
SUBSTITUTE HOUSE BILL 2728

State of Washington 63rd Legislature 2014 Regular Session

By House Public Safety (originally sponsored by Representatives Goodman, Klippert, Smith, Morrell, Gregerson, and Freeman)

READ FIRST TIME 02/05/14.

1 AN ACT Relating to impaired driving; amending RCW 10.21.055,
2 10.31.100, 46.20.385, 46.20.740, 46.20.308, 46.20.750, 46.25.120, and
3 46.61.5055; and prescribing penalties.

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

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

7 (1)(a) When any person charged with or arrested for a violation of
8 RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in which the person
9 has a prior offense as defined in RCW 46.61.5055 and the current
10 offense involves alcohol, is released from custody, after a preliminary
11 hearing, if applicable, and before arraignment or trial, on bail or
12 personal recognizance, the court authorizing the release shall require,
13 as a condition of release, that person to ~~((+a))~~ (i) have a
14 functioning ignition interlock device installed on all motor vehicles
15 operated by the person, with proof of installation filed with the court
16 by the person or the certified interlock provider within five business
17 days of the date of release from custody or as soon thereafter as
18 determined by the court based on availability within the jurisdiction;

1 or (~~(b)~~) (ii) comply with 24/7 sobriety program monitoring, as
2 defined in RCW 36.28A.330; or both.

3 (b) The court shall immediately notify the department of licensing
4 when an ignition interlock restriction is imposed as a condition of
5 release pursuant to (a) of this subsection. Pursuant to RCW 46.20.740,
6 the department of licensing shall attach or imprint a notation on the
7 driving record of any person restricted under this section stating that
8 the person may operate only a motor vehicle equipped with a functioning
9 ignition interlock device.

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

17 (b) Pursuant to (a) of this subsection the court shall immediately
18 notify the department of licensing regarding the lifting of the
19 ignition interlock restriction and the department of licensing shall
20 release any attachment, imprint, or notation on such person's driving
21 record relating to the ignition interlock requirement.

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

27 **Sec. 2.** RCW 10.31.100 and 2013 2nd sp.s. c 35 s 22 are each
28 amended to read as follows:

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

35 (1) Any police officer having probable cause to believe that a
36 person has committed or is committing a misdemeanor or gross
37 misdemeanor, involving physical harm or threats of harm to any person

1 or property or the unlawful taking of property or involving the use or
2 possession of cannabis, or involving the acquisition, possession, or
3 consumption of alcohol by a person under the age of twenty-one years
4 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070
5 or 9A.52.080, shall have the authority to arrest the person.

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

9 (a) An order has been issued of which the person has knowledge
10 under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09, 26.10,
11 26.26, 26.50, or 74.34 RCW restraining the person and the person has
12 violated the terms of the order restraining the person from acts or
13 threats of violence, or restraining the person from going onto the
14 grounds of or entering a residence, workplace, school, or day care, or
15 prohibiting the person from knowingly coming within, or knowingly
16 remaining within, a specified distance of a location or, in the case of
17 an order issued under RCW 26.44.063, imposing any other restrictions or
18 conditions upon the person; or

19 (b) A foreign protection order, as defined in RCW 26.52.010, has
20 been issued of which the person under restraint has knowledge and the
21 person under restraint has violated a provision of the foreign
22 protection order prohibiting the person under restraint from contacting
23 or communicating with another person, or excluding the person under
24 restraint from a residence, workplace, school, or day care, or
25 prohibiting the person from knowingly coming within, or knowingly
26 remaining within, a specified distance of a location, or a violation of
27 any provision for which the foreign protection order specifically
28 indicates that a violation will be a crime; or

29 (c) The person is sixteen years or older and within the preceding
30 four hours has assaulted a family or household member as defined in RCW
31 10.99.020 and the officer believes: (i) A felonious assault has
32 occurred; (ii) an assault has occurred which has resulted in bodily
33 injury to the victim, whether the injury is observable by the
34 responding officer or not; or (iii) that any physical action has
35 occurred which was intended to cause another person reasonably to fear
36 imminent serious bodily injury or death. Bodily injury means physical
37 pain, illness, or an impairment of physical condition. When the
38 officer has probable cause to believe that family or household members

