

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 3254

60th Legislature
2008 Regular Session

Passed by the House March 10, 2008
Yeas 94 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 7, 2008
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 3254** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 3254

AS AMENDED BY THE SENATE

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By House Transportation (originally sponsored by Representatives Goodman, Pedersen, Simpson, Morrell, Green, Kelley, Kagi, and Roberts)

READ FIRST TIME 02/12/08.

1 AN ACT Relating to accountability for persons driving under the
2 influence of intoxicating liquor or drugs; amending RCW 46.20.342,
3 46.20.380, 46.20.391, 46.20.400, 46.20.410, 46.20.720, 46.20.740,
4 46.61.5055, 10.05.010, 10.05.020, 10.05.090, 10.05.160, 46.61.502, and
5 46.61.504; reenacting and amending RCW 46.20.308 and 46.63.020; adding
6 a new section to chapter 46.04 RCW; adding a new section to chapter
7 46.68 RCW; adding new sections to chapter 46.20 RCW; adding a new
8 section to chapter 10.05 RCW; creating a new section; and providing an
9 effective date.

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

11 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.04 RCW
12 to read as follows:

13 "Ignition interlock driver's license" means a permit issued to a
14 person by the department that allows the person to operate a
15 noncommercial motor vehicle with an ignition interlock device while the
16 person's regular driver's license is suspended, revoked, or denied.

17 **Sec. 2.** RCW 46.20.308 and 2005 c 314 s 307 and 2005 c 269 s 1 are
18 each reenacted and amended to read as follows:

1 (1) Any person who operates a motor vehicle within this state is
2 deemed to have given consent, subject to the provisions of RCW
3 46.61.506, to a test or tests of his or her breath or blood for the
4 purpose of determining the alcohol concentration or presence of any
5 drug in his or her breath or blood if arrested for any offense where,
6 at the time of the arrest, the arresting officer has reasonable grounds
7 to believe the person had been driving or was in actual physical
8 control of a motor vehicle while under the influence of intoxicating
9 liquor or any drug or was in violation of RCW 46.61.503. Neither
10 consent nor this section precludes a police officer from obtaining a
11 search warrant for a person's breath or blood.

12 (2) The test or tests of breath shall be administered at the
13 direction of a law enforcement officer having reasonable grounds to
14 believe the person to have been driving or in actual physical control
15 of a motor vehicle within this state while under the influence of
16 intoxicating liquor or any drug or the person to have been driving or
17 in actual physical control of a motor vehicle while having alcohol in
18 a concentration in violation of RCW 46.61.503 in his or her system and
19 being under the age of twenty-one. However, in those instances where
20 the person is incapable due to physical injury, physical incapacity, or
21 other physical limitation, of providing a breath sample or where the
22 person is being treated in a hospital, clinic, doctor's office,
23 emergency medical vehicle, ambulance, or other similar facility or
24 where the officer has reasonable grounds to believe that the person is
25 under the influence of a drug, a blood test shall be administered by a
26 qualified person as provided in RCW 46.61.506(5). The officer shall
27 inform the person of his or her right to refuse the breath or blood
28 test, and of his or her right to have additional tests administered by
29 any qualified person of his or her choosing as provided in RCW
30 46.61.506. The officer shall warn the driver, in substantially the
31 following language, that:

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

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

37 (c) If the driver submits to the test and the test is administered,
38 the driver's license, permit, or privilege to drive will be suspended,

1 revoked, or denied for at least ninety days if the driver is age
2 twenty-one or over and the test indicates the alcohol concentration of
3 the driver's breath or blood is 0.08 or more, or if the driver is under
4 age twenty-one and the test indicates the alcohol concentration of the
5 driver's breath or blood is 0.02 or more, or if the driver is under age
6 twenty-one and the driver is in violation of RCW 46.61.502 or
7 46.61.504; and

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

11 (3) Except as provided in this section, the test administered shall
12 be of the breath only. If an individual is unconscious or is under
13 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
14 or vehicular assault as provided in RCW 46.61.522, or if an individual
15 is under arrest for the crime of driving while under the influence of
16 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
17 results from an accident in which there has been serious bodily injury
18 to another person, a breath or blood test may be administered without
19 the consent of the individual so arrested.

20 (4) Any person who is dead, unconscious, or who is otherwise in a
21 condition rendering him or her incapable of refusal, shall be deemed
22 not to have withdrawn the consent provided by subsection (1) of this
23 section and the test or tests may be administered, subject to the
24 provisions of RCW 46.61.506, and the person shall be deemed to have
25 received the warnings required under subsection (2) of this section.

26 (5) If, following his or her arrest and receipt of warnings under
27 subsection (2) of this section, the person arrested refuses upon the
28 request of a law enforcement officer to submit to a test or tests of
29 his or her breath or blood, no test shall be given except as authorized
30 under subsection (3) or (4) of this section.

31 (6) If, after arrest and after the other applicable conditions and
32 requirements of this section have been satisfied, a test or tests of
33 the person's blood or breath is administered and the test results
34 indicate that the alcohol concentration of the person's breath or blood
35 is 0.08 or more if the person is age twenty-one or over, or 0.02 or
36 more if the person is under the age of twenty-one, or the person
37 refuses to submit to a test, the arresting officer or other law

1 enforcement officer at whose direction any test has been given, or the
2 department, where applicable, if the arrest results in a test of the
3 person's blood, shall:

4 (a) Serve notice in writing on the person on behalf of the
5 department of its intention to suspend, revoke, or deny the person's
6 license, permit, or privilege to drive as required by subsection (7) of
7 this section;

8 (b) Serve notice in writing on the person on behalf of the
9 department of his or her right to a hearing, specifying the steps he or
10 she must take to obtain a hearing as provided by subsection (8) of this
11 section and that the person waives the right to a hearing if he or she
12 receives an ignition interlock driver's license;

13 (c) Mark the person's Washington state driver's license or permit
14 to drive, if any, in a manner authorized by the department;

15 (d) Serve notice in writing that the marked license or permit, if
16 any, is a temporary license that is valid for sixty days from the date
17 of arrest or from the date notice has been given in the event notice is
18 given by the department following a blood test, or until the
19 suspension, revocation, or denial of the person's license, permit, or
20 privilege to drive is sustained at a hearing pursuant to subsection (8)
21 of this section, whichever occurs first. No temporary license is valid
22 to any greater degree than the license or permit that it replaces; and

23 (e) Immediately notify the department of the arrest and transmit to
24 the department within seventy-two hours, except as delayed as the
25 result of a blood test, a sworn report or report under a declaration
26 authorized by RCW 9A.72.085 that states:

27 (i) That the officer had reasonable grounds to believe the arrested
28 person had been driving or was in actual physical control of a motor
29 vehicle within this state while under the influence of intoxicating
30 liquor or drugs, or both, or was under the age of twenty-one years and
31 had been driving or was in actual physical control of a motor vehicle
32 while having an alcohol concentration in violation of RCW 46.61.503;

33 (ii) That after receipt of the warnings required by subsection (2)
34 of this section the person refused to submit to a test of his or her
35 blood or breath, or a test was administered and the results indicated
36 that the alcohol concentration of the person's breath or blood was 0.08
37 or more if the person is age twenty-one or over, or was 0.02 or more if
38 the person is under the age of twenty-one; and

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

2 (7) The department of licensing, upon the receipt of a sworn report
3 or report under a declaration authorized by RCW 9A.72.085 under
4 subsection (6)(e) of this section, shall suspend, revoke, or deny the
5 person's license, permit, or privilege to drive or any nonresident
6 operating privilege, as provided in RCW 46.20.3101, such suspension,
7 revocation, or denial to be effective beginning sixty days from the
8 date of arrest or from the date notice has been given in the event
9 notice is given by the department following a blood test, or when
10 sustained at a hearing pursuant to subsection (8) of this section,
11 whichever occurs first.

