

Yvonne Walker 786-7841  
House - Public Safety & Emergency Preparedness Committee  
December 08, 2014 (11:55 AM)

1 AN ACT Relating to ~~impaired~~ driving offenses; amending RCW  
2 10.21.055, 46.20.385, 46.20.740, 46.20.308, 46.20.750, 46.25.120,  
3 46.61.504, 46.61.140, 46.61.5055, 46.61.500, 46.61.5058, 46.61.507,  
4 46.61.513, 46.61.5151, 46.61.5152, 43.43.395, 9.94A.533, and  
5 68.50.160; reenacting and amending RCW 13.04.030 and 46.52.130;  
6 adding new sections to chapter 46.61 RCW; and prescribing penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:  
8

9 **Conditions of release -- Requirements -- Ignition interlock  
10 device -- 24/7 sobriety program monitoring.**

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

13 (1) (a) When any person charged with (~~or arrested for~~) a  
14 violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in  
15 which the person has a prior offense as defined in RCW 46.61.5055  
16 and the current offense involves alcohol, is released from custody  
17 before arraignment or trial on bail or personal recognizance, the  
18 court authorizing the release shall require, as a condition of  
19

**Commented [WY1]:** Amendment from Erin Norgaard and Tom McBride, WAPA  
The original bill draft had language stating that after a person is released from custody "after a preliminary hearing," and before arraignment or trial, on bail or PR, the court must require IID restrictions as a condition of release.

1 release(~~(7)~~): (i) That person (~~(to (a))~~) have a functioning ignition  
2 interlock device installed on all motor vehicles operated by the  
3 person, with proof of installation filed with the court by the  
4 person or the certified interlock provider within five business days  
5 of the date of release from custody or as soon thereafter as  
6 determined by the court based on availability within the  
7 jurisdiction; or (~~(b)~~) (ii) that the person's driving privileges  
8 be suspended. The court may additionally require that the person  
9 comply with 24/7 sobriety program monitoring, as defined in RCW  
10 36.28A.330(~~(7 or both)~~).

11 (b) The court shall immediately notify the department of  
12 licensing when an ignition interlock restriction is imposed or when  
13 a person's driving privileges are ordered suspended as a condition  
14 of release pursuant to (a) of this subsection. If the court imposes  
15 an ignition interlock restriction pursuant to RCW 46.20.740, the  
16 department of licensing shall attach or imprint a notation on the  
17 driving record of any person restricted under this section stating  
18 that the person may operate only a motor vehicle equipped with a  
19 functioning ignition interlock device. If the court requires that  
20 person's driving privileges be suspended, the department of  
21 licensing shall immediately suspend the person's driving privileges.

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

30 (b) If the court authorizes removal of an ignition interlock  
31 device pursuant to (a) of this subsection the court shall  
32 immediately notify the department of licensing regarding the lifting  
33 of the ignition interlock restriction and the department of  
34 licensing shall release any attachment, imprint, or notation on such

**Commented [WY2]: Amendment from John Schochet (Seattle City Attorney's Office)** - Allows courts to suspend a defendant's driver's license in lieu of ordering an IID condition.

**Commented [WY3]:** Language from HB 2728 that requires the courts to notify DOL when an IID is imposed.

**Amendment from John Schochet (Seattle City Attorney's Office)** - Provides that if a court does suspend a person's license then the court must notify DOL and the DOL must immediately suspend the person's license.

**Commented [WY4]: Amendment from John Schochet (Seattle City Attorney's Office)** - Upon acquittal or dismissal of the charges, the court must authorize reinstatement of the person's driving privileges

1 person's driving record relating to the ignition interlock  
2 requirement.

3 (c) If the court authorizes reinstatement of driving privileges  
4 pursuant to (a) of this subsection, the court shall immediately  
5 notify the department of licensing regarding the authorization of  
6 reinstatement of driving privileges, and the department of licensing  
7 shall reinstate the person's driving privileges, unless the person's  
8 driving privileges are also suspended for an additional reason other  
9 than the court's order issued pursuant to subsection (1) (a) (ii) of  
10 this section.

11 (3) When an ignition interlock restriction imposed as a  
12 condition of release is canceled, the court shall provide a  
13 defendant with a written order confirming release of the  
14 restriction. The written order shall serve as proof of release of  
15 the restriction until which time the department of licensing updates  
16 the driving record.