1 have assaulted each other, the officer is not required to arrest both
2 persons. The officer shall arrest the person whom the officer believes
3 to be the primary physical aggressor. In making this determination,
4 the officer shall make every reasonable effort to consider: (i) The
5 intent to protect victims of domestic violence under RCW 10.99.010;
6 (ii) the comparative extent of injuries inflicted or serious threats
7 creating fear of physical injury; and (iii) the history of domestic
8 violence of each person involved, including whether the conduct was
9 part of an ongoing pattern of abuse(~~(i) or~~

10 ~~(d) The person has violated RCW 46.61.502 or 46.61.504 or an~~
11 ~~equivalent local ordinance and the police officer has knowledge that~~
12 ~~the person has a prior offense as defined in RCW 46.61.5055 within ten~~
13 ~~years)).~~

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

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

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

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

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

25 (e) RCW 46.61.503 or 46.25.110, relating to persons having alcohol
26 or THC in their system;

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

29 (g) RCW 46.61.5249, relating to operating a motor vehicle in a
30 negligent manner.

31 (4) A law enforcement officer investigating at the scene of a motor
32 vehicle accident may arrest the driver of a motor vehicle involved in
33 the accident if the officer has probable cause to believe that the
34 driver has committed in connection with the accident a violation of any
35 traffic law or regulation.

36 (5)(a) A law enforcement officer investigating at the scene of a
37 motor vessel accident may arrest the operator of a motor vessel

1 involved in the accident if the officer has probable cause to believe
2 that the operator has committed, in connection with the accident, a
3 criminal violation of chapter 79A.60 RCW.

4 (b) A law enforcement officer investigating at the scene of a motor
5 vessel accident may issue a citation for an infraction to the operator
6 of a motor vessel involved in the accident if the officer has probable
7 cause to believe that the operator has committed, in connection with
8 the accident, a violation of any boating safety law of chapter 79A.60
9 RCW.

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

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

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

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

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

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

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

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

1 and (7) of this section, nothing in this section extends or otherwise
2 affects the powers of arrest prescribed in Title 46 RCW.

3 (13) No police officer may be held criminally or civilly liable for
4 making an arrest pursuant to subsection (2) or (9) of this section if
5 the police officer acts in good faith and without malice.

6 (14) A police officer shall arrest and keep in custody, until
7 release by a judicial officer on bail, personal recognizance, or court
8 order, a person without a warrant when the officer has probable cause
9 to believe that the person has violated RCW 46.61.502 or 46.61.504 or
10 an equivalent local ordinance and the police officer has knowledge that
11 the person has a prior offense as defined in RCW 46.61.5055 within ten
12 years.

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

15 (1)(a) Beginning January 1, 2009, any person licensed under this
16 chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504
17 or an equivalent local or out-of-state statute or ordinance, or a
18 violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), or who has had or
19 will have his or her license suspended, revoked, or denied under RCW
20 46.20.3101, or who is otherwise permitted under subsection (8) of this
21 section, may submit to the department an application for an ignition
22 interlock driver's license. The department, upon receipt of the
23 prescribed fee and upon determining that the petitioner is eligible to
24 receive the license, may issue an ignition interlock driver's license.

25 (b) A person may apply for an ignition interlock driver's license
26 anytime, including immediately after receiving the notices under RCW
27 46.20.308 or after his or her license is suspended, revoked, or denied.
28 (~~A person receiving an ignition interlock driver's license waives his~~
29 ~~or her right to a hearing or appeal under RCW 46.20.308.~~)

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

33 (i) The department shall require the person to maintain the device
34 on all vehicles operated by the person and shall restrict the person to
35 operating only vehicles equipped with the device, for the remainder of
36 the period of suspension, revocation, or denial. Subject to the
37 provisions of RCW 46.20.720(3)(b)(ii), the installation of an ignition

1 interlock device is not necessary on vehicles owned, leased, or rented
2 by a person's employer and on those vehicles whose care and/or
3 maintenance is the temporary responsibility of the employer, and driven
4 at the direction of a person's employer as a requirement of employment
5 during working hours. The person must provide the department with a
6 declaration pursuant to RCW 9A.72.085 from his or her employer stating
7 that the person's employment requires the person to operate a vehicle
8 owned by the employer or other persons during working hours.

