

E2SHB 1276 - S AMD
By Senator Padden

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

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

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

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

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

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

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

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

5 (iii) Have an ignition interlock device pursuant to (a)(i) of
6 this subsection and comply with 24/7 sobriety program monitoring
7 pursuant to (a)(ii) of this subsection or, if not available, submit
8 at the expense of the person to alcohol monitoring as provided in RCW
9 46.61.5055(5) (b) and (c) or to undergo urinalysis or other testing
10 to monitor drug-free status.

11 (b) The court shall immediately notify the department of
12 licensing when an ignition interlock restriction is imposed: (i) As a
13 condition of release pursuant to (a) of this subsection; or (ii) in
14 instances where a person is charged with or convicted of a violation
15 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, and the offense
16 involves alcohol. If the court imposes an ignition interlock
17 restriction, the department of licensing shall attach or imprint a
18 notation on the driving record of any person restricted under this
19 section stating that the person may operate only a motor vehicle
20 equipped with a functioning ignition interlock device.

21 (2)(a) Upon acquittal or dismissal of all pending or current
22 charges relating to a violation of RCW 46.61.502, 46.61.504,
23 46.61.520, or 46.61.522, or equivalent local ordinance, the court
24 shall authorize removal of the ignition interlock device and lift any
25 requirement to comply with electronic alcohol/drug monitoring imposed
26 under subsection (1) of this section. Nothing in this section limits
27 the authority of the court or department under RCW 46.20.720.

28 (b) If the court authorizes removal of an ignition interlock
29 device imposed under (a) of this subsection the court shall
30 immediately notify the department of licensing regarding the lifting
31 of the ignition interlock restriction and the department of licensing
32 shall release any attachment, imprint, or notation on such person's
33 driving record relating to the ignition interlock requirement imposed
34 under this section.

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

1 and/or maintenance is the temporary responsibility of the employer,
2 and driven at the direction of a person's employer as a requirement
3 of employment during working hours. The person must provide the
4 department with a declaration pursuant to RCW 9A.72.085 from his or
5 her employer stating that the person's employment requires the person
6 to operate a vehicle owned by the employer or other persons during
7 working hours.

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

16 (iii) The time period during which the person is licensed under
17 this section shall apply on a day-for-day basis toward satisfying the
18 period of time the ignition interlock device restriction is required
19 under RCW 46.20.720 (~~and~~), 46.61.5055, 10.05.140, 46.61.500(3), and
20 46.61.5249(4). Beginning with incidents occurring on or after
21 September 1, 2011, when calculating the period of time for the
22 restriction under RCW 46.20.720 (2) or (3), the department must also
23 give the person a day-for-day credit for the time period, beginning
24 from the date of the incident, during which the person kept an
25 ignition interlock device installed on all vehicles the person
26 operates. For the purposes of this subsection (1)(c)(iii), the term
27 "all vehicles" does not include vehicles that would be subject to the
28 employer 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
34 interlock driver's license granted under this subsection no longer
35 has a 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
39 goes into effect the driver submits evidence that a functioning
40 ignition interlock device has been installed on all vehicles operated

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

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

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

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

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

34 (7) The department shall adopt rules to implement ignition
35 interlock licensing. The department shall consult with the
36 administrative office of the courts, the state patrol, the Washington
37 association of sheriffs and police chiefs, ignition interlock
38 companies, and any other organization or entity the department deems
39 appropriate.

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

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

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

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

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

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

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

4 **Implied consent—Test refusal—Procedures**

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

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

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

1 (c) If the driver submits to the test and the test is
2 administered, the driver's license, permit, or privilege to drive
3 will be suspended, 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
6 or more (~~or that the THC concentration of the driver's blood is 5.00~~
7 ~~or 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
10 or more (~~or that the THC concentration of the driver's blood is~~
11 ~~above 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
16 immediately 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~~
25 ~~driving while under the influence of intoxicating liquor or drugs as~~
26 ~~provided in RCW 46.61.502, which arrest results from an accident in~~
27 ~~which there has been serious bodily injury to another person, a~~
28 ~~breath or blood test may be administered without the consent of the~~
29 ~~individual so arrested pursuant to a search warrant, a valid waiver~~
30 ~~of the warrant requirement, or when exigent circumstances exist.~~

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

37 (4) Nothing in subsection (1), (2), or (3) of this section
38 precludes a law enforcement officer from obtaining a person's blood
39 to test for alcohol, marijuana, or any drug, pursuant to a search
40 warrant, a valid waiver of the warrant requirement, when exigent

1 circumstances exist, or under any other authority of law. Any blood
2 drawn for the purpose of determining the person's alcohol or
3 marijuana levels, or any drug, is drawn pursuant to this section when
4 the officer has reasonable grounds to believe that the person is in
5 physical control or driving a vehicle under the influence or in
6 violation of RCW 46.61.503.