12 (8) A person receiving notification under subsection (6)(b) of this
13 section may, within (~~thirty~~) twenty days after the notice has been
14 given, request in writing a formal hearing before the department. The
15 person shall pay a fee of two hundred dollars as part of the request.
16 If the request is mailed, it must be postmarked within (~~thirty~~)
17 twenty days after receipt of the notification. Upon timely receipt of
18 such a request for a formal hearing, including receipt of the required
19 two hundred dollar fee, the department shall afford the person an
20 opportunity for a hearing. The department may waive the required two
21 hundred dollar fee if the person is an indigent as defined in RCW
22 10.101.010. Except as otherwise provided in this section, the hearing
23 is subject to and shall be scheduled and conducted in accordance with
24 RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the
25 county of the arrest, except that all or part of the hearing may, at
26 the discretion of the department, be conducted by telephone or other
27 electronic means. The hearing shall be held within sixty days
28 following the arrest or following the date notice has been given in the
29 event notice is given by the department following a blood test, unless
30 otherwise agreed to by the department and the person, in which case the
31 action by the department shall be stayed, and any valid temporary
32 license marked under subsection (6)(c) of this section extended, if the
33 person is otherwise eligible for licensing. For the purposes of this
34 section, the scope of the hearing shall cover the issues of whether a
35 law enforcement officer had reasonable grounds to believe the person
36 had been driving or was in actual physical control of a motor vehicle
37 within this state while under the influence of intoxicating liquor or
38 any drug or had been driving or was in actual physical control of a

1 motor vehicle within this state while having alcohol in his or her
2 system in a concentration of 0.02 or more if the person was under the
3 age of twenty-one, whether the person was placed under arrest, and (a)
4 whether the person refused to submit to the test or tests upon request
5 of the officer after having been informed that such refusal would
6 result in the revocation of the person's license, permit, or privilege
7 to drive, or (b) if a test or tests were administered, whether the
8 applicable requirements of this section were satisfied before the
9 administration of the test or tests, whether the person submitted to
10 the test or tests, or whether a test was administered without express
11 consent as permitted under this section, and whether the test or tests
12 indicated that the alcohol concentration of the person's breath or
13 blood was 0.08 or more if the person was age twenty-one or over at the
14 time of the arrest, or 0.02 or more if the person was under the age of
15 twenty-one at the time of the arrest. The sworn report or report under
16 a declaration authorized by RCW 9A.72.085 submitted by a law
17 enforcement officer is prima facie evidence that the officer had
18 reasonable grounds to believe the person had been driving or was in
19 actual physical control of a motor vehicle within this state while
20 under the influence of intoxicating liquor or drugs, or both, or the
21 person had been driving or was in actual physical control of a motor
22 vehicle within this state while having alcohol in his or her system in
23 a concentration of 0.02 or more and was under the age of twenty-one and
24 that the officer complied with the requirements of this section.

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

1 order that the suspension, revocation, or denial either be rescinded or
2 sustained.

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

36 (10)(a) If a person whose driver's license, permit, or privilege to
37 drive has been or will be suspended, revoked, or denied under
38 subsection (7) of this section, other than as a result of a breath or

1 blood test refusal, and who has not committed an offense for which he
2 or she was granted a deferred prosecution under chapter 10.05 RCW,
3 petitions a court for a deferred prosecution on criminal charges
4 arising out of the arrest for which action has been or will be taken
5 under subsection (7) of this section, or notifies the department of
6 licensing of the intent to seek such a deferred prosecution, then the
7 license suspension or revocation shall be stayed pending entry of the
8 deferred prosecution. The stay shall not be longer than one hundred
9 fifty days after the date charges are filed, or two years after the
10 date of the arrest, whichever time period is shorter. If the court
11 stays the suspension, revocation, or denial, it may impose conditions
12 on such stay. If the person is otherwise eligible for licensing, the
13 department shall issue a temporary license, or extend any valid
14 temporary license marked under subsection (6) of this section, for the
15 period of the stay. If a deferred prosecution treatment plan is not
16 recommended in the report made under RCW 10.05.050, or if treatment is
17 rejected by the court, or if the person declines to accept an offered
18 treatment plan, or if the person violates any condition imposed by the
19 court, then the court shall immediately direct the department to cancel
20 the stay and any temporary marked license or extension of a temporary
21 license issued under this subsection.

22 (b) A suspension, revocation, or denial imposed under this section,
23 other than as a result of a breath or blood test refusal, shall be
24 stayed if the person is accepted for deferred prosecution as provided
25 in chapter 10.05 RCW for the incident upon which the suspension,
26 revocation, or denial is based. If the deferred prosecution is
27 terminated, the stay shall be lifted and the suspension, revocation, or
28 denial reinstated. If the deferred prosecution is completed, the stay
29 shall be lifted and the suspension, revocation, or denial canceled.

30 (c) The provisions of (b) of this subsection relating to a stay of
31 a suspension, revocation, or denial and the cancellation of any
32 suspension, revocation, or denial do not apply to the suspension,
33 revocation, denial, or disqualification of a person's commercial
34 driver's license or privilege to operate a commercial motor vehicle.

35 (11) When it has been finally determined under the procedures of
36 this section that a nonresident's privilege to operate a motor vehicle
37 in this state has been suspended, revoked, or denied, the department

1 shall give information in writing of the action taken to the motor
2 vehicle administrator of the state of the person's residence and of any
3 state in which he or she has a license.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.68 RCW
5 to read as follows:

6 The ignition interlock device revolving account is created in the
7 state treasury. All receipts from the fee assessed under section 9(6)
8 of this act must be deposited into the account. Moneys in the account
9 may be spent only after appropriation. Expenditures from the account
10 may be used only for administering and operating the ignition interlock
11 device revolving account program.

12 **Sec. 4.** RCW 46.20.342 and 2004 c 95 s 5 are each amended to read
13 as follows:

14 (1) It is unlawful for any person to drive a motor vehicle in this
15 state while that person is in a suspended or revoked status or when his
16 or her privilege to drive is suspended or revoked in this or any other
17 state. Any person who has a valid Washington driver's license is not
18 guilty of a violation of this section.

19 (a) A person found to be an habitual offender under chapter 46.65
20 RCW, who violates this section while an order of revocation issued
21 under chapter 46.65 RCW prohibiting such operation is in effect, is
22 guilty of driving while license suspended or revoked in the first
23 degree, a gross misdemeanor. Upon the first such conviction, the
24 person shall be punished by imprisonment for not less than ten days.
25 Upon the second conviction, the person shall be punished by
26 imprisonment for not less than ninety days. Upon the third or
27 subsequent conviction, the person shall be punished by imprisonment for
28 not less than one hundred eighty days. If the person is also convicted
29 of the offense defined in RCW 46.61.502 or 46.61.504, when both
30 convictions arise from the same event, the minimum sentence of
31 confinement shall be not less than ninety days. The minimum sentence
32 of confinement required shall not be suspended or deferred. A
33 conviction under this subsection does not prevent a person from
34 petitioning for reinstatement as provided by RCW 46.65.080.

35 (b) A person who violates this section while an order of suspension
36 or revocation prohibiting such operation is in effect and while the

1 person is not eligible to reinstate his or her driver's license or
2 driving privilege, other than for a suspension for the reasons
3 described in (c) of this subsection, is guilty of driving while license
4 suspended or revoked in the second degree, a gross misdemeanor. This
5 subsection applies when a person's driver's license or driving
6 privilege has been suspended or revoked by reason of:

7 (i) A conviction of a felony in the commission of which a motor
8 vehicle was used;

9 (ii) A previous conviction under this section;

10 (iii) A notice received by the department from a court or diversion
11 unit as provided by RCW 46.20.265, relating to a minor who has
12 committed, or who has entered a diversion unit concerning an offense
13 relating to alcohol, legend drugs, controlled substances, or imitation
14 controlled substances;

15 (iv) A conviction of RCW 46.20.410, relating to the violation of
16 restrictions of an occupational ((~~or~~)) driver's license, a temporary
17 restricted driver's license, or an ignition interlock driver's license;

18 (v) A conviction of RCW 46.20.345, relating to the operation of a
19 motor vehicle with a suspended or revoked license;

20 (vi) A conviction of RCW 46.52.020, relating to duty in case of
21 injury to or death of a person or damage to an attended vehicle;

