

E2SHB 1789 - S COMM AMD

By Committee on Transportation

ADOPTED AND ENGROSSED 4/8/11

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

3 "Sec. 1. RCW 46.20.385 and 2010 c 269 s 1 are each amended to read  
4 as follows:

5 (1)(a) Beginning January 1, 2009, any person licensed under this  
6 chapter who is convicted of a violation of RCW 46.61.502 or 46.61.504  
7 or an equivalent local or out-of-state statute or ordinance, or a  
8 violation of RCW 46.61.520(1)(a) or 46.61.522(1)(b), or who has had or  
9 will have his or her license suspended, revoked, or denied under RCW  
10 46.20.3101, may submit to the department an application for an ignition  
11 interlock driver's license. The department, upon receipt of the  
12 prescribed fee and upon determining that the petitioner is eligible to  
13 receive the license, may issue an ignition interlock driver's license.

14 (b) A person may apply for an ignition interlock driver's license  
15 anytime, including immediately after receiving the notices under RCW  
16 46.20.308 or after his or her license is suspended, revoked, or denied.  
17 A person receiving an ignition interlock driver's license waives his or  
18 her right to a hearing or appeal under RCW 46.20.308.

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

22 (i) The department shall require the person to maintain the device  
23 on all vehicles operated by the person and shall restrict the person to  
24 operating only vehicles equipped with the device, for the remainder of  
25 the period of suspension, revocation, or denial. The installation of  
26 an ignition interlock device is not necessary on vehicles owned,  
27 leased, or rented by a person's employer and on those vehicles whose  
28 care and/or maintenance is the temporary responsibility of the  
29 employer, and driven at the direction of a person's employer as a  
30 requirement of employment during working hours. The person must

1 provide the department with a declaration pursuant to RCW 9A.72.085  
2 from his or her employer stating that the person's employment requires  
3 the person to operate a vehicle owned by the employer or other persons  
4 during working hours.

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

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

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

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

1 ignition interlock driver's license upon submittal of evidence that a  
2 functioning ignition interlock device has been installed on all  
3 vehicles operated by the driver.

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

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

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

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

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

1       **Sec. 2.** RCW 46.61.502 and 2008 c 282 s 20 are each amended to read  
2 as follows:

3       (1) A person is guilty of driving while under the influence of  
4 intoxicating liquor or any drug if the person drives a vehicle within  
5 this state:

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

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

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

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

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

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

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

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

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

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

4 (i) Vehicular homicide while under the influence of intoxicating  
5 liquor or any drug, RCW 46.61.520(1)(a)(~~7~~);

6 (ii) Vehicular assault while under the influence of intoxicating  
7 liquor or any drug, RCW 46.61.522(1)(b)(~~7-07~~);

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

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

11 **Sec. 3.** RCW 46.61.504 and 2008 c 282 s 21 are each amended to read  
12 as follows:

13 (1) A person is guilty of being in actual physical control of a  
14 motor vehicle while under the influence of intoxicating liquor or any  
15 drug if the person has actual physical control of a vehicle within this  
16 state:

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

21 (b) While the person is under the influence of or affected by  
22 intoxicating liquor or any drug; or

23 (c) While the person is under the combined influence of or affected  
24 by intoxicating liquor and any drug.

25 (2) The fact that a person charged with a violation of this section  
26 is or has been entitled to use a drug under the laws of this state does  
27 not constitute a defense against any charge of violating this section.  
28 No person may be convicted under this section if, prior to being  
29 pursued by a law enforcement officer, the person has moved the vehicle  
30 safely off the roadway.

31 (3) It is an affirmative defense to a violation of subsection  
32 (1)(a) of this section which the defendant must prove by a  
33 preponderance of the evidence that the defendant consumed a sufficient  
34 quantity of alcohol after the time of being in actual physical control  
35 of the vehicle and before the administration of an analysis of the  
36 person's breath or blood to cause the defendant's alcohol concentration  
37 to be 0.08 or more within two hours after being in such control. The

1 court shall not admit evidence of this defense unless the defendant  
2 notifies the prosecution prior to the omnibus or pretrial hearing in  
3 the case of the defendant's intent to assert the affirmative defense.

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

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

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

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

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

20 (i) Vehicular homicide while under the influence of intoxicating  
21 liquor or any drug, RCW 46.61.520(1)(a)((~~7~~));

22 (ii) Vehicular assault while under the influence of intoxicating  
23 liquor or any drug, RCW 46.61.522(1)(b)((~~7-07~~));

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

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

27 **Sec. 4.** RCW 46.61.500 and 1990 c 291 s 1 are each amended to read  
28 as follows:

29 (1) Any person who drives any vehicle in willful or wanton  
30 disregard for the safety of persons or property is guilty of reckless  
31 driving. Violation of the provisions of this section is a gross  
32 misdemeanor punishable by imprisonment of not more than one year and by  
33 a fine of not more than five thousand dollars.

34 (2) The license or permit to drive or any nonresident privilege of  
35 any person convicted of reckless driving shall be suspended by the  
36 department for not less than thirty days.

