may consider the offender's pretrial 24/7  
24 sobriety program monitoring as fulfilling a portion of posttrial  
25 sentencing. The offender shall pay the cost of electronic home  
26 monitoring. The county or municipality in which the penalty is being  
27 imposed shall determine the cost. The court may also require the  
28 offender's electronic home monitoring device or other separate  
29 alcohol monitoring device to include an alcohol detection  
30 breathalyzer, and the court may restrict the amount of alcohol the  
31 offender may consume during the time the offender is on electronic  
32 home monitoring; and

33        (ii) By a fine of not less than (~~three hundred fifty dollars~~)  
34 \$350 nor more than (~~five thousand dollars. Three hundred fifty~~  
35 ~~dollars~~) \$5,000. \$350 of the fine may not be suspended unless the  
36 court finds the offender to be indigent; or

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

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

3 (i) By imprisonment for not less than (~~forty-eight~~) 48  
4 consecutive hours nor more than (~~three hundred sixty-four~~) 364  
5 days. In lieu of the mandatory minimum term of imprisonment required  
6 under this subsection (1)(b)(i), the court, in its discretion, may  
7 order not less than (~~thirty~~) 30 days of electronic home monitoring  
8 or a (~~one hundred twenty~~) 120-day period of 24/7 sobriety program  
9 monitoring. The court may consider the offender's pretrial 24/7  
10 sobriety program testing as fulfilling a portion of posttrial  
11 sentencing. The offender shall pay the cost of electronic home  
12 monitoring. The county or municipality in which the penalty is being  
13 imposed shall determine the cost. The court may also require the  
14 offender's electronic home monitoring device to include an alcohol  
15 detection breathalyzer or other separate alcohol monitoring device,  
16 and the court may restrict the amount of alcohol the offender may  
17 consume during the time the offender is on electronic home  
18 monitoring; and

19 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor  
20 more than (~~five thousand dollars. Five hundred dollars~~) \$5,000.  
21 \$500 of the fine may not be suspended unless the court finds the  
22 offender to be indigent.

23 (2) **One prior offense in seven years.** Except as provided in RCW  
24 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
25 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense  
26 within seven years shall be punished as follows:

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

32 (i) By imprisonment for not less than (~~thirty~~) 30 days nor more  
33 than (~~three hundred sixty-four~~) 364 days and (~~sixty~~) 60 days of  
34 electronic home monitoring. Thirty days of imprisonment and (~~sixty~~)  
35 60 days of electronic home monitoring may not be suspended or  
36 converted unless the court finds that the imposition of this  
37 mandatory minimum sentence would impose a substantial risk to the  
38 offender's physical or mental well-being. If the offender shows that  
39 the imposition of this mandatory minimum sentence would impose a  
40 substantial risk to the offender's physical or mental well-being, in

1 lieu of the mandatory term of imprisonment and electronic home  
2 monitoring under this subsection (2)(a)(i), the court may order a  
3 minimum of either (~~one hundred eighty~~) 180 days of electronic home  
4 monitoring or a (~~one hundred twenty-day~~) 120-day period of 24/7  
5 sobriety program monitoring pursuant to RCW 36.28A.300 through  
6 36.28A.390. Whenever the mandatory minimum sentence is suspended or  
7 converted, the court shall state in writing the reason for granting  
8 the suspension or conversion and the facts upon which the suspension  
9 or conversion is based. The court may consider the offender's  
10 pretrial 24/7 sobriety program monitoring as fulfilling a portion of  
11 posttrial sentencing. The court shall order an expanded substance use  
12 disorder assessment and treatment, if deemed appropriate by the  
13 assessment. The offender shall pay for the cost of the electronic  
14 monitoring. The county or municipality where the penalty is being  
15 imposed shall determine the cost. The court may also require the  
16 offender's electronic home monitoring device include an alcohol  
17 detection breathalyzer or other separate alcohol monitoring device,  
18 and may restrict the amount of alcohol the offender may consume  
19 during the time the offender is on electronic home monitoring; and

20 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor  
21 more than (~~five thousand dollars. Five hundred dollars~~) \$5,000.  
22 \$500 of the fine may not be suspended unless the court finds the  
23 offender to be indigent; or