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

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

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

33 (3) Upon receipt of evidence that a holder of an ignition interlock
34 driver's license granted under this subsection no longer has a
35 functioning ignition interlock device installed on all vehicles
36 operated by the driver, the director shall give written notice by
37 first-class mail to the driver that the ignition interlock driver's
38 license shall be canceled. If at any time before the cancellation goes

1 into effect the driver submits evidence that a functioning ignition
2 interlock device has been installed on all vehicles operated by the
3 driver, the cancellation shall be stayed. If the cancellation becomes
4 effective, the driver may obtain, at no additional charge, a new
5 ignition interlock driver's license upon submittal of evidence that a
6 functioning ignition interlock device has been installed on all
7 vehicles operated by the driver.

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

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

23 (6)(a) Unless costs are waived by the ignition interlock company or
24 the person is indigent under RCW 10.101.010, the applicant shall pay
25 the cost of installing, removing, and leasing the ignition interlock
26 device and shall pay an additional fee of twenty dollars per month.
27 Payments shall be made directly to the ignition interlock company. The
28 company shall remit the additional twenty dollar fee to the department.

29 (b) The department shall deposit the proceeds of the twenty dollar
30 fee into the ignition interlock device revolving account. Expenditures
31 from the account may be used only to administer and operate the
32 ignition interlock device revolving account program. The department
33 shall adopt rules to provide monetary assistance according to greatest
34 need and when funds are available.

35 (7) The department shall adopt rules to implement ignition
36 interlock licensing. The department shall consult with the
37 administrative office of the courts, the state patrol, the Washington

1 association of sheriffs and police chiefs, ignition interlock
2 companies, and any other organization or entity the department deems
3 appropriate.

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

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

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

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

36 (2) It is a gross misdemeanor for a person with such a notation on
37 his or her driving record to operate a motor vehicle that is not so

1 equipped unless the notation resulted from a restriction imposed as a
2 condition of release and the restriction has been released by the court
3 prior to driving.

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

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

17 (2) The test or tests of breath shall be administered at the
18 direction of a law enforcement officer having reasonable grounds to
19 believe the person to have been driving or in actual physical control
20 of a motor vehicle within this state while under the influence of
21 intoxicating liquor or any drug or the person to have been driving or
22 in actual physical control of a motor vehicle while having alcohol (~~or~~
23 ~~THC~~)) in a concentration in violation of RCW 46.61.503 in his or her
24 system and being under the age of twenty-one. Unless the officer seeks
25 to have the test administered pursuant to a search warrant, a valid
26 waiver of the warrant requirement exists, or exigent circumstances as
27 provided in subsection (4) of this section exists, the officer shall
28 inform the person of his or her right to refuse the breath test, and of
29 his or her right to have additional tests administered by any qualified
30 person of his or her choosing as provided in RCW 46.61.506. The
31 officer shall warn the driver, in substantially the following language,
32 that:

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

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

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

4 (i) The driver is age twenty-one or over and the test indicates
5 either that the alcohol concentration of the driver's breath is 0.08 or
6 more (~~or that the THC concentration of the driver's blood is 5.00 or~~
7 ~~more)); or~~

8 (ii) The driver is under age twenty-one and the test indicates
9 either that the alcohol concentration of the driver's breath is 0.02 or
10 more (~~or that the THC concentration of the driver's blood is above~~
11 ~~0.00)); or~~

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

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

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

31 ~~(4))~~ If, following his or her arrest and receipt of warnings under
32 subsection (2) of this section, the person arrested refuses upon the
33 request of a law enforcement officer to submit to a test or tests of
34 his or her breath, no test shall be given except as authorized by (~~a~~
35 ~~search warrant)) subsection (4) of this section.~~

36 (4) An arresting officer who at the time of arrest has reasonable
37 grounds to believe that a person arrested for any offense had been
38 driving or was in actual physical control of a motor vehicle while

1 under the influence of intoxicating liquor or any drug or was in
2 violation of RCW 46.61.503 may require that a breath or blood test be
3 administered pursuant to a search warrant, a valid waiver of the
4 warrant requirement, or when exigent circumstances exist.