1 (3)(a) Except as provided under (b) of this subsection, a person  
2 convicted of reckless driving who has one or more prior offenses as  
3 defined in RCW 46.61.5055(14) within seven years shall be required,  
4 under RCW 46.20.720, to install an ignition interlock device on all  
5 vehicles operated by the person if the conviction is the result of a  
6 charge that was originally filed as a violation of RCW 46.61.502,  
7 46.61.504, or an equivalent local ordinance.

8 (b) A person convicted of reckless driving shall be required, under  
9 RCW 46.20.720, to install an ignition interlock device on all vehicles  
10 operated by the person if the conviction is the result of a charge that  
11 was originally filed as a violation of RCW 46.61.520 committed while  
12 under the influence of intoxicating liquor or any drug or RCW 46.61.522  
13 committed while under the influence of intoxicating liquor or any drug.

14 **Sec. 5.** RCW 46.61.5249 and 1997 c 66 s 4 are each amended to read  
15 as follows:

16 (1)(a) A person is guilty of negligent driving in the first degree  
17 if he or she operates a motor vehicle in a manner that is both  
18 negligent and endangers or is likely to endanger any person or  
19 property, and exhibits the effects of having consumed liquor or an  
20 illegal drug.

21 (b) It is an affirmative defense to negligent driving in the first  
22 degree by means of exhibiting the effects of having consumed an illegal  
23 drug that must be proved by the defendant by a preponderance of the  
24 evidence, that the driver has a valid prescription for the drug  
25 consumed, and has been consuming it according to the prescription  
26 directions and warnings.

27 (c) Negligent driving in the first degree is a misdemeanor.

28 (2) For the purposes of this section:

29 (a) "Negligent" means the failure to exercise ordinary care, and is  
30 the doing of some act that a reasonably careful person would not do  
31 under the same or similar circumstances or the failure to do something  
32 that a reasonably careful person would do under the same or similar  
33 circumstances.

34 (b) "Exhibiting the effects of having consumed liquor" means that  
35 a person has the odor of liquor on his or her breath, or that by  
36 speech, manner, appearance, behavior, lack of coordination, or  
37 otherwise exhibits that he or she has consumed liquor, and either:

1 (i) Is in possession of or in close proximity to a container that  
2 has or recently had liquor in it; or

3 (ii) Is shown by other evidence to have recently consumed liquor.

4 (c) "Exhibiting the effects of having consumed an illegal drug"  
5 means that a person by speech, manner, appearance, behavior, lack of  
6 coordination, or otherwise exhibits that he or she has consumed an  
7 illegal drug and either:

8 (i) Is in possession of an illegal drug; or

9 (ii) Is shown by other evidence to have recently consumed an  
10 illegal drug.

11 (d) "Illegal drug" means a controlled substance under chapter 69.50  
12 RCW for which the driver does not have a valid prescription or that is  
13 not being consumed in accordance with the prescription directions and  
14 warnings, or a legend drug under chapter 69.41 RCW for which the driver  
15 does not have a valid prescription or that is not being consumed in  
16 accordance with the prescription directions and warnings.

17 (3) Any act prohibited by this section that also constitutes a  
18 crime under any other law of this state may be the basis of prosecution  
19 under such other law notwithstanding that it may also be the basis for  
20 prosecution under this section.

21 (4) A person convicted of negligent driving in the first degree who  
22 has one or more prior offenses as defined in RCW 46.61.5055(14) within  
23 seven years shall be required, under RCW 46.20.720, to install an  
24 ignition interlock device on all vehicles operated by the person.

25 **Sec. 6.** RCW 46.20.720 and 2010 c 269 s 3 are each amended to read  
26 as follows:

27 (1) The court may order that after a period of suspension,  
28 revocation, or denial of driving privileges, and for up to as long as  
29 the court has jurisdiction, any person convicted of any offense  
30 involving the use, consumption, or possession of alcohol while  
31 operating a motor vehicle may drive only a motor vehicle equipped with  
32 a functioning ignition interlock. The court shall establish a specific  
33 calibration setting at which the interlock will prevent the vehicle  
34 from being started. The court shall also establish the period of time  
35 for which interlock use will be required.

36 (2) Under RCW 46.61.5055 and subject to the exceptions listed in  
37 that statute, the court shall order any person convicted of a violation



1 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply  
2 for an ignition interlock driver's license from the department under  
3 RCW 46.20.385 and to have a functioning ignition interlock device  
4 installed on all motor vehicles operated by the person. The court  
5 shall order any person participating in a deferred prosecution program  
6 under RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 or an  
7 equivalent local ordinance to have a functioning ignition interlock  
8 device installed on all motor vehicles operated by the person.

9 (3) The department shall require that, after any applicable period  
10 of suspension, revocation, or denial of driving privileges, a person  
11 may drive only a motor vehicle equipped with a functioning ignition  
12 interlock device if the person is convicted of a violation of RCW  
13 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute  
14 or ordinance. The department shall require that a person may drive  
15 only a motor vehicle equipped with a functioning ignition interlock  
16 device if the person is convicted of a violation of RCW 46.61.5249 or  
17 46.61.500 and is required under RCW 46.61.5249(4) or 46.61.500(3) (a)  
18 or (b) to install an ignition interlock device on all vehicles operated  
19 by the person.