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

29 (i) By imprisonment for not less than (~~forty-five~~) 45 days nor  
30 more than (~~three hundred sixty-four~~) 364 days and (~~ninety~~) 90  
31 days of electronic home monitoring. Forty-five days of imprisonment  
32 and (~~ninety~~) 90 days of electronic home monitoring may not be  
33 suspended or converted unless the court finds that the imposition of  
34 this mandatory minimum sentence would impose a substantial risk to  
35 the offender's physical or mental well-being. If the offender shows  
36 that the imposition of this mandatory minimum sentence would impose a  
37 substantial risk to the offender's physical or mental well-being, in  
38 lieu of the mandatory minimum term of imprisonment and electronic  
39 home monitoring under this subsection (2)(b)(i), the court may order  
40 a minimum of either six months of electronic home monitoring or a

1 (~~one hundred twenty day~~) 120-day period of 24/7 sobriety program  
2 monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever  
3 the mandatory minimum sentence is suspended or converted, the court  
4 shall state in writing the reason for granting the suspension or  
5 conversion and the facts upon which the suspension or conversion is  
6 based. The court may consider the offender's pretrial 24/7 sobriety  
7 program monitoring as fulfilling a portion of posttrial sentencing.  
8 The court shall order an expanded substance use disorder assessment  
9 and treatment, if deemed appropriate by the assessment. The offender  
10 shall pay for the cost of the electronic monitoring. The county or  
11 municipality where the penalty is being imposed shall determine the  
12 cost. The court may also require the offender's electronic home  
13 monitoring device include an alcohol detection breathalyzer or other  
14 separate alcohol monitoring device, and may restrict the amount of  
15 alcohol the offender may consume during the time the offender is on  
16 electronic home monitoring; and

17 (ii) By a fine of not less than (~~seven hundred fifty dollars~~)  
18 \$750 nor more than (~~five thousand dollars. Seven hundred fifty~~  
19 ~~dollars~~) \$5,000. \$750 of the fine may not be suspended unless the  
20 court finds the offender to be indigent.

21 (3) **Two prior offenses in seven years.** Except as provided in RCW  
22 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
23 violation of RCW 46.61.502 or 46.61.504 and who has two prior  
24 offenses within seven years shall be punished as follows:

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

30 (i) By imprisonment for not less than (~~ninety~~) 90 days nor more  
31 than (~~three hundred sixty-four~~) 364 days, if available in that  
32 county or city, a six-month period of 24/7 sobriety program  
33 monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and (~~one~~  
34 ~~hundred twenty~~) 120 days of electronic home monitoring. Ninety days  
35 of imprisonment and (~~one hundred twenty~~) 120 days of electronic  
36 home monitoring may not be suspended or converted unless the court  
37 finds that the imposition of this mandatory minimum sentence would  
38 impose a substantial risk to the offender's physical or mental well-  
39 being. If the offender shows that the imposition of this mandatory  
40 minimum sentence would impose a substantial risk to the offender's

1 physical or mental well-being, in lieu of the mandatory minimum term  
2 of ninety days of imprisonment and (~~one hundred twenty~~) 120 days of  
3 electronic home monitoring, the court may order (~~three hundred~~  
4 ~~sixty~~) 360 days of electronic home monitoring or a (~~three hundred~~  
5 ~~sixty-day~~) 360-day period of 24/7 sobriety monitoring pursuant to  
6 RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum  
7 sentence is suspended or converted, the court shall state in writing  
8 the reason for granting the suspension or conversion and the facts  
9 upon which the suspension or conversion is based. The court shall  
10 order an expanded substance use disorder assessment and treatment, if  
11 deemed appropriate by the assessment. The offender shall pay for the  
12 cost of the electronic monitoring. The county or municipality where  
13 the penalty is being imposed shall determine the cost. The court may  
14 also require the offender's electronic home monitoring device include  
15 an alcohol detection breathalyzer or other separate alcohol  
16 monitoring device, and may restrict the amount of alcohol the  
17 offender may consume during the time the offender is on electronic  
18 home monitoring; and

19 (ii) By a fine of not less than (~~one thousand dollars~~) \$1,000  
20 nor more than (~~five thousand dollars. One thousand dollars~~) \$5,000.  
21 \$1,000 of the fine may not be suspended unless the court finds the  
22 offender to be indigent; or