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

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

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

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

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

1 (i) That the officer had reasonable grounds to believe the arrested
2 person had been driving or was in actual physical control of a motor
3 vehicle within this state while under the influence of intoxicating
4 liquor or drugs, or both, or was under the age of twenty-one years and
5 had been driving or was in actual physical control of a motor vehicle
6 while having an alcohol or THC concentration in violation of RCW
7 46.61.503;

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

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

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

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

1 section, the hearing is subject to and shall be scheduled and conducted
2 in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be
3 conducted in the county of the arrest, except that all or part of the
4 hearing may, at the discretion of the department, be conducted by
5 telephone or other electronic means. The hearing shall be held within
6 sixty days following the arrest or following the date notice has been
7 given in the event notice is given by the department following a blood
8 test, unless otherwise agreed to by the department and the person, in
9 which case the action by the department shall be stayed, and any valid
10 temporary license (~~marked~~) under subsection (5) of this section
11 extended, if the person is otherwise eligible for licensing. For the
12 purposes of this section, the scope of the hearing shall cover the
13 issues of whether a law enforcement officer had reasonable grounds to
14 believe the person had been driving or was in actual physical control
15 of a motor vehicle within this state while under the influence of
16 intoxicating liquor or any drug or had been driving or was in actual
17 physical control of a motor vehicle within this state while having
18 alcohol in his or her system in a concentration of 0.02 or more, or THC
19 in his or her system in a concentration above 0.00, if the person was
20 under the age of twenty-one, whether the person was placed under
21 arrest, and (a) whether the person refused to submit to the test or
22 tests upon request of the officer after having been informed that such
23 refusal would result in the revocation of the person's license, permit,
24 or privilege to drive, or (b) if a test or tests were administered,
25 whether the applicable requirements of this section were satisfied
26 before the administration of the test or tests, whether the person
27 submitted to the test or tests, or whether a test was administered
28 (~~without express consent~~) pursuant to a search warrant, a valid
29 waiver of the warrant requirement, or when exigent circumstances exist
30 as permitted under this section, and whether the test or tests
31 indicated that the alcohol concentration of the person's breath or
32 blood was 0.08 or more, or the THC concentration of the person's blood
33 was 5.00 or more, if the person was age twenty-one or over at the time
34 of the arrest, or that the alcohol concentration of the person's breath
35 or blood was 0.02 or more, or the THC concentration of the person's
36 blood was above 0.00, if the person was under the age of twenty-one at
37 the time of the arrest. The sworn report or report under a declaration
38 authorized by RCW 9A.72.085 submitted by a law enforcement officer is

1 prima facie evidence that the officer had reasonable grounds to believe
2 the person had been driving or was in actual physical control of a
3 motor vehicle within this state while under the influence of
4 intoxicating liquor or drugs, or both, or the person had been driving
5 or was in actual physical control of a motor vehicle within this state
6 while having alcohol in his or her system in a concentration of 0.02 or
7 more, or THC in his or her system in a concentration above 0.00, and
8 was under the age of twenty-one and that the officer complied with the
9 requirements of this section.

10 A hearing officer shall conduct the hearing, may issue subpoenas
11 for the attendance of witnesses and the production of documents, and
12 shall administer oaths to witnesses. The hearing officer shall not
13 issue a subpoena for the attendance of a witness at the request of the
14 person unless the request is accompanied by the fee required by RCW
15 5.56.010 for a witness in district court. The sworn report or report
16 under a declaration authorized by RCW 9A.72.085 of the law enforcement
17 officer and any other evidence accompanying the report shall be
18 admissible without further evidentiary foundation and the
19 certifications authorized by the criminal rules for courts of limited
20 jurisdiction shall be admissible without further evidentiary
21 foundation. The person may be represented by counsel, may question
22 witnesses, may present evidence, and may testify. The department shall
23 order that the suspension, revocation, or denial either be rescinded or
24 sustained.

25 (8) If the suspension, revocation, or denial is sustained after
26 such a hearing, the person whose license, privilege, or permit is
27 suspended, revoked, or denied has the right to file a petition in the
28 superior court of the county of arrest to review the final order of
29 revocation by the department in the same manner as an appeal from a
30 decision of a court of limited jurisdiction. Notice of appeal must be
31 filed within thirty days after the date the final order is served or
32 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
33 1.1, or other statutes or rules referencing de novo review, the appeal
34 shall be limited to a review of the record of the administrative
35 hearing. The appellant must pay the costs associated with obtaining
36 the record of the hearing before the hearing officer. The filing of
37 the appeal does not stay the effective date of the suspension,
38 revocation, or denial. A petition filed under this subsection must