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

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

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

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

38 (d) Immediately notify the department of the arrest and transmit
39 to the department within seventy-two hours, except as delayed as the

1 result of a blood test, a sworn report or report under a declaration
2 authorized by RCW 9A.72.085 that states:

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

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

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

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

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

1 waive the required three hundred seventy-five dollar fee if the
2 person is an indigent as defined in RCW 10.101.010. Except as
3 otherwise provided in this section, the hearing is subject to and
4 shall be scheduled and conducted in accordance with RCW 46.20.329 and
5 46.20.332. The hearing shall be conducted in the county of the
6 arrest, except that all or part of the hearing may, at the discretion
7 of the department, be conducted by telephone or other electronic
8 means. The hearing shall be held within sixty days following the
9 arrest or following the date notice has been given in the event
10 notice is given by the department following a blood test, unless
11 otherwise agreed to by the department and the person, in which case
12 the action by the department shall be stayed, and any valid temporary
13 license (~~marked~~) under subsection (5) of this section extended, if
14 the person is otherwise eligible for licensing. For the purposes of
15 this section, the scope of the hearing shall cover the issues of
16 whether a law enforcement officer had reasonable grounds to believe
17 the person had been driving or was in actual physical control of a
18 motor vehicle within this state while under the influence of
19 intoxicating liquor or any drug or had been driving or was in actual
20 physical control of a motor vehicle within this state while having
21 alcohol in his or her system in a concentration of 0.02 or more, or
22 THC in his or her system in a concentration above 0.00, if the person
23 was under the age of twenty-one, whether the person was placed under
24 arrest, and (a) whether the person refused to submit to the test or
25 tests upon request of the officer after having been informed that
26 such refusal would result in the revocation of the person's license,
27 permit, or privilege to drive, or (b) if a test or tests were
28 administered, whether the applicable requirements of this section
29 were satisfied before the administration of the test or tests,
30 whether the person submitted to the test or tests, or whether a test
31 was administered (~~without express consent~~) pursuant to a search
32 warrant, a valid waiver of the warrant requirement, when exigent
33 circumstances exist, or under any other authority of law as permitted
34 under this section, and whether the test or tests indicated that the
35 alcohol concentration of the person's breath or blood was 0.08 or
36 more, or the THC concentration of the person's blood was 5.00 or
37 more, if the person was age twenty-one or over at the time of the
38 arrest, or that the alcohol concentration of the person's breath or
39 blood was 0.02 or more, or the THC concentration of the person's
40 blood was above 0.00, if the person was under the age of twenty-one

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

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

35 (8) If the suspension, revocation, or denial is sustained after
36 such a hearing, the person whose license, privilege, or permit is
37 suspended, revoked, or denied has the right to file a petition in the
38 superior court of the county of arrest to review the final order of
39 revocation by the department in the same manner as an appeal from a
40 decision of a court of limited jurisdiction. Notice of appeal must be

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

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

1 date of the arrest, whichever time period is shorter. If the court
2 stays the suspension, revocation, or denial, it may impose conditions
3 on such stay. If the person is otherwise eligible for licensing, the
4 department shall issue a temporary license, or extend any valid
5 temporary license under subsection (5) of this section, for the
6 period of the stay. If a deferred prosecution treatment plan is not
7 recommended in the report made under RCW 10.05.050, or if treatment
8 is rejected by the court, or if the person declines to accept an
9 offered treatment plan, or if the person violates any condition
10 imposed by the court, then the court shall immediately direct the
11 department to cancel the stay and any temporary ((marked)) license or
12 extension of a temporary license issued under this subsection.