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

28 (i) By imprisonment for not less than (~~one hundred twenty~~) 120  
29 days nor more than (~~three hundred sixty-four~~) 364 days, if  
30 available in that county or city, a six-month period of 24/7 sobriety  
31 program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and  
32 (~~one hundred fifty~~) 150 days of electronic home monitoring. One  
33 hundred twenty days of imprisonment and (~~one hundred fifty~~) 150  
34 days of electronic home monitoring may not be suspended or converted  
35 unless the court finds that the imposition of this mandatory minimum  
36 sentence would impose a substantial risk to the offender's physical  
37 or mental well-being. If the offender shows that the imposition of  
38 this mandatory minimum sentence would impose a substantial risk to  
39 the offender's physical or mental well-being, in lieu of the  
40 mandatory minimum term of (~~one hundred twenty~~) 120 days of

1 imprisonment and (~~one hundred fifty~~) 150 days of electronic home  
2 monitoring, the court may order (~~three hundred sixty~~) 360 days of  
3 electronic home monitoring or a (~~three hundred sixty-day~~) 360-day  
4 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through  
5 36.28A.390. Whenever the mandatory minimum sentence is suspended or  
6 converted, the court shall state in writing the reason for granting  
7 the suspension or conversion and the facts upon which the suspension  
8 or conversion is based. The offender shall pay for the cost of the  
9 electronic monitoring. The court shall order an expanded substance  
10 use disorder assessment and treatment, if deemed appropriate by the  
11 assessment. The county or municipality where the penalty is being  
12 imposed shall determine the cost. The court may also require the  
13 offender's electronic home monitoring device include an alcohol  
14 detection breathalyzer or other separate alcohol monitoring device,  
15 and may restrict the amount of alcohol the offender may consume  
16 during the time the offender is on electronic home monitoring; and

17 (ii) By a fine of not less than (~~one thousand five hundred~~  
18 ~~dollars~~) \$1,500 nor more than (~~five thousand dollars. One thousand~~  
19 ~~five hundred dollars~~) \$5,000. \$1,500 of the fine may not be  
20 suspended unless the court finds the offender to be indigent.

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

24 (a) The person has three or more prior offenses within (~~ten~~) 10  
25 years; or

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

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

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

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

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

34 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall  
35 require any person convicted of a violation of RCW 46.61.502 or  
36 46.61.504 or an equivalent local ordinance to comply with the rules  
37 and requirements of the department regarding the installation and use  
38 of a functioning ignition interlock device installed on all motor  
39 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 one or more passengers under the age of  
27 (~~sixteen~~) 16 were in the vehicle, the court shall:

28 (a) Order the use of an ignition interlock or other device for an  
29 additional (~~twelve~~) 12 months for each passenger under the age of  
30 (~~sixteen~~) 16 when the person is subject to the penalties under  
31 subsection (1)(a), (2)(a), or (3)(a) of this section; and order the  
32 use of an ignition interlock device for an additional (~~eighteen~~) 18  
33 months for each passenger under the age of (~~sixteen~~) 16 when the  
34 person is subject to the penalties under subsection (1)(b), (2)(b),  
35 (3)(b), or (4) of this 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~~) 24 hours of  
39 imprisonment to be served consecutively for each passenger under the  
40 age of (~~sixteen~~) 16, and a fine of not less than (~~one thousand~~

dollars)) \$1,000 and not more than (~~(five thousand dollars)~~) \$5,000 for each passenger under the age of (~~(sixteen. One thousand dollars)~~) 16. \$1,000 of the fine for each passenger under the age of (~~(sixteen)~~) 16 may not be suspended unless the court finds the offender to be indigent;

(c) In any case in which the person has one prior offense within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional five days of imprisonment to be served consecutively for each passenger under the age of (~~(sixteen)~~) 16, and a fine of not less than (~~(two thousand dollars)~~) \$2,000 and not more than (~~(five thousand dollars)~~) \$5,000 for each passenger under the age of (~~(sixteen. One thousand dollars)~~) 16. \$1,000 of the fine for each passenger under the age of (~~(sixteen)~~) 16 may not be suspended unless the court finds the offender to be indigent;

(d) In any case in which the person has two prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional (~~(ten)~~) 10 days of imprisonment to be served consecutively for each passenger under the age of (~~(sixteen)~~) 16, and a fine of not less than (~~(three thousand dollars)~~) \$3,000 and not more than (~~(ten thousand dollars)~~) \$10,000 for each passenger under the age of (~~(sixteen. One thousand dollars)~~) 16. \$1,000 of the fine for each passenger under the age of (~~(sixteen)~~) 16 may not be suspended unless the court finds the offender to be indigent.