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

20 (9)(a) If a person whose driver's license, permit, or privilege to
21 drive has been or will be suspended, revoked, or denied under
22 subsection (6) of this section, other than as a result of a breath test
23 refusal, and who has not committed an offense for which he or she was
24 granted a deferred prosecution under chapter 10.05 RCW, petitions a
25 court for a deferred prosecution on criminal charges arising out of the
26 arrest for which action has been or will be taken under subsection (6)
27 of this section, or notifies the department of licensing of the intent
28 to seek such a deferred prosecution, then the license suspension or
29 revocation shall be stayed pending entry of the deferred prosecution.
30 The stay shall not be longer than one hundred fifty days after the date
31 charges are filed, or two years after the date of the arrest, whichever
32 time period is shorter. If the court stays the suspension, revocation,
33 or denial, it may impose conditions on such stay. If the person is
34 otherwise eligible for licensing, the department shall issue a
35 temporary license, or extend any valid temporary license under
36 subsection (5) of this section, for the period of the stay. If a
37 deferred prosecution treatment plan is not recommended in the report
38 made under RCW 10.05.050, or if treatment is rejected by the court, or

1 if the person declines to accept an offered treatment plan, or if the
2 person violates any condition imposed by the court, then the court
3 shall immediately direct the department to cancel the stay and any
4 temporary ((marked)) license or extension of a temporary license issued
5 under this subsection.

6 (b) A suspension, revocation, or denial imposed under this section,
7 other than as a result of a breath test refusal, shall be stayed if the
8 person is accepted for deferred prosecution as provided in chapter
9 10.05 RCW for the incident upon which the suspension, revocation, or
10 denial is based. If the deferred prosecution is terminated, the stay
11 shall be lifted and the suspension, revocation, or denial reinstated.
12 If the deferred prosecution is completed, the stay shall be lifted and
13 the suspension, revocation, or denial canceled.

14 (c) The provisions of (b) of this subsection relating to a stay of
15 a suspension, revocation, or denial and the cancellation of any
16 suspension, revocation, or denial do not apply to the suspension,
17 revocation, denial, or disqualification of a person's commercial
18 driver's license or privilege to operate a commercial motor vehicle.

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

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

27 (1) A person who is restricted to the use of a vehicle equipped
28 with an ignition interlock device (~~((and who tampers with the device or
29 directs, authorizes, or requests another to tamper with the device, in
30 order to circumvent the device by modifying, detaching, disconnecting,
31 or otherwise disabling it,))~~) is guilty of a gross misdemeanor when, in
32 order to circumvent the device, the person:

33 (a) Tampers with the device by modifying, detaching, disconnecting,
34 or otherwise disabling it;

35 (b) Directs, authorizes, or requests another to tamper with the
36 device by modifying, detaching, disconnecting, or otherwise disabling
37 it;

1 (c) Directs, authorizes, or requests another to blow or otherwise
2 exhale into the device.

3 (2) A person who knowingly assists another person who is restricted
4 to the use of a vehicle equipped with an ignition interlock device to
5 circumvent the device or to start and operate that vehicle in violation
6 of a court order is guilty of a gross misdemeanor. The provisions of
7 this subsection do not apply if the starting of a motor vehicle, or the
8 request to start a motor vehicle, equipped with an ignition interlock
9 device is done for the purpose of safety or mechanical repair of the
10 device or the vehicle and the person subject to the court order does
11 not operate the vehicle.

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

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

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

24 (3) The law enforcement officer requesting the test under
25 subsection (1) of this section shall warn the person requested to
26 submit to the test that a refusal to submit will result in that person
27 being disqualified from operating a commercial motor vehicle under RCW
28 46.25.090.

29 (4) A law enforcement officer who at the time of stopping or
30 detaining a commercial motor vehicle driver has probable cause to
31 believe that driver was driving a commercial motor vehicle while having
32 alcohol in his or her system or while under the influence of any drug
33 may require that a breath or blood test be administered pursuant to a
34 search warrant, a valid waiver of the warrant requirement, or when
35 exigent circumstances exist.

36 (5) If the person refuses testing, or ((~~submits to~~)) a test is
37 administered that discloses an alcohol concentration of 0.04 or more or

1 any measurable amount of THC concentration, the law enforcement officer
2 shall submit a sworn report to the department certifying that the test
3 was requested pursuant to subsection (1) of this section or a breath or
4 blood test was administered pursuant to subsection (4) of this section
5 and that the person refused to submit to testing, or (~~submitted to~~)
6 a test was administered that disclosed an alcohol concentration of 0.04
7 or more or any measurable amount of THC concentration.