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

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

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

33 **Circumventing ignition interlock—Penalty**

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

36 (1) A person who is restricted to the use of a vehicle equipped
37 with an ignition interlock device ((and who tampers with the device
38 or directs, authorizes, or requests another to tamper with the

1 ~~device, in order to circumvent the device by modifying, detaching,~~
2 ~~disconnecting, or otherwise disabling it,))~~ is guilty of a gross
3 misdemeanor if the restricted driver:

4 (a) Tamper with the device by modifying, detaching,
5 disconnecting, or otherwise disabling it to allow the restricted
6 driver to operate the vehicle;

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

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

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

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

26 (3) Any sentence imposed for a violation of subsection (1) of
27 this section shall be served consecutively with any sentence imposed
28 under RCW 46.20.740, 46.61.502, 46.61.504, 46.61.5055,
29 46.61.520(1)(a), or 46.61.522(1)(b).

30 **Commercial vehicles—Test for alcohol or drugs—Disqualification for**
31 **refusal of test or positive test—Procedures**

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

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

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

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

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

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

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

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

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

26 ~~((+7))~~ (8) The hearing provisions of this section do not apply
27 to those persons disqualified from driving a commercial motor vehicle
28 under RCW 46.25.090(7).

29 **Open container law for marijuana**

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

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

33 (i) For the registered owner of a motor vehicle, or the driver if
34 the registered owner is not then present, or passengers in the
35 vehicle, to keep marijuana in a motor vehicle when the vehicle is
36 upon a highway, unless it is (A) in the trunk of the vehicle, (B) in
37 some other area of the vehicle not normally occupied or directly
38 accessible by the driver or passengers if the vehicle does not have a

1 trunk, or (C) in a package, container, or receptacle that has not
2 been opened or the seal broken or contents partially removed. A
3 utility compartment or glove compartment is deemed to be within the
4 area occupied by the driver and passengers;

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

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

11 (b) There is a rebuttable presumption that it is a traffic
12 infraction if the original container of marijuana is incorrectly
13 labeled and there is a subsequent violation of (a)(i) of this
14 subsection.

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

25 **Alcohol and drug violators—Penalty schedule**

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

28 (1) **No prior offenses in seven years.** Except as provided in RCW
29 46.61.502(6) or 46.61.504(6), a person who is convicted of a
30 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
31 within seven years shall be punished as follows:

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

37 (i) By imprisonment for not less than one day nor more than three
38 hundred sixty-four days. Twenty-four consecutive hours of the

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

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

21 (b) **Penalty for alcohol concentration at least 0.15.** In the case
22 of a person whose alcohol concentration was at least 0.15, or for
23 whom by reason of 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 two days nor more than
27 three hundred sixty-four days. Forty-eight consecutive hours of the
28 imprisonment may not be suspended unless the court finds that the
29 imposition of this mandatory minimum sentence would impose a
30 substantial risk to the offender's physical or mental well-being.
31 Whenever the mandatory minimum sentence is suspended, the court shall
32 state in writing the reason for granting the suspension and the facts
33 upon which the suspension is based. In lieu of the mandatory minimum
34 term of imprisonment required under this subsection (1)(b)(i), the
35 court may order not less than thirty days of electronic home
36 monitoring. The offender shall pay the cost of electronic home
37 monitoring. The county or municipality in which the penalty is being
38 imposed shall determine the cost. The court may also require the
39 offender's electronic home monitoring device to include an alcohol
40 detection breathalyzer or other separate alcohol monitoring device,

1 and the court may restrict the amount of alcohol the offender may
2 consume during the time the offender is on electronic home
3 monitoring; and

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

7 (2) **One prior offense in seven years.** Except as provided in RCW
8 46.61.502(6) or 46.61.504(6), a person who is convicted of a
9 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
10 within seven years shall be punished as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (5) **Monitoring.**

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

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

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

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

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

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

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

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

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

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

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

1 (d) In any case in which the person has two or three prior
2 offenses within seven years, and except as provided in RCW
3 46.61.502(6) or 46.61.504(6), order an additional ten days of
4 imprisonment and a fine of not less than three thousand dollars and
5 not more than ten thousand dollars. One thousand dollars of the fine
6 may not be suspended unless the court finds the offender to be
7 indigent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 or any extension of a suspension, revocation, or denial imposed under
2 this subsection.