20 The department may waive the requirement for the use of such a  
21 device if it concludes that such devices are not reasonably available  
22 in the local area. The installation of an ignition interlock device is  
23 not necessary on vehicles owned, leased, or rented by a person's  
24 employer and on those vehicles whose care and/or maintenance is the  
25 temporary responsibility of the employer, and driven at the direction  
26 of a person's employer as a requirement of employment during working  
27 hours. The person must provide the department with a declaration  
28 pursuant to RCW 9A.72.085 from his or her employer stating that the  
29 person's employment requires the person to operate a vehicle owned by  
30 the employer or other persons during working hours.

31 The ignition interlock device shall be calibrated to prevent the  
32 motor vehicle from being started when the breath sample provided has an  
33 alcohol concentration of 0.025 or more. Subject to the provisions of  
34 subsections (4) and (5) of this section, the period of time of the  
35 restriction will be no less than:

36 (a) For a person who has not previously been restricted under this  
37 section, a period of one year;

1 (b) For a person who has previously been restricted under (a) of  
2 this subsection, a period of five years;

3 (c) For a person who has previously been restricted under (b) of  
4 this subsection, a period of ten years.

5 (4) A restriction imposed under subsection (3) of this section  
6 shall remain in effect until the department receives a declaration from  
7 the person's ignition interlock device vendor, in a form provided or  
8 approved by the department, certifying that there have been none of the  
9 following incidents in the four consecutive months prior to the date of  
10 release:

11 (a) An attempt to start the vehicle with a breath alcohol  
12 concentration of 0.04 or more;

13 (b) Failure to take or pass any required retest; or

14 (c) Failure of the person to appear at the ignition interlock  
15 device vendor when required for maintenance, repair, calibration,  
16 monitoring, inspection, or replacement of the device.

17 (5) For a person required to install an ignition interlock device  
18 pursuant to RCW 46.61.5249(4) or 46.61.500(3), the period of time of  
19 the restriction shall be for six months and shall be subject to  
20 subsection (4) of this section.

21 **Sec. 7.** RCW 46.61.5055 and 2010 c 269 s 4 are each amended to read  
22 as follows:

23 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
24 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
25 and who has no prior offense within seven years shall be punished as  
26 follows:

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

31 (i) By imprisonment for not less than one day nor more than one  
32 year. Twenty-four consecutive hours of the imprisonment may not be  
33 suspended or deferred unless the court finds that the imposition of  
34 this mandatory minimum sentence would impose a substantial risk to the  
35 offender's physical or mental well-being. Whenever the mandatory  
36 minimum sentence is suspended or deferred, the court shall state in  
37 writing the reason for granting the suspension or deferral and the

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

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

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

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

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

1 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
2 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
3 and who has one prior offense within seven years shall be punished as  
4 follows:

5 (a) In the case of a person whose alcohol concentration was less  
6 than 0.15, or for whom for reasons other than the person's refusal to  
7 take a test offered pursuant to RCW 46.20.308 there is no test result  
8 indicating the person's alcohol concentration:

9 (i) By imprisonment for not less than thirty days nor more than one  
10 year and sixty days of electronic home monitoring. The offender shall  
11 pay for the cost of the electronic monitoring. The county or  
12 municipality where the penalty is being imposed shall determine the  
13 cost. The court may also require the offender's electronic home  
14 monitoring device include an alcohol detection breathalyzer, and may  
15 restrict the amount of alcohol the offender may consume during the time  
16 the offender is on electronic home monitoring. Thirty days of  
17 imprisonment and sixty days of electronic home monitoring may not be  
18 suspended or deferred unless the court finds that the imposition of  
19 this mandatory minimum sentence would impose a substantial risk to the  
20 offender's physical or mental well-being. Whenever the mandatory  
21 minimum sentence is suspended or deferred, the court shall state in  
22 writing the reason for granting the suspension or deferral and the  
23 facts upon which the suspension or deferral is based; and

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

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

32 (i) By imprisonment for not less than forty-five days nor more than  
33 one year and ninety days of electronic home monitoring. The offender  
34 shall pay for the cost of the electronic monitoring. The county or  
35 municipality where the penalty is being imposed shall determine the  
36 cost. The court may also require the offender's electronic home  
37 monitoring device include an alcohol detection breathalyzer, and may  
38 restrict the amount of alcohol the offender may consume during the time

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

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

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

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

21 (i) By imprisonment for not less than ninety days nor more than one  
22 year and one hundred twenty days of electronic home monitoring. The  
23 offender shall pay for the cost of the electronic monitoring. The  
24 county or municipality where the penalty is being imposed shall  
25 determine the cost. The court may also require the offender's  
26 electronic home monitoring device include an alcohol detection  
27 breathalyzer, and may restrict the amount of alcohol the offender may  
28 consume during the time the offender is on electronic home monitoring.  
29 Ninety days of imprisonment and one hundred twenty days of electronic  
30 home monitoring may not be suspended or deferred unless the court finds  
31 that the imposition of this mandatory minimum sentence would impose a  
32 substantial risk to the offender's physical or mental well-being.  
33 Whenever the mandatory minimum sentence is suspended or deferred, the  
34 court shall state in writing the reason for granting the suspension or  
35 deferral and the facts upon which the suspension or deferral is based;  
36 and