22 (vii) A conviction of RCW 46.61.024, relating to attempting to
23 elude pursuing police vehicles;

24 (viii) A conviction of RCW 46.61.500, relating to reckless driving;

25 (ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a
26 person under the influence of intoxicating liquor or drugs;

27 (x) A conviction of RCW 46.61.520, relating to vehicular homicide;

28 (xi) A conviction of RCW 46.61.522, relating to vehicular assault;

29 (xii) A conviction of RCW 46.61.527(4), relating to reckless
30 endangerment of roadway workers;

31 (xiii) A conviction of RCW 46.61.530, relating to racing of
32 vehicles on highways;

33 (xiv) A conviction of RCW 46.61.685, relating to leaving children
34 in an unattended vehicle with motor running;

35 (xv) A conviction of RCW 46.61.740, relating to theft of motor
36 vehicle fuel;

37 (xvi) A conviction of RCW 46.64.048, relating to attempting,
38 aiding, abetting, coercing, and committing crimes;

1 (xvii) An administrative action taken by the department under
2 chapter 46.20 RCW; or

3 (xviii) A conviction of a local law, ordinance, regulation, or
4 resolution of a political subdivision of this state, the federal
5 government, or any other state, of an offense substantially similar to
6 a violation included in this subsection.

7 (c) A person who violates this section when his or her driver's
8 license or driving privilege is, at the time of the violation,
9 suspended or revoked solely because (i) the person must furnish proof
10 of satisfactory progress in a required alcoholism or drug treatment
11 program, (ii) the person must furnish proof of financial responsibility
12 for the future as provided by chapter 46.29 RCW, (iii) the person has
13 failed to comply with the provisions of chapter 46.29 RCW relating to
14 uninsured accidents, (iv) the person has failed to respond to a notice
15 of traffic infraction, failed to appear at a requested hearing,
16 violated a written promise to appear in court, or has failed to comply
17 with the terms of a notice of traffic infraction or citation, as
18 provided in RCW 46.20.289, (v) the person has committed an offense in
19 another state that, if committed in this state, would not be grounds
20 for the suspension or revocation of the person's driver's license, (vi)
21 the person has been suspended or revoked by reason of one or more of
22 the items listed in (b) of this subsection, but was eligible to
23 reinstate his or her driver's license or driving privilege at the time
24 of the violation, or (vii) the person has received traffic citations or
25 notices of traffic infraction that have resulted in a suspension under
26 RCW 46.20.267 relating to intermediate drivers' licenses, or any
27 combination of (i) through (vii), is guilty of driving while license
28 suspended or revoked in the third degree, a misdemeanor.

29 (2) Upon receiving a record of conviction of any person or upon
30 receiving an order by any juvenile court or any duly authorized court
31 officer of the conviction of any juvenile under this section, the
32 department shall:

33 (a) For a conviction of driving while suspended or revoked in the
34 first degree, as provided by subsection (1)(a) of this section, extend
35 the period of administrative revocation imposed under chapter 46.65 RCW
36 for an additional period of one year from and after the date the person
37 would otherwise have been entitled to apply for a new license or have
38 his or her driving privilege restored; or

1 (b) For a conviction of driving while suspended or revoked in the
2 second degree, as provided by subsection (1)(b) of this section, not
3 issue a new license or restore the driving privilege for an additional
4 period of one year from and after the date the person would otherwise
5 have been entitled to apply for a new license or have his or her
6 driving privilege restored; or

7 (c) Not extend the period of suspension or revocation if the
8 conviction was under subsection (1)(c) of this section. If the
9 conviction was under subsection (1)(a) or (b) of this section and the
10 court recommends against the extension and the convicted person has
11 obtained a valid driver's license, the period of suspension or
12 revocation shall not be extended.

13 **Sec. 5.** RCW 46.20.380 and 2004 c 95 s 6 are each amended to read
14 as follows:

15 No person may file an application for an occupational ~~((or))~~
16 driver's license, a temporary restricted driver's license, or an
17 ignition interlock driver's license as provided in RCW 46.20.391 and
18 section 9 of this act unless he or she first pays to the director or
19 other person authorized to accept applications and fees for driver's
20 licenses a fee of one hundred dollars. The applicant shall receive
21 upon payment an official receipt for the payment of such fee. All such
22 fees shall be forwarded to the director who shall transmit such fees to
23 the state treasurer in the same manner as other driver's license fees.

24 **Sec. 6.** RCW 46.20.391 and 2004 c 95 s 7 are each amended to read
25 as follows:

26 (1)~~((a))~~ Any person licensed under this chapter who is convicted
27 of an offense relating to motor vehicles for which suspension or
28 revocation of the driver's license is mandatory, other than vehicular
29 homicide ~~((or))~~, vehicular assault, ~~((or who has had his or her license~~
30 ~~suspended, revoked, or denied under RCW 46.20.3101))~~ driving while
31 under the influence of intoxicating liquor or any drug, or being in
32 actual physical control of a motor vehicle while under the influence of
33 intoxicating liquor or any drug, may submit to the department an
34 application for a temporary restricted driver's license. The
35 department, upon receipt of the prescribed fee and upon determining
36 that the petitioner is eligible to receive the license, may issue a

1 temporary restricted driver's license and may set definite restrictions
2 as provided in RCW 46.20.394. ~~((No person may petition for, and the
3 department shall not issue, a temporary restricted driver's license
4 that is effective during the first thirty days of any suspension or
5 revocation imposed for a violation of RCW 46.61.502 or 46.61.504 or,
6 for a suspension, revocation, or denial imposed under RCW 46.20.3101,
7 during the required minimum portion of the periods of suspension,
8 revocation, or denial established under (c) of this subsection.~~

9 ~~(b) An applicant under this subsection whose driver's license is
10 suspended or revoked for an alcohol-related offense shall provide proof
11 to the satisfaction of the department that a functioning ignition
12 interlock device has been installed on a vehicle owned or operated by
13 the person.~~

14 ~~(i) The department shall require the person to maintain such a
15 device on a vehicle owned or operated by the person and shall restrict
16 the person to operating only vehicles equipped with such a device, for
17 the remainder of the period of suspension, revocation, or denial.~~

18 ~~(ii) Subject to any periodic renewal requirements established by
19 the department pursuant to this section and subject to any applicable
20 compliance requirements under this chapter or other law, a temporary
21 restricted driver's license granted after a suspension or revocation
22 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
23 portion of any concurrent or consecutive suspension or revocation that
24 may be imposed as the result of administrative action and criminal
25 conviction arising out of the same incident.~~

26 ~~(iii) The time period during which the person is licensed under
27 this section shall apply on a day for day basis toward satisfying the
28 period of time the ignition interlock device restriction is required
29 under RCW 46.20.720 (1) and (2) (a), (b), and (c).~~

30 ~~(c) The department shall provide by rule the minimum portions of
31 the periods of suspension, revocation, or denial set forth in RCW
32 46.20.3101 after which a person may apply for a temporary restricted
33 driver's license under this section. In establishing the minimum
34 portions of the periods of suspension, revocation, or denial, the
35 department shall consider the requirements of federal law regarding
36 state eligibility for grants or other funding, and shall establish such
37 periods so as to ensure that the state will maintain its eligibility,~~

1 ~~or establish eligibility, to obtain incentive grants or any other~~
2 ~~federal funding.))~~

3 (2)(a) A person licensed under this chapter whose driver's license
4 is suspended administratively due to failure to appear or pay a traffic
5 ticket under RCW 46.20.289; a violation of the financial responsibility
6 laws under chapter 46.29 RCW; or for multiple violations within a
7 specified period of time under RCW 46.20.291, may apply to the
8 department for an occupational driver's license.

9 (b) If the suspension is for failure to respond, pay, or comply
10 with a notice of traffic infraction or conviction, the applicant must
11 enter into a payment plan with the court.

12 (c) An occupational driver's license issued to an applicant
13 described in (a) of this subsection shall be valid for the period of
14 the suspension or revocation.