(7) **Penalty for being under the influence of multiple intoxicants.** If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while under the influence of a combination of intoxicating liquor and any drug or a combination of more than one drug the court shall order:

(a) The use of an ignition interlock or other device for an additional 12 months;

(b) An additional 10 days of imprisonment to be served consecutively to all other sentencing provisions; and

(c) An additional \$1,000 fine.

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

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



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

3 (c) Whether the driver was driving in the opposite direction of  
4 the normal flow of traffic on a multiple lane highway, as defined by  
5 RCW 46.04.350, with a posted speed limit of (~~forty-five~~) 45 miles  
6 per hour or greater; and

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

9 (~~(+8)~~) (9) **Treatment and information school.** An offender  
10 punishable under this section is subject to the substance use  
11 disorder assessment and treatment provisions of RCW 46.61.5056.

12 (~~(+9)~~) (10) **Driver's license privileges of the defendant.** (a)  
13 The license, permit, or nonresident privilege of a person convicted  
14 of driving or being in physical control of a motor vehicle while  
15 under the influence of intoxicating liquor or drugs must:

16 (i) **Penalty for alcohol concentration less than 0.15.** If the  
17 person's alcohol concentration was less than 0.15, or if for reasons  
18 other than the person's refusal to take a test offered under RCW  
19 46.20.308 there is no test result indicating the person's alcohol  
20 concentration:

21 (A) Where there has been no prior offense within seven years, be  
22 suspended or denied by the department for (~~ninety~~) 90 days or until  
23 the person is evaluated by a substance use disorder agency or  
24 probation department pursuant to RCW 46.20.311 and the person  
25 completes or is enrolled in a (~~ninety-day~~) 90-day period of 24/7  
26 sobriety program monitoring. In no circumstances shall the license  
27 suspension be for fewer than two days;

28 (B) Where there has been one prior offense within seven years, be  
29 revoked or denied by the department for two years or until the person  
30 is evaluated by a substance use disorder agency or probation  
31 department pursuant to RCW 46.20.311 and the person completes or is  
32 enrolled in a six-month period of 24/7 sobriety program monitoring.  
33 In no circumstances shall the license suspension be for less than one  
34 year; or

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

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

39 (A) Where there has been no prior offense within seven years, be  
40 revoked or denied by the department for one year or until the person

1 is evaluated by a substance use disorder agency or probation  
2 department pursuant to RCW 46.20.311 and the person completes or is  
3 enrolled in a (~~one hundred twenty~~) 120-day period of 24/7 sobriety  
4 program monitoring. In no circumstances shall the license revocation  
5 be for fewer than four days;

6 (B) Where there has been one prior offense within seven years, be  
7 revoked or denied by the department for (~~nine hundred~~) 900 days; or

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

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

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

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

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

19 (b) (i) The department shall grant credit on a day-for-day basis  
20 for a suspension, revocation, or denial imposed under this subsection  
21 (~~(9)~~) (10) for any portion of a suspension, revocation, or denial  
22 already served under RCW 46.20.3101 arising out of the same incident.

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

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

39 (d) Upon its own motion or upon motion by a person, a court may  
40 find, on the record, that notice to the department under RCW

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

9 (e) For purposes of this subsection (~~((9))~~) (10), the department  
10 shall refer to the driver's record maintained under RCW 46.52.120  
11 when determining the existence of prior offenses.