37 (ii) By a fine of not less than one thousand dollars nor more than

1 five thousand dollars. One thousand dollars of the fine may not be  
2 suspended or deferred unless the court finds the offender to be  
3 indigent; or

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

8 (i) By imprisonment for not less than one hundred twenty days nor  
9 more than one year and one hundred fifty days of electronic home  
10 monitoring. The offender shall pay for the cost of the electronic  
11 monitoring. The county or municipality where the penalty is being  
12 imposed shall determine the cost. The court may also require the  
13 offender's electronic home monitoring device include an alcohol  
14 detection breathalyzer, and may restrict the amount of alcohol the  
15 offender may consume during the time the offender is on electronic home  
16 monitoring. One hundred twenty days of imprisonment and one hundred  
17 fifty days of electronic home monitoring may not be suspended or  
18 deferred unless the court finds that the imposition of this mandatory  
19 minimum sentence would impose a substantial risk to the offender's  
20 physical or mental well-being. Whenever the mandatory minimum sentence  
21 is suspended or deferred, the court shall state in writing the reason  
22 for granting the suspension or deferral and the facts upon which the  
23 suspension or deferral is based; and

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

28 (4) A person who is convicted of a violation of RCW 46.61.502 or  
29 46.61.504 shall be punished under chapter 9.94A RCW if:

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

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

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

34 (ii) A violation of RCW 46.61.522 committed while under the  
35 influence of intoxicating liquor or any drug; (~~or~~)

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

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

1 (5)(a) The court shall require any person convicted of a violation  
2 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply  
3 for an ignition interlock driver's license from the department and to  
4 have a functioning ignition interlock device installed on all motor  
5 vehicles operated by the person.

6 (b) The installation of an ignition interlock device is not  
7 necessary on vehicles owned, leased, or rented by a person's employer  
8 and on those vehicles whose care and/or maintenance is the temporary  
9 responsibility of the employer, and driven at the direction of a  
10 person's employer as a requirement of employment during working hours.  
11 The person must provide the department with a declaration pursuant to  
12 RCW 9A.72.085 from his or her employer stating that the person's  
13 employment requires the person to operate a vehicle owned by the  
14 employer or other persons during working hours.

15 (c) An ignition interlock device imposed under this section shall  
16 be calibrated to prevent a motor vehicle from being started when the  
17 breath sample provided has an alcohol concentration of 0.025 or more.

18 (d) The court may waive the requirement that a person apply for an  
19 ignition interlock driver's license if the court makes a specific  
20 finding in writing that:

21 (i) The person lives out-of-state and the devices are not  
22 reasonably available in the person's local area;

23 (ii) The person does not operate a vehicle; or

24 (iii) The person is not eligible to receive an ignition interlock  
25 driver's license under RCW 46.20.385 because the person is not a  
26 resident of Washington, is a habitual traffic offender, has already  
27 applied for or is already in possession of an ignition interlock  
28 driver's license, has never had a driver's license, has been certified  
29 under chapter 74.20A RCW as noncompliant with a child support order, or  
30 is subject to any other condition or circumstance that makes the person  
31 ineligible to obtain an ignition interlock driver's license.

32 (e) If a court finds that a person is not eligible to receive an  
33 ignition interlock driver's license under this section, the court is  
34 not required to make any further subsequent inquiry or determination as  
35 to the person's eligibility.

36 (f) If the court orders that a person refrain from consuming any  
37 alcohol and requires the person to apply for an ignition interlock  
38 driver's license, and the person states that he or she does not operate

1 a motor vehicle or the person is ineligible to obtain an ignition  
2 interlock driver's license, the court shall order the person to submit  
3 to alcohol monitoring through an alcohol detection breathalyzer device,  
4 transdermal sensor device, or other technology designed to detect  
5 alcohol in a person's system. Alcohol monitoring ordered under this  
6 subsection must be for the period of the mandatory license suspension  
7 or revocation. The person shall pay for the cost of the monitoring.  
8 The county or municipality where the penalty is being imposed shall  
9 determine the cost.

10 (g) The period of time for which ignition interlock use (~~or~~  
11 ~~alcohol monitoring~~) is required will be as follows:

12 (i) For a person who has not previously been restricted under this  
13 section, a period of one year;

14 (ii) For a person who has previously been restricted under (g)(i)  
15 of this subsection, a period of five years;

16 (iii) For a person who has previously been restricted under (g)(ii)  
17 of this subsection, a period of ten years.

18 (h) Beginning with incidents occurring on or after the effective  
19 date of this section, when calculating the period of time for the  
20 restriction under RCW 46.20.720(3), the department must also give the  
21 person a day-for-day credit for the time period, beginning from the  
22 date of the incident, during which the person kept an ignition  
23 interlock device installed on all vehicles the person operates. For  
24 the purposes of this subsection (5)(h), the term "all vehicles" does  
25 not include vehicles that would be subject to the employer exception  
26 under RCW 46.20.720(3).

27 (6) If a person who is convicted of a violation of RCW 46.61.502 or  
28 46.61.504 committed the offense while a passenger under the age of  
29 sixteen was in the vehicle, the court shall:

30 (a) In any case in which the installation and use of an interlock  
31 or other device is not mandatory under RCW 46.20.720 or other law,  
32 order the use of such a device for not less than sixty days following  
33 the restoration of the person's license, permit, or nonresident driving  
34 privileges; and

35 (b) In any case in which the installation and use of such a device  
36 is otherwise mandatory, order the use of such a device for an  
37 additional sixty days.