15 (3) An applicant for an occupational or temporary restricted
16 driver's license who qualifies under subsection (1) or (2) of this
17 section is eligible to receive such license only if:

18 (a) Within seven years immediately preceding the date of the
19 offense that gave rise to the present conviction or incident, the
20 applicant has not committed vehicular homicide under RCW 46.61.520 or
21 vehicular assault under RCW 46.61.522; and

22 (b) The applicant demonstrates that it is necessary for him or her
23 to operate a motor vehicle because he or she:

24 (i) Is engaged in an occupation or trade that makes it essential
25 that he or she operate a motor vehicle;

26 (ii) Is undergoing continuing health care or providing continuing
27 care to another who is dependent upon the applicant;

28 (iii) Is enrolled in an educational institution and pursuing a
29 course of study leading to a diploma, degree, or other certification of
30 successful educational completion;

31 (iv) Is undergoing substance abuse treatment or is participating in
32 meetings of a twelve-step group such as Alcoholics Anonymous that
33 requires the petitioner to drive to or from the treatment or meetings;

34 (v) Is fulfilling court-ordered community service responsibilities;

35 (vi) Is in a program that assists persons who are enrolled in a
36 WorkFirst program pursuant to chapter 74.08A RCW to become gainfully
37 employed and the program requires a driver's license;

1 (vii) Is in an apprenticeship, on-the-job training, or welfare-to-
2 work program; or

3 (viii) Presents evidence that he or she has applied for a position
4 in an apprenticeship or on-the-job training program for which a
5 driver's license is required to begin the program, provided that a
6 license granted under this provision shall be in effect for no longer
7 than fourteen days; and

8 (c) The applicant files satisfactory proof of financial
9 responsibility under chapter 46.29 RCW; and

10 (d) Upon receipt of evidence that a holder of an occupational
11 driver's license granted under this subsection is no longer enrolled in
12 an apprenticeship or on-the-job training program, the director shall
13 give written notice by first-class mail to the driver that the
14 occupational driver's license shall be canceled. The effective date of
15 cancellation shall be fifteen days from the date of mailing the notice.
16 If at any time before the cancellation goes into effect the driver
17 submits evidence of continued enrollment in the program, the
18 cancellation shall be stayed. If the cancellation becomes effective,
19 the driver may obtain, at no additional charge, a new occupational
20 driver's license upon submittal of evidence of enrollment in another
21 program that meets the criteria set forth in this subsection; and

22 (e) The department shall not issue an occupational driver's license
23 under (b)(iv) of this subsection if the applicant is able to receive
24 transit services sufficient to allow for the applicant's participation
25 in the programs referenced under (b)(iv) of this subsection.

26 (4) A person aggrieved by the decision of the department on the
27 application for an occupational or temporary restricted driver's
28 license may request a hearing as provided by rule of the department.

29 (5) The director shall cancel an occupational or temporary
30 restricted driver's license upon receipt of notice that the holder
31 thereof has been convicted of operating a motor vehicle in violation of
32 its restrictions, or of a separate offense that under chapter 46.20 RCW
33 would warrant suspension or revocation of a regular driver's license.
34 The cancellation is effective as of the date of the conviction, and
35 continues with the same force and effect as any suspension or
36 revocation under this title.

1 **Sec. 7.** RCW 46.20.400 and 2004 c 95 s 9 are each amended to read
2 as follows:

3 If an occupational ((~~or~~)) driver's license, a temporary restricted
4 driver's license, or an ignition interlock driver's license is issued
5 and is not revoked during the period for which issued the licensee may
6 obtain a new driver's license at the end of such period, but no new
7 driver's license may be issued to such person until he or she
8 surrenders his or her occupational ((~~or~~)) driver's license, temporary
9 restricted driver's license, or ignition interlock driver's license and
10 his or her copy of the order, and the director is satisfied that the
11 person complies with all other provisions of law relative to the
12 issuance of a driver's license.

13 **Sec. 8.** RCW 46.20.410 and 2004 c 95 s 10 are each amended to read
14 as follows:

15 Any person convicted for violation of any restriction of an
16 occupational ((~~or~~)) driver's license, a temporary restricted driver's
17 license, or an ignition interlock driver's license shall in addition to
18 the immediate revocation of such license and any other penalties
19 provided by law be fined not less than fifty nor more than two hundred
20 dollars or imprisoned for not more than six months or both such fine
21 and imprisonment.

22 NEW SECTION. **Sec. 9.** A new section is added to chapter 46.20 RCW
23 to read as follows:

24 (1)(a) Beginning January 1, 2009, any person licensed under this
25 chapter who is convicted of any offense involving the use, consumption,
26 or possession of alcohol while operating a motor vehicle in violation
27 of RCW 46.61.502 or 46.61.504, other than vehicular homicide or
28 vehicular assault, or who has had or will have his or her license
29 suspended, revoked, or denied under RCW 46.20.3101, may submit to the
30 department an application for an ignition interlock driver's license.
31 The department, upon receipt of the prescribed fee and upon determining
32 that the petitioner is eligible to receive the license, may issue an
33 ignition interlock driver's license.

34 (b) A person may apply for an ignition interlock driver's license
35 anytime, including immediately after receiving the notices under RCW

1 46.20.308 or after his or her license is suspended, revoked, or denied.
2 A person receiving an ignition interlock driver's license waives his or
3 her right to a hearing or appeal under RCW 46.20.308.

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

7 (i) The department shall require the person to maintain the device
8 on all vehicles operated by the person and shall restrict the person to
9 operating only vehicles equipped with the device, for the remainder of
10 the period of suspension, revocation, or denial. The installation of
11 an ignition interlock device is not necessary on vehicles owned by a
12 person's employer and driven as a requirement of employment during
13 working hours. The person must provide the department with a
14 declaration pursuant to RCW 9A.72.085 from his or her employer stating
15 that the person's employment requires the person to operate a vehicle
16 owned by the employer during working hours.

17 (ii) Subject to any periodic renewal requirements established by
18 the department under this section and subject to any applicable
19 compliance requirements under this chapter or other law, an ignition
20 interlock driver's license granted upon a suspension or revocation
21 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
22 portion of any concurrent or consecutive suspension or revocation that
23 may be imposed as the result of administrative action and criminal
24 conviction arising out of the same incident.

25 (iii) The time period during which the person is licensed under
26 this section shall apply on a day-for-day basis toward satisfying the
27 period of time the ignition interlock device restriction is required
28 under RCW 46.20.720 and 46.61.5055.

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:

32 (a) Within seven years immediately preceding the date of the
33 offense that gave rise to the present conviction or incident, the
34 applicant has not committed vehicular homicide under RCW 46.61.520 or
35 vehicular assault under RCW 46.61.522; and

36 (b) The applicant files satisfactory proof of financial
37 responsibility under chapter 46.29 RCW.

1 (3) Upon receipt of evidence that a holder of an ignition interlock
2 driver's license granted under this subsection no longer has a
3 functioning ignition interlock device installed on all vehicles
4 operated by the driver, the director shall give written notice by
5 first-class mail to the driver that the ignition interlock driver's
6 license shall be canceled. The effective date of cancellation shall be
7 fifteen days from the date of mailing the notice. If at any time
8 before the cancellation goes into effect the driver submits evidence
9 that a functioning ignition interlock device has been installed on all
10 vehicles operated by the driver, the cancellation shall be stayed. If
11 the cancellation becomes effective, the driver may obtain, at no
12 additional charge, a new ignition interlock driver's license upon
13 submittal of evidence that a functioning ignition interlock device has
14 been installed on all vehicles operated by the driver.

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

18 (5) The director shall cancel an ignition interlock driver's
19 license upon receipt of notice that the holder thereof has been
20 convicted of operating a motor vehicle in violation of its
21 restrictions, or of a separate offense that under this chapter would
22 warrant suspension or revocation of a regular driver's license. The
23 cancellation is effective as of the date of the conviction, and
24 continues with the same force and effect as any suspension or
25 revocation under this title.

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

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

1 (7) The department shall adopt rules to implement ignition
2 interlock licensing. The department shall consult with the
3 administrative office of the courts, the state patrol, the Washington
4 association of sheriffs and police chiefs, ignition interlock
5 companies, and any other organization or entity the department deems
6 appropriate.