8 (~~(+5)~~) (6) Upon receipt of the sworn report of a law enforcement
9 officer under subsection (~~(+4)~~) (5) of this section, the department
10 shall disqualify the driver from driving a commercial motor vehicle
11 under RCW 46.25.090, subject to the hearing provisions of RCW 46.20.329
12 and 46.20.332. The hearing shall be conducted in the county of the
13 arrest. For the purposes of this section, the hearing shall cover the
14 issues of whether a law enforcement officer had reasonable grounds to
15 believe the person had been driving or was in actual physical control
16 of a commercial motor vehicle within this state while having alcohol in
17 the person's system or while under the influence of any drug, whether
18 the person refused to submit to the test or tests upon request of the
19 officer after having been informed that the refusal would result in the
20 disqualification of the person from driving a commercial motor vehicle,
21 if applicable, and, if the test was administered, whether the results
22 indicated an alcohol concentration of 0.04 percent or more or any
23 measurable amount of THC concentration. The department shall order
24 that the disqualification of the person either be rescinded or
25 sustained. Any decision by the department disqualifying a person from
26 driving a commercial motor vehicle is stayed and does not take effect
27 while a formal hearing is pending under this section or during the
28 pendency of a subsequent appeal to superior court so long as there is
29 no conviction for a moving violation or no finding that the person has
30 committed a traffic infraction that is a moving violation during the
31 pendency of the hearing and appeal. If the disqualification of the
32 person is sustained after the hearing, the person who is disqualified
33 may file a petition in the superior court of the county of arrest to
34 review the final order of disqualification by the department in the
35 manner provided in RCW 46.20.334.

36 (~~(+6)~~) (7) If a motor carrier or employer who is required to have
37 a testing program under 49 C.F.R. 382 knows that a commercial driver in
38 his or her employ has refused to submit to testing under this section

1 and has not been disqualified from driving a commercial motor vehicle,
2 the employer may notify law enforcement or his or her medical review
3 officer or breath alcohol technician that the driver has refused to
4 submit to the required testing.

5 ~~((7))~~ (8) The hearing provisions of this section do not apply to
6 those persons disqualified from driving a commercial motor vehicle
7 under RCW 46.25.090(7).

8 **Sec. 8.** RCW 46.61.5055 and 2013 2nd sp.s. c 35 s 13 are each
9 amended to read as follows:

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

14 (a) **Penalty for alcohol concentration less than 0.15.** In the case
15 of a person whose alcohol concentration was less than 0.15, or for whom
16 for reasons other than 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 one day nor more than three
20 hundred sixty-four days. Twenty-four 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)(a)(i), the
28 court may order not less than fifteen days of electronic home
29 monitoring. The offender shall pay the cost of electronic home
30 monitoring. The county or municipality in which the penalty is being
31 imposed shall determine the cost. The court may also require the
32 offender's electronic home monitoring device or other separate alcohol
33 monitoring device to include an alcohol detection breathalyzer, and the
34 court may restrict the amount of alcohol the offender may consume
35 during the time the offender is on electronic home monitoring; and

36 (ii) By a fine of not less than three hundred fifty dollars nor

1 more than five thousand dollars. Three hundred fifty dollars of the
2 fine may not be suspended unless the court finds the offender to be
3 indigent; or

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

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

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

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

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

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

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

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

30 (i) By imprisonment for not less than forty-five days nor more than
31 three hundred sixty-four days and ninety days of electronic home
32 monitoring. In lieu of the mandatory minimum term of ninety days
33 electronic home monitoring, the court may order at least an additional
34 six days in jail or, if available in that county or city, a six-month
35 period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300
36 through 36.28A.390, and the court shall order an expanded alcohol
37 assessment and treatment, if deemed appropriate by the assessment. The
38 offender shall pay for the cost of the electronic monitoring. The

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

13 (ii) By a fine of not less than seven hundred fifty dollars nor
14 more than five thousand dollars. Seven hundred fifty dollars of the
15 fine may not be suspended unless the court finds the offender to be
16 indigent.