1 (7) In exercising its discretion in setting penalties within the  
2 limits allowed by this section, the court shall particularly consider  
3 the following:

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

6 (b) Whether at the time of the offense the person was driving or in  
7 physical control of a vehicle with one or more passengers.

8 (8) An offender punishable under this section is subject to the  
9 alcohol assessment and treatment provisions of RCW 46.61.5056.

10 (9) The license, permit, or nonresident privilege of a person  
11 convicted of driving or being in physical control of a motor vehicle  
12 while under the influence of intoxicating liquor or drugs must:

13 (a) If the person's alcohol concentration was less than 0.15, or if  
14 for reasons other than the person's refusal to take a test offered  
15 under RCW 46.20.308 there is no test result indicating the person's  
16 alcohol concentration:

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

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

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

23 (b) If the person's alcohol concentration was at least 0.15:

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

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

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

30 (c) If by reason of the person's refusal to take a test offered  
31 under RCW 46.20.308, there is no test result indicating the person's  
32 alcohol concentration:

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

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

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

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

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

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

12 (11)(a) In addition to any nonsuspendable and nondeferrable jail  
13 sentence required by this section, whenever the court imposes less than  
14 one year in jail, the court shall also suspend but shall not defer a  
15 period of confinement for a period not exceeding five years. The court  
16 shall impose conditions of probation that include: (i) Not driving a  
17 motor vehicle within this state without a valid license to drive and  
18 proof of financial responsibility for the future; (ii) not driving a  
19 motor vehicle within this state while having an alcohol concentration  
20 of 0.08 or more within two hours after driving; and (iii) not refusing  
21 to submit to a test of his or her breath or blood to determine alcohol  
22 concentration upon request of a law enforcement officer who has  
23 reasonable grounds to believe the person was driving or was in actual  
24 physical control of a motor vehicle within this state while under the  
25 influence of intoxicating liquor. The court may impose conditions of  
26 probation that include nonrepetition, installation of an ignition  
27 interlock device on the probationer's motor vehicle, alcohol or drug  
28 treatment, supervised probation, or other conditions that may be  
29 appropriate. The sentence may be imposed in whole or in part upon  
30 violation of a condition of probation during the suspension period.

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

35 (c) For each incident involving a violation of a mandatory  
36 condition of probation imposed under this subsection, the license,  
37 permit, or privilege to drive of the person shall be suspended by the  
38 court for thirty days or, if such license, permit, or privilege to

1 drive already is suspended, revoked, or denied at the time the finding  
2 of probation violation is made, the suspension, revocation, or denial  
3 then in effect shall be extended by thirty days. The court shall  
4 notify the department of any suspension, revocation, or denial or any  
5 extension of a suspension, revocation, or denial imposed under this  
6 subsection.

7 (12) A court may waive the electronic home monitoring requirements  
8 of this chapter when:

9 (a) The offender does not have a dwelling, telephone service, or  
10 any other necessity to operate an electronic home monitoring system;

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 monitoring  
14 penalty.

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

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

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

31 (14) For purposes of this section and RCW 46.61.502 and 46.61.504:

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

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

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

37 (iii) A conviction for a violation of RCW 46.61.520 committed while  
38 under the influence of intoxicating liquor or any drug, or a conviction

1 for a violation of RCW 46.61.520 committed in a reckless manner or with  
2 the disregard for the safety of others if the conviction is the result  
3 of a charge that was originally filed as a violation of RCW 46.61.520  
4 committed while under the influence of intoxicating liquor or any drug;

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

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

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

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

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

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

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

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

1       **Sec. 8.** RCW 10.05.140 and 2004 c 95 s 1 are each amended to read  
2 as follows:

3       As a condition of granting a deferred prosecution petition, the  
4 court shall order that the petitioner shall not operate a motor vehicle  
5 upon the public highways without a valid operator's license and proof  
6 of liability insurance. The amount of liability insurance shall be  
7 established by the court at not less than that established by RCW  
8 46.29.490. As a condition of granting a deferred prosecution petition  
9 on any alcohol-dependency based case, the court shall also order the  
10 installation of an ignition interlock under RCW 46.20.720. The  
11 required periods of use of the interlock shall be not less than the  
12 periods provided for in RCW 46.20.720(~~((+2+))~~)(3) (a), (b), and (c). As  
13 a condition of granting a deferred prosecution petition, the court may  
14 order the petitioner to make restitution and to pay costs as defined in  
15 RCW 10.01.160. To help ensure continued sobriety and reduce the  
16 likelihood of reoffense, the court may order reasonable conditions  
17 during the period of the deferred prosecution including, but not  
18 limited to, attendance at self-help recovery support groups for  
19 alcoholism or drugs, complete abstinence from alcohol and all  
20 nonprescribed mind-altering drugs, periodic urinalysis or breath  
21 analysis, and maintaining law-abiding behavior. The court may  
22 terminate the deferred prosecution program upon violation of the  
23 deferred prosecution order.