7 NEW SECTION. **Sec. 10.** A new section is added to chapter 46.20 RCW
8 to read as follows:

9 (1) The ignition interlock device revolving account program is
10 created within the department to assist in covering the monetary costs
11 of installing, removing, and leasing an ignition interlock device, and
12 applicable licensing, for indigent persons who are required under
13 section 9 of this act and RCW 46.61.5055 to install an ignition
14 interlock device in all vehicles owned or operated by the person. For
15 purposes of this subsection, "indigent" has the same meaning as in RCW
16 10.101.010, as determined by the department.

17 (2) A pilot program is created within the ignition interlock device
18 revolving account program for the purpose of monitoring compliance by
19 persons required to use ignition interlock devices and by ignition
20 interlock companies and vendors.

21 (3) The department, the state patrol, and the Washington traffic
22 safety commission shall coordinate to establish a compliance pilot
23 program that will target at least one county from eastern Washington
24 and one county from western Washington, as determined by the
25 department, state patrol, and Washington traffic safety commission.

26 (4) At a minimum, the compliance pilot program shall:

27 (a) Review the number of ignition interlock devices that are
28 required to be installed in the targeted county and the number of
29 ignition interlock devices actually installed;

30 (b) Work to identify those persons who are not complying with
31 ignition interlock requirements or are repeatedly violating ignition
32 interlock requirements; and

33 (c) Identify ways to track compliance and reduce noncompliance.

34 (5) As part of monitoring compliance, the Washington traffic safety
35 commission shall also track recidivism for violations of RCW 46.61.502
36 and 46.61.504 by persons required to have an ignition interlock
37 driver's license under section 9 of this act.

1 **Sec. 11.** RCW 46.63.020 and 2005 c 431 s 2, 2005 c 323 s 3, and
2 2005 c 183 s 10 are each reenacted and amended to read as follows:

3 Failure to perform any act required or the performance of any act
4 prohibited by this title or an equivalent administrative regulation or
5 local law, ordinance, regulation, or resolution relating to traffic
6 including parking, standing, stopping, and pedestrian offenses, is
7 designated as a traffic infraction and may not be classified as a
8 criminal offense, except for an offense contained in the following
9 provisions of this title or a violation of an equivalent administrative
10 regulation or local law, ordinance, regulation, or resolution:

11 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
12 vehicle while under the influence of intoxicating liquor or a
13 controlled substance;

14 (2) RCW 46.09.130 relating to operation of nonhighway vehicles;

15 (3) RCW 46.10.090(2) relating to the operation of a snowmobile
16 while under the influence of intoxicating liquor or narcotics or habit-
17 forming drugs or in a manner endangering the person of another;

18 (4) RCW 46.10.130 relating to the operation of snowmobiles;

19 (5) Chapter 46.12 RCW relating to certificates of ownership and
20 registration and markings indicating that a vehicle has been destroyed
21 or declared a total loss;

22 (6) RCW 46.16.010 relating to the nonpayment of taxes and fees by
23 failure to register a vehicle and falsifying residency when registering
24 a motor vehicle;

25 (7) RCW 46.16.011 relating to permitting unauthorized persons to
26 drive;

27 (8) RCW 46.16.160 relating to vehicle trip permits;

28 (9) RCW 46.16.381(2) relating to knowingly providing false
29 information in conjunction with an application for a special placard or
30 license plate for disabled persons' parking;

31 (10) RCW 46.20.005 relating to driving without a valid driver's
32 license;

33 (11) RCW 46.20.091 relating to false statements regarding a
34 driver's license or instruction permit;

35 (12) RCW 46.20.0921 relating to the unlawful possession and use of
36 a driver's license;

37 (13) RCW 46.20.342 relating to driving with a suspended or revoked
38 license or status;

- 1 (14) RCW 46.20.345 relating to the operation of a motor vehicle
2 with a suspended or revoked license;
- 3 (15) RCW 46.20.410 relating to the violation of restrictions of an
4 occupational (~~(or)~~) driver's license, temporary restricted driver's
5 license, or ignition interlock driver's license;
- 6 (16) RCW 46.20.740 relating to operation of a motor vehicle without
7 an ignition interlock device in violation of a license notation that
8 the device is required;
- 9 (17) RCW 46.20.750 relating to (~~(assisting another person to start~~
10 ~~a vehicle equipped with)~~) circumventing an ignition interlock device;
- 11 (18) RCW 46.25.170 relating to commercial driver's licenses;
- 12 (19) Chapter 46.29 RCW relating to financial responsibility;
- 13 (20) RCW 46.30.040 relating to providing false evidence of
14 financial responsibility;
- 15 (21) RCW 46.37.435 relating to wrongful installation of
16 sunscreening material;
- 17 (22) RCW 46.37.650 relating to the sale, resale, distribution, or
18 installation of a previously deployed air bag;
- 19 (23) RCW 46.37.671 through 46.37.675 relating to signal preemption
20 devices;
- 21 (24) RCW 46.44.180 relating to operation of mobile home pilot
22 vehicles;
- 23 (~~(+24)~~) (25) RCW 46.48.175 relating to the transportation of
24 dangerous articles;
- 25 (~~(+25)~~) (26) RCW 46.52.010 relating to duty on striking an
26 unattended car or other property;
- 27 (~~(+26)~~) (27) RCW 46.52.020 relating to duty in case of injury to
28 or death of a person or damage to an attended vehicle;
- 29 (~~(+27)~~) (28) RCW 46.52.090 relating to reports by repairmen,
30 storagemen, and appraisers;
- 31 (~~(+28)~~) (29) RCW 46.52.130 relating to confidentiality of the
32 driving record to be furnished to an insurance company, an employer,
33 and an alcohol/drug assessment or treatment agency;
- 34 (~~(+29)~~) (30) RCW 46.55.020 relating to engaging in the activities
35 of a registered tow truck operator without a registration certificate;
- 36 (~~(+30)~~) (31) RCW 46.55.035 relating to prohibited practices by tow
37 truck operators;
- 38 (~~(+31)~~) (32) RCW 46.55.300 relating to vehicle immobilization;

1 (33) RCW 46.61.015 relating to obedience to police officers,
2 flaggers, or firefighters;
3 ~~((+32+))~~ (34) RCW 46.61.020 relating to refusal to give information
4 to or cooperate with an officer;
5 ~~((+33+))~~ (35) RCW 46.61.022 relating to failure to stop and give
6 identification to an officer;
7 ~~((+34+))~~ (36) RCW 46.61.024 relating to attempting to elude
8 pursuing police vehicles;
9 ~~((+35+))~~ (37) RCW 46.61.500 relating to reckless driving;
10 ~~((+36+))~~ (38) RCW 46.61.502 and 46.61.504 relating to persons under
11 the influence of intoxicating liquor or drugs;
12 ~~((+37+))~~ (39) RCW 46.61.503 relating to a person under age twenty-
13 one driving a motor vehicle after consuming alcohol;
14 ~~((+38+))~~ (40) RCW 46.61.520 relating to vehicular homicide by motor
15 vehicle;
16 ~~((+39+))~~ (41) RCW 46.61.522 relating to vehicular assault;
17 ~~((+40+))~~ (42) RCW 46.61.5249 relating to first degree negligent
18 driving;
19 ~~((+41+))~~ (43) RCW 46.61.527(4) relating to reckless endangerment of
20 roadway workers;
21 ~~((+42+))~~ (44) RCW 46.61.530 relating to racing of vehicles on
22 highways;
23 ~~((+43+))~~ (45) RCW 46.61.655(7) (a) and (b) relating to failure to
24 secure a load;
25 ~~((+44+))~~ (46) RCW 46.61.685 relating to leaving children in an
26 unattended vehicle with the motor running;
27 ~~((+45+))~~ (47) RCW 46.61.740 relating to theft of motor vehicle
28 fuel;
29 ~~((+46+))~~ ~~RCW 46.37.671 through 46.37.675 relating to signal~~
30 ~~preemption devices;~~
31 ~~(+47+))~~ (48) RCW 46.64.010 relating to unlawful cancellation of or
32 attempt to cancel a traffic citation;
33 ~~((+48+))~~ (49) RCW 46.64.048 relating to attempting, aiding,
34 abetting, coercing, and committing crimes;
35 ~~((+49+))~~ (50) Chapter 46.65 RCW relating to habitual traffic
36 offenders;
37 ~~((+50+))~~ (51) RCW 46.68.010 relating to false statements made to
38 obtain a refund;