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

17 (~~((11))~~) (12) **Conditions of probation.** (a) In addition to any  
18 nonsuspendable and nondeferrable jail sentence required by this  
19 section, whenever the court imposes up to (~~(three hundred sixty-~~  
20 ~~four)~~) 364 days in jail, the court shall also suspend but shall not  
21 defer a period of confinement for a period not exceeding five years.  
22 The court shall impose conditions of probation that include: (i) Not  
23 driving a motor vehicle within this state without a valid license to  
24 drive; (ii) not driving a motor vehicle within this state without  
25 proof of liability insurance or other financial responsibility for  
26 the future pursuant to RCW 46.30.020; (iii) not driving or being in  
27 physical control of a motor vehicle within this state while having an  
28 alcohol concentration of 0.08 or more or a THC concentration of 5.00  
29 nanograms per milliliter of whole blood or higher, within two hours  
30 after driving; (iv) not refusing to submit to a test of his or her  
31 breath or blood to determine alcohol or drug concentration upon  
32 request of a law enforcement officer who has reasonable grounds to  
33 believe the person was driving or was in actual physical control of a  
34 motor vehicle within this state while under the influence of  
35 intoxicating liquor or drug; and (v) not driving a motor vehicle in  
36 this state without a functioning ignition interlock device as  
37 required by the department under RCW 46.20.720. The court may impose  
38 conditions of probation that include nonrepetition, installation of  
39 an ignition interlock device on the probationer's motor vehicle,  
40 substance use disorder treatment, supervised probation, or other

1 conditions that may be appropriate. The sentence may be imposed in  
2 whole or in part upon violation of a condition of probation during  
3 the suspension period.

4 (b) For each violation of mandatory conditions of probation under  
5 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall  
6 order the convicted person to be confined for (~~(thirty)~~) 30 days,  
7 which shall not be suspended or deferred.

8 (c) For each incident involving a violation of a mandatory  
9 condition of probation imposed under this subsection, the license,  
10 permit, or privilege to drive of the person shall be suspended by the  
11 court for (~~(thirty)~~) 30 days or, if such license, permit, or  
12 privilege to drive already is suspended, revoked, or denied at the  
13 time the finding of probation violation is made, the suspension,  
14 revocation, or denial then in effect shall be extended by (~~(thirty)~~)  
15 30 days. The court shall notify the department of any suspension,  
16 revocation, or denial or any extension of a suspension, revocation,  
17 or denial imposed under this subsection.

18 (~~((12))~~) (13) **Waiver of electronic home monitoring.** A court may  
19 waive the electronic home monitoring requirements of this chapter  
20 when:

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

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

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

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

38 Whenever the combination of jail time and electronic home  
39 monitoring or alternative sentence would exceed (~~(three—hundred~~  
40 ~~sixty—four)~~) 364 days, the offender shall serve the jail portion of

1 the sentence first, and the electronic home monitoring or alternative  
2 portion of the sentence shall be reduced so that the combination does  
3 not exceed (~~(three hundred sixty-four)~~) 364 days.

4 (~~(13)~~) (14) **Extraordinary medical placement.** An offender  
5 serving a sentence under this section, whether or not a mandatory  
6 minimum term has expired, may be granted an extraordinary medical  
7 placement by the jail administrator subject to the standards and  
8 limitations set forth in RCW 9.94A.728(1)(c).

9 (~~(14)~~) (15) **Definitions.** For purposes of this section and RCW  
10 46.61.502 and 46.61.504:

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

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

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

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

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

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

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

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

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

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

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

1 violation of RCW 46.61.520 committed while under the influence of  
2 intoxicating liquor or any drug;

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

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

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

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

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

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

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

39 If a deferred prosecution is revoked based on a subsequent  
40 conviction for an offense listed in this subsection (~~((14))~~) (15)(a),

1 the subsequent conviction shall not be treated as a prior offense of  
2 the revoked deferred prosecution for the purposes of sentencing;

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

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

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

11 ~~((15))~~ (16) All fines imposed by this section apply to adult  
12 offenders only.

13 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A  
14 RCW to read as follows:

15 (1) In a prosecution for vehicular homicide committed while under  
16 the influence of intoxicating liquor or any drug under RCW 46.61.520,  
17 vehicular assault committed while under the influence of intoxicating  
18 liquor or any drug under RCW 46.61.522, driving under the influence  
19 under RCW 46.61.502, whether a gross misdemeanor or felony, or actual  
20 physical control of a motor vehicle while under the influence under  
21 RCW 46.61.504, whether a gross misdemeanor or felony, the prosecution  
22 may file a special allegation that the defendant committed the  
23 offense while under the influence of a combination of intoxicating  
24 liquor and any drug or a combination of more than one drug when there  
25 is sufficient admissible evidence of this circumstance.