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

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

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

12 (c) The court determines that there is reason to believe that the
13 offender would violate the conditions of the electronic home
14 monitoring penalty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (~~(viii)~~) (x) A conviction for a violation of RCW 46.61.520
23 committed while under the influence of intoxicating liquor or any
24 drug, or a conviction for a violation of RCW 46.61.520 committed in a
25 reckless manner or with the disregard for the safety of others if the
26 conviction is the result of a charge that was originally filed as a
27 violation of RCW 46.61.520 committed while under the influence of
28 intoxicating liquor or any drug;

29 (~~(ix)~~) (xi) A conviction for a violation of RCW 46.61.522
30 committed while under the influence of intoxicating liquor or any
31 drug, or a conviction for a violation of RCW 46.61.522 committed in a
32 reckless manner or with the disregard for the safety of others if the
33 conviction is the result of a charge that was originally filed as a
34 violation of RCW 46.61.522 committed while under the influence of
35 intoxicating liquor or any drug;

36 (~~(x)~~) (xii) A conviction for a violation of RCW 46.61.5249,
37 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the
38 conviction is the result of a charge that was originally filed as a
39 violation of RCW 46.61.502 or 46.61.504, or an equivalent local
40 ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

7 (~~(xiii)~~) (xv) A deferred prosecution under chapter 10.05 RCW
8 granted in a prosecution for a violation of RCW 46.61.5249, or an
9 equivalent local ordinance, if the charge under which the deferred
10 prosecution was granted was originally filed as a violation of RCW
11 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
12 46.61.520 or 46.61.522;

13 (~~(xiv)~~) (xvi) A deferred prosecution granted in another state
14 for a violation of driving or having physical control of a vehicle
15 while under the influence of intoxicating liquor or any drug if the
16 out-of-state deferred prosecution is equivalent to the deferred
17 prosecution under chapter 10.05 RCW, including a requirement that the
18 defendant participate in a chemical dependency treatment program; or

19 (~~(xv)~~) (xvii) A deferred sentence imposed in a prosecution for
20 a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
21 equivalent local ordinance, if the charge under which the deferred
22 sentence was imposed was originally filed as a violation of RCW
23 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
24 violation of RCW 46.61.520 or 46.61.522;

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

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

31 (c) "Within seven years" means that the arrest for a prior
32 offense occurred within seven years before or after the arrest for
33 the current offense; and

34 (d) "Within ten years" means that the arrest for a prior offense
35 occurred within ten years before or after the arrest for the current
36 offense.

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

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

10 (2)(a) The director shall not destroy records of convictions or
11 adjudications of RCW 46.61.502, 46.61.503, 46.61.504, 46.61.520, and
12 46.61.522, or records of deferred prosecutions granted under RCW
13 10.05.120 and shall maintain such records permanently on file.

14 (b) The director shall not, within fifteen years from the date of
15 conviction or adjudication, destroy records if the offense was
16 originally charged as one of the offenses designated in (a) of this
17 subsection, convictions or adjudications of the following offenses:
18 RCW 46.61.500 or 46.61.5249 or any other violation that was
19 originally charged as one of the offenses designated in (a) of this
20 subsection.

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

23 **Ignition interlock devices—Standards—Compliance**

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

26 (1) The state patrol shall by rule provide standards for the
27 certification, installation, repair, maintenance, monitoring,
28 inspection, and removal of ignition interlock devices, as defined
29 under RCW 46.04.215, and equipment as outlined under this section,
30 and may inspect the records and equipment of manufacturers and
31 vendors during regular business hours for compliance with statutes
32 and rules and may suspend or revoke certification for any
33 noncompliance.

34 (2)(a) When a certified service provider or individual installer
35 of ignition interlock devices is found to be out of compliance, the
36 installation privileges of that certified service provider or
37 individual installer may be suspended or revoked until the certified
38 service provider or individual installer comes into compliance.

1 During any suspension or revocation period, the certified service
2 provider or individual installer is responsible for notifying
3 affected customers of any changes in their service agreement.

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

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

14 (i) Fuel cell technology. For the purposes of this subsection,
15 "fuel cell technology" consists of the following electrochemical
16 method: An electrolyte designed to oxidize the alcohol and release
17 electrons to be collected by an active electrode; a current flow is
18 generated within the electrode proportional to the amount of alcohol
19 oxidized on the fuel cell surface; and the electrical current is
20 measured and reported as breath alcohol concentration. Fuel cell
21 technology is highly specific for alcohols((-

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

24 (ii) Technology capable of taking a photo identification of the
25 user giving the breath sample and recording on the photo the time the
26 breath sample was given; and

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

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

33 (i) Meet or exceed the minimum test standards according to rules
34 adopted by the state patrol. Only a notarized statement from a
35 laboratory that is accredited and certified ((by)) under the current
36 edition of ISO (the international organization of standardization)
37 17025 standard for testing and calibration laboratories and is
38 capable of performing the tests specified will be accepted as proof
39 of meeting or exceeding the standards. The notarized statement must
40 include the name and signature of the person in charge of the tests