17  
18 **Mandatory revocation--Notice--Administrative, judicial**  
19 **review--Rules--Application.**  
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21 **Sec. 2.** RCW 46.20.245 and 2005 c 288 s 1 are each amended to  
22 read as follows:

23 (1) Whenever the department proposes to withhold the driving  
24 privilege of a person or disqualify a person from operating a  
25 commercial motor vehicle and this action is made mandatory by the  
26 provisions of this chapter or other law, the department must give  
27 notice to the person in writing by posting in the United States  
28 mail, appropriately addressed, postage prepaid, or by personal  
29 service. Notice by mail is given upon deposit in the United States  
30 mail. Notice given under this subsection must specify the date upon  
31 which the driving privilege is to be withheld which shall not be  
32 less than forty-five days after the original notice is given.  
33  
34

**Commented [WY5]:** Language from **HB 2728** that provides that if the courts authorize the removal of an IID, then the court must notify DOL who must remove any notations of the person's driver's record.

**Commented [WY6]:** Amendment from **John Schochet (Seattle City Attorney's Office)** - Provides that if the courts reinstates a person's driving privileges, then the court must notify DOL who must remove any notations of the person's driver's record.

**Commented [WY7]:** Language from **HB 2728** that provides that if an IID restriction is cancelled, the court must provide the person with written order confirming the release of the IID restriction which will serve as proof of release until DOL updates the driving record.

1 (2) Within fifteen days after notice has been given to a person  
2 under subsection (1) of this section, the person may request in  
3 writing an administrative review before the department. If the  
4 request is mailed, it must be postmarked within fifteen days after  
5 the date the department has given notice. If a person fails to  
6 request an administrative review within fifteen days after the date  
7 the department gives notice, the person is considered to have  
8 defaulted and loses his or her right to an administrative review  
9 unless the department finds good cause for a request after the  
10 fifteen-day period.

11 (a) An administrative review under this subsection shall consist  
12 solely of an internal review of documents and records submitted or  
13 available to the department, unless the person requests an interview  
14 before the department, in which case all or any part of the  
15 administrative review may, at the discretion of the department, be  
16 conducted by telephone or other electronic means.

17 (b) The only issues to be addressed in the administrative review  
18 are:

19 (i) Whether the records relied on by the department identify the  
20 correct person; and

21 (ii) Whether the information transmitted from the court or other  
22 reporting agency or entity regarding the person accurately describes  
23 the action taken by the court or other reporting agency or entity.

24 (c) For the purposes of this section, the notice received from a  
25 court or other reporting agency or entity, regardless of form or  
26 format, is prima facie evidence that the information from the court  
27 or other reporting agency or entity regarding the person is  
28 accurate. A person requesting administrative review has the burden  
29 of showing by a preponderance of the evidence that the person is not  
30 subject to the withholding of the driving privilege.

31 (d) The action subject to the notification requirements of  
32 subsection (1) of this section shall be stayed during the  
33 administrative review process.

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1 (e) Judicial review of a department order affirming the action  
2 subject to the notification requirements of subsection (1) of this  
3 section after an administrative review shall be available in the  
4 same manner as provided in \*RCW 46.20.308(9). The department shall  
5 certify its record to the court within thirty days after service  
6 upon the department of the petition for judicial review. The action  
7 subject to the notification requirements of subsection (1) of this  
8 section shall not automatically be stayed during the judicial  
9 review. If judicial relief is sought for a stay or other temporary  
10 remedy from the department's action, the court shall not grant  
11 relief unless the court finds that the appellant is likely to  
12 prevail in the appeal and that without a stay the appellant will  
13 suffer irreparable injury.

14 (3) The department may adopt rules that are considered necessary  
15 or convenient by the department for purposes of administering this  
16 section, including, but not limited to, rules regarding expedited  
17 procedures for issuing orders and expedited notice procedures.

18 (4) This section does not apply where an opportunity for an  
19 informal settlement, driver improvement interview, ~~((or))~~ formal  
20 hearing, or suspension as condition of release (pursuant section  
21 1(1)(b) of this act) is otherwise provided by law or rule of the  
22 department.

**Commented [WY8]:** Amendment suggest by Clark Holloway (DOL) - DOL must give 45 days' notice prior to imposing a mandatory suspension. Since section 1 (1) (b) of this act requires immediate suspension, this statute provides an exception to the 45 day rule.

25 **Ignition interlock driver's license -- Application --**  
26 **Eligibility -- Cancellation -- Costs -- Rules.**

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

30 (1) (a) Beginning January 1, 2009, any person licensed under this  
31 chapter who is convicted of a violation of RCW 46.61.502 or  
32 46.61.504 or an equivalent local or out-of-state statute or  
33 ordinance, or a violation of RCW 46.61.520 ~~((1) (a))~~ or  
34

1 46.61.522(~~(1)(b)~~), or who has had or will have his or her license  
2 suspended, revoked, or denied under RCW 46.20.3101, or who is  
3 otherwise permitted under subsection (8) of this section, may submit  
4 to the department an application for an ignition interlock driver's  
5 license. The department, upon receipt of the prescribed fee and upon  
6 determining that the petitioner is eligible to receive the license,  
7 may issue an ignition interlock driver's license.