24       **Sec. 9.** RCW 9.94A.533 and 2009 c 141 s 2 are each amended to read  
25 as follows:

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

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

34       (3) The following additional times shall be added to the standard  
35 sentence range for felony crimes committed after July 23, 1995, if the  
36 offender or an accomplice was armed with a firearm as defined in RCW  
37 9.41.010 and the offender is being sentenced for one of the crimes

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

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

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

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

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

30 (e) Notwithstanding any other provision of law, all firearm  
31 enhancements under this section are mandatory, shall be served in total  
32 confinement, and shall run consecutively to all other sentencing  
33 provisions, including other firearm or deadly weapon enhancements, for  
34 all offenses sentenced under this chapter. However, whether or not a  
35 mandatory minimum term has expired, an offender serving a sentence  
36 under this subsection may be granted an extraordinary medical placement  
37 when authorized under RCW 9.94A.728(~~(+4)~~)(3);

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

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

13 (4) The following additional times shall be added to the standard  
14 sentence range for felony crimes committed after July 23, 1995, if the  
15 offender or an accomplice was armed with a deadly weapon other than a  
16 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
17 for one of the crimes listed in this subsection as eligible for any  
18 deadly weapon enhancements based on the classification of the completed  
19 felony crime. If the offender is being sentenced for more than one  
20 offense, the deadly weapon enhancement or enhancements must be added to  
21 the total period of confinement for all offenses, regardless of which  
22 underlying offense is subject to a deadly weapon enhancement. If the  
23 offender or an accomplice was armed with a deadly weapon other than a  
24 firearm as defined in RCW 9.41.010 and the offender is being sentenced  
25 for an anticipatory offense under chapter 9A.28 RCW to commit one of  
26 the crimes listed in this subsection as eligible for any deadly weapon  
27 enhancements, the following additional times shall be added to the  
28 standard sentence range determined under subsection (2) of this section  
29 based on the felony crime of conviction as classified under RCW  
30 9A.28.020:

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

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

37 (c) Six months for any felony defined under any law as a class C

1 felony or with a statutory maximum sentence of five years, or both, and  
2 not covered under (f) of this subsection;

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

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

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

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

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



1 subsection, the following additional times shall be added to the  
2 standard sentence range determined under subsection (2) of this  
3 section:

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

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

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

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

12 (6) An additional twenty-four months shall be added to the standard  
13 sentence range for any ranked offense involving a violation of chapter  
14 69.50 RCW if the offense was also a violation of RCW 69.50.435 or  
15 (~~9.94A.605~~) 9.94A.827. All enhancements under this subsection shall  
16 run consecutively to all other sentencing provisions, for all offenses  
17 sentenced under this chapter.

18 (7) An additional two years shall be added to the standard sentence  
19 range for vehicular homicide committed while under the influence of  
20 intoxicating liquor or any drug as defined by RCW 46.61.502 for each  
21 prior offense as defined in RCW 46.61.5055. All enhancements under  
22 this subsection shall be mandatory, shall be served in total  
23 confinement, and shall run consecutively to all other sentencing  
24 provisions.

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

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

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

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

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

15 (b) Notwithstanding any other provision of law, all sexual  
16 motivation enhancements under this subsection are mandatory, shall be  
17 served in total confinement, and shall run consecutively to all other  
18 sentencing provisions, including other sexual motivation enhancements,  
19 for all offenses sentenced under this chapter. However, whether or not  
20 a mandatory minimum term has expired, an offender serving a sentence  
21 under this subsection may be granted an extraordinary medical placement  
22 when authorized under RCW 9.94A.728(~~(+4)~~)(3);

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

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

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

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

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

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

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

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

36 (11) An additional twelve months and one day shall be added to the  
37 standard sentence range for a conviction of attempting to elude a

1 police vehicle as defined by RCW 46.61.024, if the conviction included  
2 a finding by special allegation of endangering one or more persons  
3 under RCW 9.94A.834.

4 (12) An additional twelve months shall be added to the standard  
5 sentence range for an offense that is also a violation of RCW  
6 9.94A.831.

7 NEW SECTION. **Sec. 10.** A new section is added to chapter 2.28 RCW  
8 to read as follows:

9 (1) Counties may establish and operate DUI courts.

10 (2) For the purposes of this section, "DUI court" means a court  
11 that has special calendars or dockets designed to achieve a reduction  
12 in recidivism of impaired driving among nonviolent, alcohol abusing  
13 offenders, whether adult or juvenile, by increasing their likelihood  
14 for successful rehabilitation through early, continuous, and intense  
15 judicially supervised treatment; mandatory periodic testing for alcohol  
16 use and, if applicable, drug use; and the use of appropriate sanctions  
17 and other rehabilitation services.

18 (3)(a) Any jurisdiction that seeks a state appropriation to fund a  
19 DUI court program must first:

20 (i) Exhaust all federal funding that is available to support the  
21 operations of its DUI court and associated services; and

22 (ii) Match, on a dollar-for-dollar basis, state moneys allocated  
23 for DUI court programs with local cash or in-kind resources. Moneys  
24 allocated by the state must be used to supplement, not supplant, other  
25 federal, state, and local funds for DUI court operations and associated  
26 services. However, until June 30, 2014, no match is required for state  
27 moneys expended for the administrative and overhead costs associated  
28 with the operation of a DUI court established as of January 1, 2011.