1 under the certification statement. The state patrol must adopt by
2 rule the required language of the certification statement that must,
3 at a minimum, outline that the testing meets or exceeds all
4 specifications listed in the federal register adopted in rule by the
5 state patrol; and

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

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

9 **Sec. 12.** RCW 46.52.130 and 2012 c 74 s 6 and 2012 c 73 s 1 are
10 each reenacted and amended to read as follows:

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

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

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

17 (i) The total number of vehicles involved;

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

19 (iii) Whether the vehicles were occupied at the time of the
20 accident; and

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

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

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

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

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

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

36 (ii) Nothing in this section prevents a court from providing a
37 copy of the driver's abstract to the individual named in the abstract
38 or that named individual's attorney, provided that the named

1 individual has a pending or open infraction or criminal case in that
2 court. A pending case includes criminal cases that have not reached a
3 disposition by plea, stipulation, trial, or amended charge. An open
4 infraction or criminal case includes cases on probation, payment
5 agreement or subject to, or in collections. Courts may charge a
6 reasonable fee for the production and copying of the abstract for the
7 individual.

8 (b) **Employers or prospective employers.** (i)(A) An abstract of the
9 full driving record maintained by the department may be furnished to
10 an employer or prospective employer or an agent acting on behalf of
11 an employer or prospective employer of the named individual for
12 purposes related to driving by the individual as a condition of
13 employment or otherwise at the direction of the employer.

14 (B) Release of an abstract of the driving record of an employee
15 or prospective employee requires a statement signed by: (I) The
16 employee or prospective employee that authorizes the release of the
17 record; and (II) the employer attesting that the information is
18 necessary for employment purposes related to driving by the
19 individual as a condition of employment or otherwise at the direction
20 of the employer. If the employer or prospective employer authorizes
21 an agent to obtain this information on their behalf, this must be
22 noted in the statement.

23 (C) Upon request of the person named in the abstract provided
24 under this subsection, and upon that same person furnishing copies of
25 court records ruling that the person was not at fault in a motor
26 vehicle accident, the department must indicate on any abstract
27 provided under this subsection that the person was not at fault in
28 the motor vehicle accident.

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

39 (c) **Volunteer organizations.** (i) An abstract of the full driving
40 record maintained by the department may be furnished to a volunteer

1 organization or an agent for a volunteer organization for which the
2 named individual has submitted an application for a position that
3 would require driving by the individual at the direction of the
4 volunteer organization.

5 (ii) Release of an abstract of the driving record of a
6 prospective volunteer requires a statement signed by: (A) The
7 prospective volunteer that authorizes the release of the record; and
8 (B) the volunteer organization attesting that the information is
9 necessary for purposes related to driving by the individual at the
10 direction of the volunteer organization. If the volunteer
11 organization authorizes an agent to obtain this information on their
12 behalf, this must be noted in the statement.

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

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

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

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

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

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

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

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

37 (C) Exclude any deferred prosecution under RCW 10.05.060, except
38 that if a person is removed from a deferred prosecution under RCW
39 10.05.090, the abstract must show the deferred prosecution as well as
40 the removal.

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

5 (iv) Any insurance company or its agent, for underwriting
6 purposes relating to the operation of commercial motor vehicles, may
7 not use any information contained in the abstract relative to any
8 person's operation of motor vehicles while not engaged in such
9 employment. Any insurance company or its agent, for underwriting
10 purposes relating to the operation of noncommercial motor vehicles,
11 may not use any information contained in the abstract relative to any
12 person's operation of commercial motor vehicles.

13 (v) The director may enter into a contractual agreement with an
14 insurance company or its agent for the limited purpose of reviewing
15 the driving records of existing policyholders for changes to the
16 record during specified periods of time. The department shall
17 establish a fee for this service, which must be deposited in the
18 highway safety fund. The fee for this service must be set at a level
19 that will not result in a net revenue loss to the state. Any
20 information provided under this subsection must be treated in the
21 same manner and is subject to the same restrictions as driving record
22 abstracts.