1 (~~(+51+)~~) (52) Chapter 46.70 RCW relating to unfair motor vehicle
2 business practices, except where that chapter provides for the
3 assessment of monetary penalties of a civil nature;

4 (~~(+52+)~~) (53) Chapter 46.72 RCW relating to the transportation of
5 passengers in for hire vehicles;

6 (~~(+53+)~~) (54) RCW 46.72A.060 relating to limousine carrier
7 insurance;

8 (~~(+54+)~~) (55) RCW 46.72A.070 relating to operation of a limousine
9 without a vehicle certificate;

10 (~~(+55+)~~) (56) RCW 46.72A.080 relating to false advertising by a
11 limousine carrier;

12 (~~(+56+)~~) (57) Chapter 46.80 RCW relating to motor vehicle wreckers;

13 (~~(+57+)~~) (58) Chapter 46.82 RCW relating to driver's training
14 schools;

15 (~~(+58+)~~) (59) RCW 46.87.260 relating to alteration or forgery of a
16 cab card, letter of authority, or other temporary authority issued
17 under chapter 46.87 RCW;

18 (~~(+59+)~~) (60) RCW 46.87.290 relating to operation of an
19 unregistered or unlicensed vehicle under chapter 46.87 RCW.

20 **Sec. 12.** RCW 46.20.720 and 2004 c 95 s 11 are each amended to read
21 as follows:

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

31 (2) Under RCW 46.61.5055, 10.05.020, or section 18 of this act, the
32 court shall order any person convicted of an alcohol-related violation
33 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance or
34 participating in a deferred prosecution program under RCW 10.05.020 or
35 section 18 of this act for an alcohol-related violation of RCW
36 46.61.502 or 46.61.504 or an equivalent local ordinance to apply for an

1 ignition interlock driver's license from the department under section
2 9 of this act and to have a functioning ignition interlock device
3 installed on all motor vehicles operated by the person.

4 (3) The department shall require that, after any applicable period
5 of suspension, revocation, or denial of driving privileges, a person
6 may drive only a motor vehicle equipped with a functioning ignition
7 interlock device if the person is convicted of an alcohol-related
8 violation of RCW 46.61.502 or 46.61.504 or an equivalent local
9 ordinance.

10 The department may waive the requirement for the use of such a
11 device if it concludes that such devices are not reasonably available
12 in the local area. The device is not necessary on vehicles owned by a
13 person's employer and driven as a requirement of employment during
14 working hours. The person must provide the department with a
15 declaration pursuant to RCW 9A.72.085 from his or her employer stating
16 that the person's employment requires the person to operate a vehicle
17 owned by the employer during working hours.

18 The ignition interlock device shall be calibrated to prevent the
19 motor vehicle from being started when the breath sample provided has an
20 alcohol concentration of 0.025 or more. The period of time of the
21 restriction will be as follows:

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

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

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

28 **Sec. 13.** RCW 46.20.740 and 2004 c 95 s 12 are each amended to read
29 as follows:

30 (1) The department shall attach or imprint a notation on the
31 driving record of any person restricted under RCW 46.20.720 or
32 46.61.5055 stating that the person may operate only a motor vehicle
33 equipped with a functioning ignition interlock device. The department
34 shall determine the person's eligibility for licensing based upon
35 written verification by a company doing business in the state that it
36 has installed the required device on a vehicle owned or operated by the
37 person seeking reinstatement. If, based upon notification from the

1 interlock provider or otherwise, the department determines that an
2 ignition interlock required under this section is no longer installed
3 or functioning as required, the department shall suspend the person's
4 license or privilege to drive. Whenever the license or driving
5 privilege of any person is suspended or revoked as a result of
6 noncompliance with an ignition interlock requirement, the suspension
7 shall remain in effect until the person provides notice issued by a
8 company doing business in the state that a vehicle owned or operated by
9 the person is equipped with a functioning ignition interlock device.

10 (2) It is a misdemeanor for a person with such a notation on his or
11 her driving record to operate a motor vehicle that is not so equipped.

12 **Sec. 14.** RCW 46.61.5055 and 2007 c 474 s 1 are each amended to
13 read as follows:

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

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

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

1 alcohol the offender may consume during the time the offender is on
2 electronic home monitoring; and

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

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

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

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

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

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

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

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

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

24 (i) By imprisonment for not less than forty-five days nor more than
25 one year and ninety days of electronic home monitoring. The offender
26 shall pay for the cost of the electronic monitoring. The county or
27 municipality where the penalty is being imposed shall determine the
28 cost. The court may also require the offender's electronic home
29 monitoring device include an alcohol detection breathalyzer, and may
30 restrict the amount of alcohol the offender may consume during the time
31 the offender is on electronic home monitoring. Forty-five days of
32 imprisonment and ninety days of electronic home monitoring 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
38 facts upon which the suspension or deferral is based; and

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

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

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

13 (i) By imprisonment for not less than ninety days nor more than one
14 year and one hundred twenty days of electronic home monitoring. The
15 offender shall pay for the cost of the electronic monitoring. The
16 county or municipality where the penalty is being imposed shall
17 determine the cost. The court may also require the offender's
18 electronic home monitoring device include an alcohol detection
19 breathalyzer, and may restrict the amount of alcohol the offender may
20 consume during the time the offender is on electronic home monitoring.
21 Ninety days of imprisonment and one hundred twenty days of electronic
22 home monitoring may not be suspended or deferred unless the court finds
23 that the 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 or deferred, the
26 court shall state in writing the reason for granting the suspension or
27 deferral and the facts upon which the suspension or deferral is based;
28 and

29 (ii) By a fine of not less than one thousand dollars nor more than
30 five thousand dollars. One thousand dollars of the fine may not be
31 suspended or deferred unless the court finds the offender to be
32 indigent; or

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

37 (i) By imprisonment for not less than one hundred twenty days nor
38 more than one year and one hundred fifty days of electronic home

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

19 (4) A person who is convicted of a violation of RCW 46.61.502 or
20 46.61.504 (~~and who~~) shall be punished under chapter 9.94A RCW if:
21 (a) The person has four or more prior offenses within ten years((7));
22 or ((who)) (b) the person has ever previously been convicted of: (i)
23 A violation of RCW 46.61.520 committed while under the influence of
24 intoxicating liquor or any drug ((or)); (ii) a violation of RCW
25 46.61.522 committed while under the influence of intoxicating liquor or
26 any drug((, shall be punished in accordance with chapter 9.94A RCW));
27 or (iii) an out-of-state offense comparable to the offense specified in
28 (b)(i) or (ii) of this subsection.

29 (5)(a) The court shall require any person convicted of an
30 alcohol-related violation of RCW 46.61.502 or 46.61.504 to apply for an
31 ignition interlock driver's license from the department under section
32 9 of this act and to have a functioning ignition interlock device
33 installed on all motor vehicles operated by the person.

34 (b) The installation of an ignition interlock device is not
35 necessary on vehicles owned by a person's employer and driven as a
36 requirement of employment during working hours. The person must
37 provide the department with a declaration pursuant to RCW 9A.72.085

1 from his or her employer stating that the person's employment requires
2 the person to operate a vehicle owned by the employer during working
3 hours.

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

7 (d) The court may waive the requirement that a person obtain an
8 ignition interlock driver's license and operate only vehicles equipped
9 with a functioning ignition interlock device if the court makes a
10 specific finding in writing that the devices are not reasonably
11 available in the local area, that the person does not operate a
12 vehicle, or the person is not eligible to receive an ignition interlock
13 driver's license under section 9 of this act.