26 (2) Once a special allegation has been made under this section,  
27 the state has the burden to prove beyond a reasonable doubt that the  
28 defendant committed the offense while under the influence of a  
29 combination of intoxicating liquor and any drug or a combination of  
30 more than one drug. If a jury is had, the jury shall, if it finds the  
31 defendant guilty, also find a special verdict as to whether the  
32 defendant committed the offense while under the influence of a  
33 combination of intoxicating liquor and any drug or a combination of  
34 more than one drug. If no jury is had, the court shall make a finding  
35 of fact as to whether the defendant committed the offense while under  
36 the influence of a combination of intoxicating liquor and any drug or  
37 a combination of more than one drug.

1       **Sec. 4.** RCW 46.20.720 and 2020 c 330 s 10 are each amended to  
2 read as follows:

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

6       (a) **Pretrial release.** Upon receipt of notice from a court that an  
7 ignition interlock device restriction has been imposed under RCW  
8 10.21.055;

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

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

14       (i) RCW 46.61.502 or 46.61.504 or an equivalent local ordinance;  
15 or

16       (ii) RCW 46.61.5249 or 46.61.500 or an equivalent local ordinance  
17 if the person would be required under RCW 46.61.5249(4) or  
18 46.61.500(3) (a) or (b) to install an ignition interlock device on  
19 all vehicles operated by the person in the event of a conviction;

20       (d) **Post conviction.** After any applicable period of mandatory  
21 suspension, revocation, or denial of driving privileges, or upon  
22 fulfillment of day-for-day credit under RCW 46.61.5055(~~(+9)~~) (10)  
23 (b)(ii) for a suspension, revocation, or denial of driving  
24 privileges:

25       (i) Due to a conviction of a violation of RCW 46.61.502 or  
26 46.61.504 or an equivalent local or out-of-state statute or  
27 ordinance; or

28       (ii) Due to a conviction of a violation of RCW 46.61.5249 or  
29 46.61.500 or an equivalent local ordinance if the person is required  
30 under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an  
31 ignition interlock device on all vehicles operated by the person; or

32       (e) **Court order.** Upon receipt of an order by a court having  
33 jurisdiction that a person charged or convicted of any offense  
34 involving the use, consumption, or possession of alcohol while  
35 operating a motor vehicle may drive only a motor vehicle equipped  
36 with a functioning ignition interlock. The court shall establish a  
37 specific alcohol set point at which the ignition interlock will  
38 prevent the vehicle from being started. The court shall also  
39 establish the period of time for which ignition interlock use will be  
40 required.



1 (2) **Alcohol set point.** Unless otherwise specified by the court  
2 for a restriction imposed under subsection (1)(e) of this section,  
3 the ignition interlock device shall have an alcohol set point that  
4 prevents the motor vehicle from being started when the breath sample  
5 provided has an alcohol concentration of 0.020 or more.

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

7 (a) Subsection (1)(a) of this section shall remain in effect  
8 until:

9 (i) The court has authorized the removal of the device under RCW  
10 10.21.055; or

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

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

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

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

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

22 (iii) For a person who has previously been restricted under  
23 (c)(ii) of this subsection, a period of (~~ten~~) 10 years.

24 The restriction of a person who is convicted of a violation of  
25 RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and who  
26 committed the offense while one or more passengers under the age of  
27 (~~sixteen~~) 16 were in the vehicle shall be extended for an  
28 additional period as required by RCW 46.61.5055(6)(a).

29 The restriction of a person who is convicted of a violation of  
30 RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and who  
31 committed the offense while under the influence of a combination of  
32 intoxicating liquor and any drug or a combination of more than one  
33 drug shall be extended for an additional period as required by RCW  
34 46.61.5055(7)(a).