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

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

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

36 (g) **Attorneys—City attorneys ((and)), county prosecuting**
37 **attorneys, and named individual's attorney of record.** An abstract of
38 the full driving record maintained by the department, including
39 whether a recorded violation is an alcohol-related offense, as
40 defined in RCW 46.01.260(2), that was originally charged as a

1 violation of either RCW 46.61.502 or 46.61.504, may be furnished to
2 city attorneys ~~((or))~~, county prosecuting attorneys, or the named
3 individual's attorney of record. City attorneys ~~((and))~~, county
4 prosecuting attorneys, or the named individual's attorney of record
5 may provide the driving record to alcohol/drug assessment or
6 treatment agencies approved by the department of social and health
7 services to which the named individual has applied or been assigned
8 for evaluation or treatment.

9 (h) **State colleges, universities, or agencies, or units of local**
10 **government.** An abstract of the full driving record maintained by the
11 department may be furnished to (i) state colleges, universities, or
12 agencies for employment and risk management purposes or (ii) units of
13 local government authorized to self-insure under RCW 48.62.031 for
14 employment and risk management purposes.

15 (i) **Superintendent of public instruction.** An abstract of the full
16 driving record maintained by the department may be furnished to the
17 superintendent of public instruction for review of public school bus
18 driver records. The superintendent or superintendent's designee may
19 discuss information on the driving record with an authorized
20 representative of the employing school district for employment and
21 risk management purposes.

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

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

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

35 (b) Any intentional violation of this section is a class C
36 felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 ((+4)) (5) A violation of this section is a misdemeanor.

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

1 If a person is required, as part of the person's judgment and
2 sentence or as a condition of release, to install an ignition
3 interlock device on all motor vehicles operated by the person and the
4 person is under the jurisdiction of the municipality or county
5 probation or supervision department, the probation or supervision
6 department must verify the installation of the ignition interlock
7 device or devices. The municipality or county probation or
8 supervision department satisfies the requirement to verify the
9 installation or installations if the municipality or county probation
10 or supervision department receives written verification by one or
11 more companies doing business in the state that it has installed the
12 required device on a vehicle owned or operated by the person. The
13 municipality or county shall have no further obligation to supervise
14 the use of the ignition interlock device or devices by the person and
15 shall not be civilly liable for any injuries or damages caused by the
16 person for failing to use an ignition interlock device or for driving
17 under the influence of intoxicating liquor or any drug or being in
18 actual physical control of a motor vehicle under the influence of
19 intoxicating liquor or any drug.

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

22 There is hereby established in the state treasury the 24/7
23 sobriety account. The account shall be maintained and administered by
24 the criminal justice training commission to reimburse the state for
25 costs associated with establishing and operating the 24/7 sobriety
26 program and the Washington association of sheriffs and police chiefs
27 for ongoing 24/7 sobriety program administration costs. (~~{The}~~) An
28 appropriation is not required for expenditures and the account is not
29 subject to allotment procedures under chapter 43.88 RCW. Funds in the
30 account may not lapse and must carry forward from biennium to
31 biennium. Interest earned by the account must be retained in the
32 account. The criminal justice training commission may accept for
33 deposit in the account money from donations, gifts, grants,
34 participation fees, and user fees or payments. (~~Expenditures from~~
35 ~~the account shall be budgeted through the normal budget process.))~~

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

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

3 (1) "~~24/7 ((electronic—alcohol/drug—monitoring))~~ sobriety
4 program" means ~~((the monitoring by the use of any electronic~~
5 ~~instrument that is capable of determining and monitoring the presence~~
6 ~~of alcohol or drugs in a person's body and includes any associated~~
7 ~~equipment a participant needs in order for the device to properly~~
8 ~~perform. Monitoring may also include mandatory urine analysis tests~~
9 ~~as ordered by the court))~~ a program in which a participant submits to
10 testing of the participant's blood, breath, urine, or other bodily
11 substance to determine the presence of alcohol or any drug as defined
12 in RCW 46.61.540. Testing must take place at a location or locations
13 designated by the participating agency, or, with the concurrence of
14 the Washington association of sheriffs and police chiefs, by an
15 alternate method.

16 (2) "Participant" means a person who has one or more prior
17 convictions for a violation of RCW 46.61.502 or 46.61.504 and who has
18 been ordered by a court to participate in the 24/7 sobriety program.

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

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

- 35 (a) The type, frequency, and time period of testing;
36 (b) The location of testing;
37 (c) The fees and payment procedures required for testing; and
38 (d) The responsibilities and obligations of the participant under
39 the 24/7 sobriety program.