14 (e) When the requirement that a person obtain an ignition interlock
15 driver's license and operate only vehicles equipped with a functioning
16 ignition interlock device is waived by the court, the court shall order
17 the person to submit to alcohol monitoring through an alcohol detection
18 breathalyzer device, transdermal sensor device, or other technology
19 designed to detect alcohol in a person's system. The person shall pay
20 for the cost of the monitoring. The county or municipality where the
21 penalty is being imposed shall determine the cost.

22 (f) The period of time for which ignition interlock use or alcohol
23 monitoring is required will be as follows:

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

26 (ii) For a person who has previously been restricted under (f)(i)
27 of this subsection, a period of five years;

28 (iii) For a person who has previously been restricted under (f)(ii)
29 of this subsection, a period of ten years.

30 (6) If a person who is convicted of a violation of RCW 46.61.502 or
31 46.61.504 committed the offense while a passenger under the age of
32 sixteen was in the vehicle, the court shall:

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

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

4 (~~(6)~~) (7) In exercising its discretion in setting penalties
5 within the limits allowed by this section, the court shall particularly
6 consider the following:

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

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

11 (~~(7)~~) (8) An offender punishable under this section is subject to
12 the alcohol assessment and treatment provisions of RCW 46.61.5056.

13 (~~(8)~~) (9) The license, permit, or nonresident privilege of a
14 person convicted of driving or being in physical control of a motor
15 vehicle while under the influence of intoxicating liquor or drugs must:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (~~((9))~~) (10) After expiration of any period of suspension,
13 revocation, or denial of the offender's license, permit, or privilege
14 to drive required by this section, the department shall place the
15 offender's driving privilege in probationary status pursuant to RCW
16 46.20.355.

17 (~~((10))~~) (11)(a) In addition to any nonsuspendable and
18 nondeferrable jail sentence required by this section, whenever the
19 court imposes less than one year in jail, the court shall also suspend
20 but shall not defer a period of confinement for a period not exceeding
21 five years. The court shall impose conditions of probation that
22 include: (i) Not driving a motor vehicle within this state without a
23 valid license to drive and proof of financial responsibility for the
24 future; (ii) not driving a motor vehicle within this state while having
25 an alcohol concentration of 0.08 or more within two hours after
26 driving; and (iii) not refusing to submit to a test of his or her
27 breath or blood to determine alcohol concentration upon request of a
28 law enforcement officer who has reasonable grounds to believe the
29 person was driving or was in actual physical control of a motor vehicle
30 within this state while under the influence of intoxicating liquor.
31 The court may impose conditions of probation that include
32 nonrepetition, installation of an ignition interlock device on the
33 probationer's motor vehicle, alcohol or drug treatment, supervised
34 probation, or other conditions that may be appropriate. The sentence
35 may be imposed in whole or in part upon violation of a condition of
36 probation during the suspension period.

37 (b) For each violation of mandatory conditions of probation under

1 (a)(i), (ii), or (iii) of this subsection, the court shall order the
2 convicted person to be confined for thirty days, which shall not be
3 suspended or deferred.

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

14 ~~((+11+))~~ (12) A court may waive the electronic home monitoring
15 requirements of this chapter when:

- 16 (a) The offender does not have a dwelling, telephone service, or
17 any other necessity to operate an electronic home monitoring system;
- 18 (b) The offender does not reside in the state of Washington; or
- 19 (c) The court determines that there is reason to believe that the
20 offender would violate the conditions of the electronic home monitoring
21 penalty.

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

28 Whenever the combination of jail time and electronic home
29 monitoring or alternative sentence would exceed three hundred sixty-
30 five days, the offender shall serve the jail portion of the sentence
31 first, and the electronic home monitoring or alternative portion of the
32 sentence shall be reduced so that the combination does not exceed three
33 hundred sixty-five days.

34 ~~((+12+))~~ (13) An offender serving a sentence under this section,
35 whether or not a mandatory minimum term has expired, may be granted an
36 extraordinary medical placement by the jail administrator subject to
37 the standards and limitations set forth in RCW 9.94A.728(4).

1 (~~(13)~~) (14) For purposes of this section and RCW 46.61.502 and
2 46.61.504:

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

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

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

8 (iii) A conviction for a violation of RCW 46.61.520 committed while
9 under the influence of intoxicating liquor or any drug;

10 (iv) A conviction for a violation of RCW 46.61.522 committed while
11 under the influence of intoxicating liquor or any drug;

12 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
13 9A.36.050 or an equivalent local ordinance, if the conviction is the
14 result of a charge that was originally filed as a violation of RCW
15 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
16 46.61.520 or 46.61.522;

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

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

23 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
24 prosecution for a violation of RCW 46.61.5249, or an equivalent local
25 ordinance, if the charge under which the deferred prosecution was
26 granted was originally filed as a violation of RCW 46.61.502 or
27 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
28 46.61.522;

29 (b) "Within seven years" means that the arrest for a prior offense
30 occurred within seven years of the arrest for the current offense; and

31 (c) "Within ten years" means that the arrest for a prior offense
32 occurred within ten years of the arrest for the current offense.

33 **Sec. 15.** RCW 10.05.010 and 2002 c 219 s 6 are each amended to read
34 as follows:

35 (1) In a court of limited jurisdiction a person charged with a
36 misdemeanor or gross misdemeanor may petition the court to be
37 considered for a deferred prosecution program. The petition shall be

1 filed with the court at least seven days before the date set for trial
2 but, upon a written motion and affidavit establishing good cause for
3 the delay and failure to comply with this section, the court may waive
4 this requirement subject to the defendant's reimbursement to the court
5 of the witness fees and expenses due for subpoenaed witnesses who have
6 appeared on the date set for trial.

7 (2) A person charged with a traffic infraction, misdemeanor, or
8 gross misdemeanor under Title 46 RCW shall not be eligible for a
9 deferred prosecution program unless the court makes specific findings
10 pursuant to RCW 10.05.020 or section 18 of this act. Such person shall
11 not be eligible for a deferred prosecution program more than once; and
12 cannot receive a deferred prosecution under both RCW 10.05.020 and
13 section 18 of this act. Separate offenses committed more than seven
14 days apart may not be consolidated in a single program.

15 (3) A person charged with a misdemeanor or a gross misdemeanor
16 under chapter 9A.42 RCW shall not be eligible for a deferred
17 prosecution program unless the court makes specific findings pursuant
18 to RCW 10.05.020. Such person shall not be eligible for a deferred
19 prosecution program more than once.

20 **Sec. 16.** RCW 10.05.020 and 2002 c 219 s 7 are each amended to read
21 as follows:

22 (1) Except as provided in subsection (2) of this section or section
23 18 of this act, the petitioner shall allege under oath in the petition
24 that the wrongful conduct charged is the result of or caused by
25 alcoholism, drug addiction, or mental problems for which the person is
26 in need of treatment and unless treated the probability of future
27 recurrence is great, along with a statement that the person agrees to
28 pay the cost of a diagnosis and treatment of the alleged problem or
29 problems if financially able to do so. The petition shall also contain
30 a case history and written assessment prepared by an approved
31 alcoholism treatment program as designated in chapter 70.96A RCW if the
32 petition alleges alcoholism, an approved drug program as designated in
33 chapter 71.24 RCW if the petition alleges drug addiction, or by an
34 approved mental health center if the petition alleges a mental problem.

35 (2) In the case of a petitioner charged with a misdemeanor or gross
36 misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under
37 oath in the petition that the petitioner is the natural or adoptive

1 parent of the alleged victim; that the wrongful conduct charged is the
2 result of parenting problems for which the petitioner is in need of
3 services; that the petitioner is in need of child welfare services
4 under chapter 74.13 RCW to improve his or her parenting skills in order
5 to better provide his or her child or children with the basic
6 necessities of life; that the petitioner wants to correct his or her
7 conduct to reduce the likelihood of harm to his or her minor children;
8 that in the absence of child welfare services the petitioner may be
9 unable to reduce the likelihood of harm to his or her minor children;
10 and that the petitioner has cooperated with the department of social
11 and health services to develop a plan to receive appropriate child
12 welfare services; along with a statement that the person agrees to pay
13 the cost of the services if he or she is financially able to do so.
14 The petition shall also contain a case history and a written service
15 plan from the department of social and health services.