29 (b) Any county that establishes a DUI court pursuant to this  
30 section shall establish minimum requirements for the participation of  
31 offenders in the program. The DUI court may adopt local requirements  
32 that are more stringent than the minimum. The minimum requirements  
33 are:

34 (i) The offender would benefit from alcohol treatment;

35 (ii) The offender has not previously been convicted of a serious  
36 violent offense or sex offense as defined in RCW 9.94A.030, vehicular

1 homicide under RCW 46.61.520, vehicular assault under RCW 46.61.522, or  
2 an equivalent out-of-state offense; and

3 (iii) Without regard to whether proof of any of these elements is  
4 required to convict, the offender is not currently charged with or  
5 convicted of an offense:

6 (A) That is a sex offense;

7 (B) That is a serious violent offense;

8 (C) That is vehicular homicide or vehicular assault;

9 (D) During which the defendant used a firearm; or

10 (E) During which the defendant caused substantial or great bodily  
11 harm or death to another person.

12 **Sec. 11.** RCW 2.28.190 and 2005 c 504 s 502 are each amended to  
13 read as follows:

14 Any county that has established a DUI court, drug court, and a  
15 mental health court under this chapter may combine the functions of  
16 (~~both~~) these courts into a single therapeutic court.

17 **Sec. 12.** RCW 46.61.5054 and 1995 c 398 s 15 and 1995 c 332 s 13  
18 are each reenacted and amended to read as follows:

19 (1)(a) In addition to penalties set forth in RCW 46.61.5051 through  
20 46.61.5053 until September 1, 1995, and RCW 46.61.5055 thereafter, a  
21 (~~one~~) two hundred (~~twenty-five~~) dollar fee shall be assessed to a  
22 person who is either convicted, sentenced to a lesser charge, or given  
23 deferred prosecution, as a result of an arrest for violating RCW  
24 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the  
25 purpose of funding the Washington state toxicology laboratory and the  
26 Washington state patrol for grants and activities to increase the  
27 conviction rate and decrease the incidence of persons driving under the  
28 influence of alcohol or drugs.

29 (b) Upon a verified petition by the person assessed the fee, the  
30 court may suspend payment of all or part of the fee if it finds that  
31 the person does not have the ability to pay.

32 (c) When a minor has been adjudicated a juvenile offender for an  
33 offense which, if committed by an adult, would constitute a violation  
34 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall  
35 assess the (~~one~~) two hundred (~~twenty-five~~) dollar fee under (a) of

1 this subsection. Upon a verified petition by a minor assessed the fee,  
2 the court may suspend payment of all or part of the fee if it finds  
3 that the minor does not have the ability to pay the fee.

4 (2) The fee assessed under subsection (1) of this section shall be  
5 collected by the clerk of the court and, subject to subsection (4) of  
6 this section, one hundred seventy-five dollars of the fee must be  
7 distributed as follows:

8 (a) Forty percent shall be subject to distribution under RCW  
9 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

10 (b) The remainder of the fee shall be forwarded to the state  
11 treasurer who shall, through June 30, 1997, deposit: Fifty percent in  
12 the death investigations' account to be used solely for funding the  
13 state toxicology laboratory blood or breath testing programs; and fifty  
14 percent in the state patrol highway account to be used solely for  
15 funding activities to increase the conviction rate and decrease the  
16 incidence of persons driving under the influence of alcohol or drugs.  
17 Effective July 1, 1997, the remainder of the fee shall be forwarded to  
18 the state treasurer who shall deposit: Fifteen percent in the death  
19 investigations' account to be used solely for funding the state  
20 toxicology laboratory blood or breath testing programs; and eighty-five  
21 percent in the state patrol highway account to be used solely for  
22 funding activities to increase the conviction rate and decrease the  
23 incidence of persons driving under the influence of alcohol or drugs.

24 (3) Twenty-five dollars of the fee assessed under subsection (1) of  
25 this section must be distributed to the highway safety account to be  
26 used solely for funding Washington traffic safety commission grants to  
27 reduce statewide collisions caused by persons driving under the  
28 influence of alcohol or drugs. Grants awarded under this subsection  
29 may be for projects that encourage collaboration with other community,  
30 governmental, and private organizations, and that utilize innovative  
31 approaches based on best practices or proven strategies supported by  
32 research or rigorous evaluation. Grants recipients may include, for  
33 example:

34 (a) DUI courts; and

35 (b) Jurisdictions implementing the victim impact panel registries  
36 under RCW 46.61.5152 and section 15 of this act.

37 (4) If the court has suspended payment of part of the fee pursuant

1 to subsection (1)(b) or (c) of this section, amounts collected shall be  
2 distributed proportionately.

3 (5) This section applies to any offense committed on or after July  
4 1, 1993.

5 **Sec. 13.** RCW 46.61.5056 and 1995 c 332 s 14 are each amended to  
6 read as follows:

7 (1) A person subject to alcohol assessment and treatment under RCW  
8 46.61.5055 shall be required by the court to complete a course in an  
9 alcohol information school approved by the department of social and  
10 health services or to complete more intensive treatment in a program  
11 approved by the department of social and health services, as determined  
12 by the court. The court shall notify the department of licensing  
13 whenever it orders a person to complete a course or treatment program  
14 under this section.