8 (b) A person may apply for an ignition interlock driver's  
9 license anytime, including immediately after receiving the notices  
10 under RCW 46.20.308 or after his or her license is suspended,  
11 revoked, or denied. A person receiving an ignition interlock  
12 driver's license waives his or her right to a hearing (~~(or appeal)~~)  
13 under RCW 46.20.308.

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

18 (i) The department shall require the person to maintain the  
19 device on all vehicles operated by the person and shall restrict the  
20 person to operating only vehicles equipped with the device, for the  
21 remainder of the period of suspension, revocation, or denial.  
22 Subject to the provisions of RCW 46.20.720(3)(b)(ii), the  
23 installation of an ignition interlock device is not necessary on  
24 vehicles owned, leased, or rented by a person's employer and on  
25 those vehicles whose care and/or maintenance is the temporary  
26 responsibility of the employer, and driven at the direction of a  
27 person's employer as a requirement of employment during working  
28 hours. The person must provide the department with a declaration  
29 pursuant to RCW 9A.72.085 from his or her employer stating that the  
30 person's employment requires the person to operate a vehicle owned  
31 by the employer or other persons during working hours.

32 (ii) Subject to any periodic renewal requirements established by  
33 the department under this section and subject to any applicable  
34 compliance requirements under this chapter or other law, an ignition

**Commented [WY9]: Amendment from Patricia Fulton (WACDL/WDA)** - Extends eligibility for an IID license to those convicted of all prongs of Vehicle Homicide & Vehicular Assault (reckless and disregard for safety of others) instead of just while under the influence of alcohol or drugs.

**Commented [WY10]:** In the *Nielsen v. Department of Licensing* decision, the Washington State Court of Appeals ruled that the statute that prohibits a person from appealing a license suspension or revocation is unconstitutional.

**Amendment from Jerry Stanton** - Washington's implied consent law provides for the revocation of a licensee's driver's license where the licensee is arrested for DUI and refuses to submit to a blood or breath alcohol test. Following a license revocation, the licensee can apply for an ignition interlock driver's license (IIDL), which allows the licensee to lawfully operate a vehicle during the revocation. However, the current IIDL statute precludes a licensee who obtains an IIDL from thereafter asserting the statutory right to judicial "appeal" from the administrative decision imposing the revocation. The Court of Appeals ruled that it was unconstitutional (in *Nielsen v. DOL*) that current statute denies a person the due process option to go to court to appeal the DOL's administrative decision imposing the revocation.

1 interlock driver's license granted upon a suspension or revocation  
2 under RCW 46.61.5055 or 46.20.3101 extends through the remaining  
3 portion of any concurrent or consecutive suspension or revocation  
4 that may be imposed as the result of administrative action and  
5 criminal conviction arising out of the same incident.

6 (iii) The time period during which the person is licensed under  
7 this section shall apply on a day-for-day basis toward satisfying  
8 the period of time the ignition interlock device restriction is  
9 required under RCW 46.20.720 (~~and~~), 46.61.5055, 10.05.140,  
10 46.61.500(3), and 46.61.5249(4). Beginning with incidents occurring  
11 on or after September 1, 2011, when calculating the period of time  
12 for the restriction under RCW 46.20.720 (2) or (3), the department  
13 must also give the person a day-for-day credit for the time period,  
14 beginning from the date of the incident, during which the person  
15 kept an ignition interlock device installed on all vehicles the  
16 person operates. For the purposes of this subsection (1)(c)(iii),  
17 the term "all vehicles" does not include vehicles that would be  
18 subject to the employer exception under RCW 46.20.720(3).

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

23 (3) Upon receipt of evidence that a holder of an ignition  
24 interlock driver's license granted under this subsection no longer  
25 has a functioning ignition interlock device installed on all  
26 vehicles operated by the driver, the director shall give written  
27 notice by first-class mail to the driver that the ignition interlock  
28 driver's license shall be canceled. If at any time before the  
29 cancellation goes into effect the driver submits evidence that a  
30 functioning ignition interlock device has been installed on all  
31 vehicles operated by the driver, the cancellation shall be stayed.  
32 If the cancellation becomes effective, the driver may obtain, at no  
33 additional charge, a new ignition interlock driver's license upon  
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**Commented [WY11]: Amendment from Patricia Fulton (WACDL/WDA)** - Extends the day-for-day credit towards satisfying the period of time on IID restriction to deferred prosecutions and IID requirements due to reckless driving and negligent driving 1 with prior offenses.