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

37 (e) The period of restriction under (c) or (d) of this subsection  
38 shall be extended by (~~one hundred eighty~~) 180 days whenever the  
39 department receives notice that the restricted person has been  
40 convicted under RCW 46.20.740 or 46.20.750. If the period of

1 restriction under (c) or (d) of this subsection has been fulfilled  
2 and cannot be extended, the department must add a new (~~one hundred~~  
3 ~~eighty-day~~) 180-day restriction that is imposed from the date of  
4 conviction and is subject to the requirements for removal under  
5 subsection (4) of this section.

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

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

20 (4) **Requirements for removal.** A restriction imposed under  
21 subsection (1)(c) or (d) of this section shall remain in effect until  
22 the department receives a declaration from the person's ignition  
23 interlock device vendor, in a form provided or approved by the  
24 department, certifying the following:

25 (a) That there have been none of the following incidents in the  
26 (~~one hundred eighty~~) 180 consecutive days prior to the date of  
27 release:

28 (i) Any attempt to start the vehicle with a breath alcohol  
29 concentration of 0.04 or more unless a subsequent test performed  
30 within (~~ten~~) 10 minutes registers a breath alcohol concentration  
31 lower than 0.04 and the digital image confirms the same person  
32 provided both samples;

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

36 (iii) Failure to pass any random retest with a breath alcohol  
37 concentration of lower than 0.020 unless a subsequent test performed  
38 within (~~ten~~) 10 minutes registers a breath alcohol concentration  
39 lower than 0.020, and the digital image confirms the same person  
40 provided both samples;

1 (iv) Failure of the person to appear at the ignition interlock  
2 device vendor when required for maintenance, repair, calibration,  
3 monitoring, inspection, or replacement of the device; or

4 (v) Removal of the ignition interlock device by a person other  
5 than an ignition interlock technician certified by the Washington  
6 state patrol; and

7 (b) That the ignition interlock device was inspected at the  
8 conclusion of the (~~one hundred eighty day~~) 180-day period by an  
9 ignition interlock technician certified by the Washington state  
10 patrol and no evidence was found that the device was tampered with in  
11 the manner described in RCW 46.20.750.

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

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

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

30 (6) **Employer exemption.** (a) Except as provided in (b) of this  
31 subsection, the installation of an ignition interlock device is not  
32 necessary on vehicles owned, leased, or rented by a person's employer  
33 and on those vehicles whose care and/or maintenance is the temporary  
34 responsibility of the employer, and driven at the direction of a  
35 person's employer as a requirement of employment during working  
36 hours. The person must provide the department with a declaration  
37 pursuant to chapter 5.50 RCW from his or her employer stating that  
38 the person's employment requires the person to operate a vehicle  
39 owned by the employer or other persons during working hours. When the  
40 department receives a declaration under this subsection, it shall

1 attach or imprint a notation on the person's driving record stating  
2 that the employer exemption applies.

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

6 (7) **Ignition interlock device revolving account.** In addition to  
7 any other costs associated with the use of an ignition interlock  
8 device imposed on the person restricted under this section, the  
9 person shall pay an additional fee of (~~twenty-one dollars~~) \$21 per  
10 month. Payments must be made directly to the ignition interlock  
11 company. The company shall remit the additional fee to the department  
12 to be deposited into the ignition interlock device revolving account,  
13 except that the company may retain (~~twenty-five~~) 25 cents per month  
14 of the additional fee to cover the expenses associated with  
15 administering the fee. The department may waive the monthly fee if  
16 the person is indigent under RCW 10.101.010.

17 (8) **Foreign jurisdiction.** For a person restricted under this  
18 section who is residing outside of the state of Washington, the  
19 department may accept verification of installation of an ignition  
20 interlock device by an ignition interlock company authorized to do  
21 business in the jurisdiction in which the person resides, provided  
22 the device meets any applicable requirements of that jurisdiction.  
23 The department may waive one or more requirements for removal under  
24 subsection (4) of this section if compliance with the requirement or  
25 requirements would be impractical in the case of a person residing in  
26 another jurisdiction, provided the person is in compliance with any  
27 equivalent requirement of that jurisdiction. The department may waive  
28 the monthly fee required by subsection (7) of this section if  
29 collection of the fee would be impractical in the case of a person  
30 residing in another jurisdiction.

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