15 (2) A diagnostic evaluation and treatment recommendation shall be  
16 prepared under the direction of the court by an alcoholism agency  
17 approved by the department of social and health services or a qualified  
18 probation department approved by the department of social and health  
19 services. A copy of the report shall be forwarded to the court and the  
20 department of licensing. Based on the diagnostic evaluation, the court  
21 shall determine whether the person shall be required to complete a  
22 course in an alcohol information school approved by the department of  
23 social and health services or more intensive treatment in a program  
24 approved by the department of social and health services.

25 (3) Standards for approval for alcohol treatment programs shall be  
26 prescribed by the department of social and health services. The  
27 department of social and health services shall periodically review the  
28 costs of alcohol information schools and treatment programs.

29 (4) Any agency that provides treatment ordered under RCW  
30 46.61.5055, shall immediately report to the appropriate probation  
31 department where applicable, otherwise to the court, and to the  
32 department of licensing any noncompliance by a person with the  
33 conditions of his or her ordered treatment. The court shall notify the  
34 department of licensing and the department of social and health  
35 services of any failure by an agency to so report noncompliance. Any  
36 agency with knowledge of noncompliance that fails to so report shall be  
37 fined two hundred fifty dollars by the department of social and health

1 services. Upon three such failures by an agency within one year, the  
2 department of social and health services shall revoke the agency's  
3 approval under this section.

4 (5) The department of licensing and the department of social and  
5 health services may adopt such rules as are necessary to carry out this  
6 section.

7 **Sec. 14.** RCW 46.61.5152 and 2006 c 73 s 17 are each amended to  
8 read as follows:

9 In addition to penalties that may be imposed under RCW 46.61.5055,  
10 the court may require a person who is convicted of a nonfelony  
11 violation of RCW 46.61.502 or 46.61.504 or who enters a deferred  
12 prosecution program under RCW 10.05.020 based on a nonfelony violation  
13 of RCW 46.61.502 or 46.61.504, to attend an educational program, such  
14 as a victim impact panel, focusing on the emotional, physical, and  
15 financial suffering of victims who were injured by persons convicted of  
16 driving while under the influence of intoxicants. The victim impact  
17 panel program must meet the minimum standards established under section  
18 15 of this act.

19 NEW SECTION. **Sec. 15.** A new section is added to chapter 10.01 RCW  
20 to read as follows:

21 (1) The Washington traffic safety commission may develop and  
22 maintain a registry of qualified victim impact panels. When imposing  
23 a requirement that an offender attend a victim impact panel under RCW  
24 46.61.5152, the court may refer the offender to a victim impact panel  
25 that is listed in the registry. The Washington traffic safety  
26 commission may consult with victim impact panel organizations to  
27 develop and maintain a registry.

28 (2) To be listed on the registry, the victim impact panel must meet  
29 the following minimum standards:

30 (a) The victim impact panel must address the effects of driving  
31 while impaired on individuals and families and address alternatives to  
32 drinking and driving and drug use and driving;

33 (b) The victim impact panel should strive to have at least two  
34 different speakers, one of whom is a victim survivor of an impaired  
35 driving crash, to present their stories in person. A victim survivor



1 may be the panel facilitator. The victim impact panel should be a  
2 minimum of sixty minutes of presentation, not including registration  
3 and administration time.

4 (c) The victim impact panel shall have policies and procedures to  
5 recruit, screen, train, and provide feedback and ongoing support to the  
6 panelists. The panel shall take reasonable steps to verify the  
7 authenticity of each panelist's story;

8 (d) The victim impact panel shall charge a reasonable fee to all  
9 persons required to attend, unless otherwise ordered by the court;

10 (e) The victim impact panel shall have a policy to prohibit  
11 admittance of anyone under the influence of alcohol or drugs, or anyone  
12 whose actions or behavior are otherwise inappropriate. The victim  
13 impact panel may institute additional admission requirements;

14 (f) The victim impact panel shall maintain attendance records for  
15 at least five years;

16 (g) The victim impact panel shall make reasonable efforts to use a  
17 facility that meets standards established by the Americans with  
18 disabilities act;

19 (h) The victim impact panel may provide referral information to  
20 other community services; and

21 (i) The victim impact panel shall have a designated facilitator who  
22 is responsible for the compliance with these minimum standards and who  
23 is responsible for maintaining appropriate records and communication  
24 with the referring courts and probationary departments regarding  
25 attendance or nonattendance.

26 NEW SECTION. **Sec. 16.** Sections 1 through 9 of this act take  
27 effect September 1, 2011."

**E2SHB 1789** - S COMM AMD  
By Committee on Transportation

**ADOPTED AND ENGROSSED 4/8/11**

28 On page 1, line 2 of the title, after "drugs;" strike the remainder  
29 of the title and insert "amending RCW 46.20.385, 46.61.502, 46.61.504,

1 46.61.500, 46.61.5249, 46.20.720, 46.61.5055, 10.05.140, 9.94A.533,  
2 2.28.190, 46.61.5056, and 46.61.5152; reenacting and amending RCW  
3 46.61.5054; adding a new section to chapter 2.28 RCW; adding a new  
4 section to chapter 10.01 RCW; providing an effective date; and  
5 prescribing penalties."

--- END ---