16 (3) Before entry of an order deferring prosecution, a petitioner
17 shall be advised of his or her rights as an accused and execute, as a
18 condition of receiving treatment, a statement that contains: (a) An
19 acknowledgment of his or her rights; (b) an acknowledgment and waiver
20 of the right to testify, the right to a speedy trial, the right to call
21 witnesses to testify, the right to present evidence in his or her
22 defense, and the right to a jury trial; (c) a stipulation to the
23 admissibility and sufficiency of the facts contained in the written
24 police report; and (d) an acknowledgment that the statement will be
25 entered and used to support a finding of guilty if the court finds
26 cause to revoke the order granting deferred prosecution. The
27 petitioner shall also be advised that he or she may, if he or she
28 proceeds to trial and is found guilty, be allowed to seek suspension of
29 some or all of the fines and incarceration that may be ordered upon the
30 condition that he or she seek treatment and, further, that he or she
31 may seek treatment from public and private agencies at any time without
32 regard to whether or not he or she is found guilty of the offense
33 charged. He or she shall also be advised that the court will not
34 accept a petition for deferred prosecution from a person who: (i)
35 Sincerely believes that he or she is innocent of the charges ((~~or~~));
36 (ii) sincerely believes that he or she does not, in fact, suffer from
37 alcoholism, drug addiction, or mental problems, unless the petition for

1 deferred prosecution is under section 18 of this act; or (iii) in the
2 case of a petitioner charged under chapter 9A.42 RCW, sincerely
3 believes that he or she does not need child welfare services.

4 (4) Before entering an order deferring prosecution, the court shall
5 make specific findings that: (a) The petitioner has stipulated to the
6 admissibility and sufficiency of the facts as contained in the written
7 police report; (b) the petitioner has acknowledged the admissibility of
8 the stipulated facts in any criminal hearing on the underlying offense
9 or offenses held subsequent to revocation of the order granting
10 deferred prosecution; (c) the petitioner has acknowledged and waived
11 the right to testify, the right to a speedy trial, the right to call
12 witnesses to testify, the right to present evidence in his or her
13 defense, and the right to a jury trial; and (d) the petitioner's
14 statements were made knowingly and voluntarily. Such findings shall be
15 included in the order granting deferred prosecution.

16 **Sec. 17.** RCW 10.05.090 and 1997 c 229 s 1 are each amended to read
17 as follows:

18 If a petitioner, who has been accepted for a deferred prosecution,
19 fails or neglects to carry out and fulfill any term or condition of the
20 petitioner's treatment plan or any term or condition imposed in
21 connection with the installation of an interlock or other device under
22 RCW 46.20.720 or section 9 of this act, the facility, center,
23 institution, or agency administering the treatment or the entity
24 administering the use of the device, shall immediately report such
25 breach to the court, the prosecutor, and the petitioner or petitioner's
26 attorney of record, together with its recommendation. The court upon
27 receiving such a report shall hold a hearing to determine whether the
28 petitioner should be removed from the deferred prosecution program. At
29 the hearing, evidence shall be taken of the petitioner's alleged
30 failure to comply with the treatment plan or device installation and
31 the petitioner shall have the right to present evidence on his or her
32 own behalf. The court shall either order that the petitioner continue
33 on the treatment plan or be removed from deferred prosecution. If the
34 petitioner's noncompliance is based on a violation of a term or
35 condition imposed in connection with the installation of an ignition
36 interlock device under section 9 of this act, the court shall either
37 order that the petitioner comply with the term or condition or be

1 removed from deferred prosecution. If removed from deferred
2 prosecution, the court shall enter judgment pursuant to RCW 10.05.020
3 and, if the charge for which the deferred prosecution was granted was
4 a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the
5 department of licensing of the removal and entry of judgment.

6 NEW SECTION. **Sec. 18.** A new section is added to chapter 10.05 RCW
7 to read as follows:

8 (1) A person charged with a misdemeanor or gross misdemeanor under
9 RCW 46.61.502 or 46.61.504 who has had no prior offenses as defined in
10 RCW 46.61.5055 and has been assessed pursuant to subsection (3) of this
11 section shall be eligible for a one-time deferred prosecution program.

12 (2) Before entering an order deferring prosecution under this
13 section, the court shall make a specific finding that the petitioner
14 has no prior offenses as defined in RCW 46.61.5055 and has been
15 assessed by a certified chemical dependency counselor and a licensed
16 mental health professional, and found not to need treatment for
17 alcoholism, drug addiction, or mental problems. As a condition of
18 granting a deferral prosecution petition, the court shall order the
19 petitioner to satisfy the conditions in RCW 10.05.140 and shall order
20 the petitioner to apply for an ignition interlock driver's license from
21 the department of licensing and have a functioning ignition interlock
22 device installed on all motor vehicles operated by the person. The
23 required period of use of the ignition interlock device shall be one
24 year. The court may order supervision of the petitioner during the
25 period of deferral pursuant to RCW 10.05.170.

26 (3) A petitioner seeking a deferral of prosecution under this
27 section shall undergo an assessment by a certified chemical dependency
28 counselor and a licensed mental health professional to determine
29 whether the petitioner is or is not in need of treatment for
30 alcoholism, drug addiction, or mental problems.

31 **Sec. 19.** RCW 10.05.160 and 1999 c 143 s 44 are each amended to
32 read as follows:

33 The prosecutor may appeal an order granting deferred prosecution on
34 any or all of the following grounds:

35 (1) Prior deferred prosecution has been granted to the defendant;

1 (2) Failure of the court to obtain proof of insurance or a
2 treatment plan conforming to the requirements of this chapter;

3 (3) Failure of the court to comply with the requirements of RCW
4 10.05.100;

5 (4) Failure of the evaluation facility to provide the information
6 required in RCW 10.05.040 and 10.05.050, if the defendant has been
7 referred to the facility for treatment. If an appeal on such basis is
8 successful, the trial court may consider the use of another treatment
9 program;

10 (5) Failure of the court to order the installation of an ignition
11 interlock or other device under RCW 46.20.720 or section 9 of this act.

12 **Sec. 20.** RCW 46.61.502 and 2006 c 73 s 1 are each amended to read
13 as follows:

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

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

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

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

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

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

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

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

11 (6) It is a class C felony punishable under chapter 9.94A RCW, or
12 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has
13 four or more prior offenses within ten years as defined in RCW
14 46.61.5055; or (b) the person has ever previously been convicted of (i)
15 vehicular homicide while under the influence of intoxicating liquor or
16 any drug, RCW 46.61.520(1)(a), ~~((or))~~ (ii) vehicular assault while
17 under the influence of intoxicating liquor or any drug, RCW
18 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the
19 offense specified in (b)(i) or (ii) of this subsection.

20 **Sec. 21.** RCW 46.61.504 and 2006 c 73 s 2 are each amended to read
21 as follows:

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

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

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

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

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

1 No person may be convicted under this section if, prior to being
2 pursued by a law enforcement officer, the person has moved the vehicle
3 safely off the roadway.

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

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

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

25 (6) It is a class C felony punishable under chapter 9.94A RCW, or
26 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has
27 four or more prior offenses within ten years as defined in RCW
28 46.61.5055; or (b) the person has ever previously been convicted of (i)
29 vehicular homicide while under the influence of intoxicating liquor or
30 any drug, RCW 46.61.520(1)(a), ~~((or))~~ (ii) vehicular assault while
31 under the influence of intoxicating liquor or any drug, RCW
32 46.61.522(1)(b), or (iii) an out-of-state offense comparable to the
33 offense specified in (b)(i) or (ii) of this subsection.

34 NEW SECTION. **Sec. 22.** If specific funding for the purposes of
35 this act, referencing this act by bill or chapter number, is not
36 provided by June 30, 2008, in the omnibus transportation appropriations
37 act, this act is null and void.

1 NEW SECTION. **Sec. 23.** Sections 2, 4 through 8, and 11 through 14
2 of this act take effect January 1, 2009.

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