1 ~~((5) "24/7 sobriety program" means a twenty four hour and seven~~
2 ~~day a week sobriety program in which a participant submits to the~~
3 ~~testing of the participant's blood, breath, urine, or other bodily~~
4 ~~substances in order to determine the presence of alcohol, marijuana,~~
5 ~~or any controlled substance in the participant's body.))~~

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

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

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

19 ~~((b)) (2) Any participation fee must be collected ((in the~~
20 ~~administration of testing under)) by the participating agency and~~
21 ~~deposited in the state 24/7 sobriety ((program)) account to cover~~
22 ~~24/7 sobriety program administration costs incurred by the Washington~~
23 ~~association of sheriffs and police chiefs ((shall be collected by the~~
24 ~~sheriff or chief, or an entity designated by the sheriff or chief,~~
25 ~~and deposited in the 24/7 sobriety account)).~~

26 ~~((2)) (3) All applicable fees shall be paid by the participant~~
27 ~~contemporaneously or in advance of the time when the fee becomes due;~~
28 ~~however, cities and counties may subsidize or pay any applicable~~
29 ~~fees.~~

30 (4) A city or county may accept donations, gifts, grants, and
31 other assistance to defray the participating agency's costs of the
32 24/7 sobriety program.

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

35 (1) A general authority Washington peace officer, as defined in
36 RCW 10.93.020, who has probable cause to believe that a participant
37 has violated the terms of participation in the 24/7 sobriety program
38 may immediately take the participant into custody and cause him or

1 her to be held until an appearance before a judge on the next
2 judicial day.

3 (2) A participant who violates the terms of participation in the
4 24/7 sobriety program or does not pay the required fees or associated
5 costs pretrial or posttrial shall, at a minimum:

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

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

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

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

16 (e) For a fifth or subsequent violation pretrial, the participant
17 shall abide by the order of the court. For posttrial participants,
18 the participant shall serve the entire remaining sentence imposed by
19 the court.

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

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

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

37 (2) A pretrial release program may not agree to supervise, or
38 accept into its custody, an offender who is currently awaiting trial
39 for a violent offense or sex offense, as defined in RCW 9.94A.030,

1 who has been convicted of one or more violent offenses or sex
2 offenses in the ten years before the date of the current offense,
3 unless the offender's release before trial was secured with a payment
4 of bail.

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

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

1 technician or paramedic licensed under chapter 18.73 RCW; until July
2 1, 2016, health care assistant certified under chapter 18.135 RCW; or
3 medical assistant-certified or medical assistant-phlebotomist
4 certified under chapter 18.360 RCW, or hospital, or duly licensed
5 clinical laboratory employing or utilizing services of such licensed
6 or certified health care provider withdrawing blood from professional
7 discipline arising from the use of improper procedures or from
8 failing to exercise the required standard of care.

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

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

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

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

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

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

38 (4)(a) A breath test performed by any instrument approved by the
39 state toxicologist shall be admissible at trial or in an

1 administrative proceeding if the prosecution or department produces
2 prima facie evidence of the following:

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

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

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

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

15 (v) The internal standard test resulted in the message
16 "verified";

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

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

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

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

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

39 (5) When a blood test is administered under the provisions of RCW
40 46.20.308, the withdrawal of blood for the purpose of determining its

1 alcoholic or drug content may be performed only by a physician(~~(, a~~
2 ~~registered nurse, a licensed practical nurse, a nursing assistant as~~
3 ~~defined in chapter 18.88A RCW, a physician assistant as defined in~~
4 ~~chapter 18.71A RCW, a first responder as defined in chapter 18.73~~
5 ~~RCW, an emergency medical technician as defined in chapter 18.73 RCW,~~
6 ~~a health care assistant as defined in chapter 18.135 RCW, or any~~
7 ~~technician trained in withdrawing blood)) licensed under chapter
8 18.71 RCW; an osteopathic physician licensed under chapter 18.57 RCW;
9 a registered nurse, licensed practical nurse, or advanced registered
10 nurse practitioner licensed under chapter 18.79 RCW; a physician
11 assistant licensed under chapter 18.71A RCW; an osteopathic physician
12 assistant licensed under chapter 18.57A RCW; an advanced emergency
13 medical technician or paramedic licensed under chapter 18.73 RCW;
14 until July 1, 2016, a health care assistant certified under chapter
15 18.135 RCW; or a medical assistant-certified or medical assistant-
16 phlebotomist certified under chapter 18.360 RCW. This limitation
17 shall not apply to the taking of breath specimens.~~