17 (3) **Two or three prior offenses in seven years.** Except as provided
18 in RCW 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 two or three prior
20 offenses 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 whom
23 for reasons other than the person's refusal to take a test offered
24 pursuant to RCW 46.20.308 there is no test result indicating the
25 person's alcohol concentration:

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

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

10 (ii) By a fine of not less than one thousand dollars nor more than
11 five thousand dollars. One thousand dollars of the fine may not be
12 suspended unless the court finds the offender to be 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 whom
15 by reason of the person's refusal to take a test offered pursuant to
16 RCW 46.20.308 there is no test result indicating the person's alcohol
17 concentration:

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

1 state in writing the reason for granting the suspension and the facts
2 upon which the suspension is based; and

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

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

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

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

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

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

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

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

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

25 (b) If the court orders that a person refrain from consuming any
26 alcohol, the court may order the person to submit to alcohol monitoring
27 through an alcohol detection breathalyzer device, transdermal sensor
28 device, or other technology designed to detect alcohol in a person's
29 system. The person shall pay for the cost of the monitoring, unless
30 the court specifies that the cost of monitoring will be paid with funds
31 that are available from an alternative source identified by the court.
32 The county or municipality where the penalty is being imposed shall
33 determine the cost.

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

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

3 (b) In any case in which the person has no prior offenses within
4 seven years, and except as provided in RCW 46.61.502(6) or
5 46.61.504(6), order an additional twenty-four hours of imprisonment and
6 a fine of not less than one thousand dollars and not more than five
7 thousand dollars. One thousand dollars of the fine may not be
8 suspended unless the court finds the offender to be indigent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 Upon its own motion or upon motion by a person, a court may find,
38 on the record, that notice to the department under RCW 46.20.270 has

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

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

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

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

1 (b) For each violation of mandatory conditions of probation under
2 (a)(i), (ii), or (iii) of this subsection, the court shall order the
3 convicted person to be confined for thirty days, which shall not be
4 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 finding
10 of probation violation is made, the suspension, revocation, or denial
11 then in effect shall be extended by thirty days. The court shall
12 notify the department of any suspension, revocation, or denial or any
13 extension of a suspension, revocation, or denial imposed under this
14 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 period
22 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 monitoring
26 penalty.

27 Whenever the mandatory minimum term of electronic home monitoring
28 is waived, the court shall state in writing the reason for granting the
29 waiver and the facts upon which the waiver is based, and shall impose
30 an alternative sentence with similar punitive consequences. The
31 alternative sentence may include, but is not limited to, use of an
32 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 the

1 sentence shall be reduced so that the combination does not exceed three
2 hundred sixty-four days.

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

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

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

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

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

15 (iii) A conviction for a violation of RCW 46.61.520 committed while
16 under the influence of intoxicating liquor or any drug, or a conviction
17 for a violation of RCW 46.61.520 committed in a reckless manner or with
18 the disregard for the safety of others if the conviction is the result
19 of a charge that was originally filed as a violation of RCW 46.61.520
20 committed while under the influence of intoxicating liquor or any drug;

21 (iv) A conviction for a violation of RCW 46.61.522 committed while
22 under the influence of intoxicating liquor or any drug, or a conviction
23 for a violation of RCW 46.61.522 committed in a reckless manner or with
24 the disregard for the safety of others if the conviction is the result
25 of a charge that was originally filed as a violation of RCW 46.61.522
26 committed while under the influence of intoxicating liquor or any drug;

27 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
28 9A.36.050 or an equivalent local ordinance, if the conviction is the
29 result of a charge that was originally filed as a violation of RCW
30 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
31 46.61.520 or 46.61.522;

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

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

1 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
2 prosecution for a violation of RCW 46.61.5249, or an equivalent local
3 ordinance, if the charge under which the deferred prosecution was
4 granted was originally filed as a violation of RCW 46.61.502 or
5 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
6 46.61.522;

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

13 (x) A deferred sentence imposed in a prosecution for a violation of
14 RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local
15 ordinance, if the charge under which the deferred sentence was imposed
16 was originally filed as a violation of RCW 46.61.502 or 46.61.504, or
17 an equivalent local ordinance, or a violation of RCW 46.61.520 or
18 46.61.522;

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

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

25 (c) "Within seven years" means that the arrest for a prior offense
26 occurred within seven years before or after the arrest for the current
27 offense; and

28 (d) "Within ten years" means that the arrest for a prior offense
29 occurred within ten years before or after the arrest for the current
30 offense.

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