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

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

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

34 No physician(~~(, registered nurse, qualified technician))~~ licensed
35 under chapter 18.71 RCW; osteopathic physician licensed under chapter
36 18.57 RCW; registered nurse, licensed practical nurse, or advanced
37 registered nurse practitioner licensed under chapter 18.79 RCW;
38 physician assistant licensed under chapter 18.71A RCW; osteopathic
39 physician assistant licensed under chapter 18.57A RCW; advanced

1 emergency medical technician or paramedic licensed under chapter
2 18.73 RCW; until July 1, 2016, health care assistant certified under
3 chapter 18.135 RCW; or medical assistant-certified or medical
4 assistant-phlebotomist certified under chapter 18.360 RCW, or
5 hospital, or duly licensed clinical laboratory employing or utilizing
6 services of such ((~~physician, registered nurse, or qualified~~
7 ~~technician~~)) licensed or certified health care provider, shall incur
8 any civil or criminal liability as a result of the act of withdrawing
9 blood from any person when directed by a law enforcement officer to
10 do so for the purpose of a blood test under the provisions of a
11 search warrant, a waiver of the search warrant requirement, exigent
12 circumstances, any other authority of law, or RCW 46.20.308, as now
13 or hereafter amended: PROVIDED, That nothing in this section shall
14 relieve ((~~any physician, registered nurse, qualified technician~~))
15 such licensed or certified health care provider, or hospital or duly
16 licensed clinical laboratory from civil liability arising from the
17 use of improper procedures or failing to exercise the required
18 standard of care.

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

21 (1) A person is guilty of being in actual physical control of a
22 motor vehicle while under the influence of intoxicating liquor or any
23 drug if the person has actual physical control of a vehicle within
24 this state:

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

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

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

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

37 (2) The fact that a person charged with a violation of this
38 section is or has been entitled to use a drug under the laws of this
39 state does not constitute a defense against any charge of violating

1 this section. No person may be convicted under this section and it is
2 an affirmative defense to any action pursuant to RCW 46.20.308 to
3 suspend, revoke, or deny the privilege to drive if, prior to being
4 pursued by a law enforcement officer, the person has moved the
5 vehicle safely off the roadway.

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

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

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

37 (b) Analyses of blood samples obtained more than two hours after
38 the alleged being in actual physical control of a vehicle may be used
39 as evidence that within two hours of the alleged being in control of
40 the vehicle, a person had a THC concentration of 5.00 or more in

1 violation of subsection (1)(b) of this section, and in any case in
2 which the analysis shows a THC concentration above 0.00 may be used
3 as evidence that a person was under the influence of or affected by
4 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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 this subsection (6) or RCW 46.61.502(6).

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

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

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

32 (3) The medical quality assurance commission, the board of
33 osteopathic medicine and surgery, the podiatric medical board, the
34 nursing care quality assurance commission, the board of naturopathy,
35 and the optometry board shall each review and identify other
36 specialty assistive personnel not included in this chapter and the
37 tasks they perform. The department of health shall compile the
38 information from each disciplining authority listed in this

1 subsection and submit the compiled information to the legislature no
2 later than December 15, 2012.

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

E2SHB 1276 - S AMD
By Senator Padden

15 On page 1, line 1 of the title, after "driving;" strike the
16 remainder of the title and insert "amending RCW 10.21.055, 46.20.385,
17 46.20.740, 46.20.308, 46.20.750, 46.25.120, 46.61.5055, 46.01.260,
18 43.43.395, 9.94A.589, 46.61.503, 46.20.755, 36.28A.320, 36.28A.330,
19 36.28A.370, 36.28A.390, 10.21.015, 46.61.506, 46.61.508, 46.61.504,
20 and 18.360.030; reenacting and amending RCW 46.52.130; adding a new
21 section to chapter 46.61 RCW; adding a new section to chapter 18.130
22 RCW; creating a new section; and prescribing penalties."

EFFECT: (1) The person may no longer file a sworn statement in lieu of an ignition interlock device, 24/7 monitoring, or alcohol or drug monitoring.

(2) The 24/7 sobriety program remains a pilot program.

(3) First-time DUI or PC offenders are not eligible for the 24/7 sobriety program. The 24/7 sobriety program is used for DUI or PC offenders only.

(4) It is not professional misconduct for any technician trained in withdrawing blood, to collect a blood sample without a person's consent when these professionals are directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant, exigent circumstances, or other authority of law.

(5) The rules for collecting venipuncture blood samples for forensic testing must include standards for testing and for maintaining the endorsement.

--- END ---