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

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

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

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

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

31 (7) The department shall adopt rules to implement ignition  
32 interlock licensing. The department shall consult with the  
33 administrative office of the courts, the state patrol, the  
34 Washington association of sheriffs and police chiefs, ignition



1 interlock companies, and any other organization or entity the  
2 department deems appropriate.

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

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

16  
17 **Notation on driving record -- Verification of interlock**  
18 **-- Penalty.**

19  
20 **Sec. 4.** RCW 46.20.740 and 2010 c 269 s 8 are each amended to  
21 read as follows:

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

1 license or privilege to drive. Whenever the license or driving  
2 privilege of any person is suspended or revoked as a result of  
3 noncompliance with an ignition interlock requirement, the suspension  
4 shall remain in effect until the person provides notice issued by a  
5 company doing business in the state that a vehicle owned or operated  
6 by the person is equipped with a functioning ignition interlock  
7 device.

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

**Commented [WY12]:** Language from **HB 2728** that provides the DOL must note on a person's driving record if he/she is required to have an IID as a condition of release.

14 **Implied consent -- Test refusal -- Procedures.**

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

18 (1) Any person who operates a motor vehicle within this state is  
19 deemed to have given consent, subject to the provisions of RCW  
20 46.61.506, to a test or tests of his or her breath for the purpose  
21 of determining the alcohol concentration ~~((, THC concentration, or~~  
22 ~~presence of any drug))~~ in his or her breath if arrested for any  
23 offense where, at the time of the arrest, the arresting officer has  
24 reasonable grounds to believe the person had been driving or was in  
25 actual physical control of a motor vehicle while under the influence  
26 of intoxicating liquor or any drug or was in violation of RCW  
27 46.61.503. ~~((Neither consent nor this section precludes a police~~  
28 ~~officer from obtaining a search warrant for a person's breath or~~  
29 ~~blood.))~~

30 (2) The test or tests of breath shall be administered at the  
31 direction of a law enforcement officer having reasonable grounds to  
32 believe the person to have been driving or in actual physical  
33 control of a motor vehicle within this state while under the  
34 influence of intoxicating liquor or any drug or the person to have

1 been driving or in actual physical control of a motor vehicle while  
2 having alcohol (~~or THC~~) in a concentration in violation of RCW  
3 46.61.503 in his or her system and being under the age of twenty-  
4 one. Prior to administering a breath test pursuant to this section,  
5 the officer shall inform the person of his or her right under this  
6 section to refuse the breath or blood test, and of his or her right  
7 to have additional tests administered by any qualified person of his  
8 or her choosing as provided in RCW 46.61.506. The officer shall warn  
9 the driver, in substantially the following language, that:

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

13 (b) If the driver refuses to take the test, the driver may be  
14 subject to criminal charges for failing to submit to a breath test;  
15 and

16 (c) If the driver refuses to take the test, the driver's refusal  
17 to take the test may be used in a criminal trial; and

18 ~~((e))~~ (d) If the driver submits to the test and the test is  
19 administered, the driver's license, permit, or privilege to drive  
20 will be suspended, revoked, or denied for at least ninety days if:

21 (i) The driver is age twenty-one or over and the test indicates  
22 either that the alcohol concentration of the driver's breath is 0.08  
23 or more ~~((or that the THC concentration of the driver's blood is~~  
24 ~~5.00 or more)); or~~

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

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

31 ~~((e))~~ (e) If the driver's license, permit, or privilege to  
32 drive is suspended, revoked, or denied the driver may be eligible to  
33 immediately apply for an ignition interlock driver's license.  
34

**Commented [WY13]:** Language from HB 2728 that removes references to the testing of a person's breath for purposes of determining THC concentration or the presence of drugs. *This is a policy decision that will need to be made as some people felt that since THC and drugs cannot be presently measured or tested with a breath test, that that particular language should be removed from statute.*

**Commented [WY14]:** Amendment from Erin Norgaard and Tom McBride, WAPA- Provides that prior to administering a breath test, an officer must inform the person of his/her right to refuse the breath or "blood" test.

**Commented [WY15]:** Amendment from John Schochet (Seattle City Attorney's Office) - Requires an officer to warn a driver that if he/she refuses to submit to a breath test then he/she can be subject to criminal charges. See section 12 of the bill draft which makes it a gross misdemeanor for a person arrested for DUI to refuse to submit to a breath test.

**Commented [WY16]:** Language from HB 2728 that removes references to the testing of a person's breath for purposes of determining THC concentration or the presence of drugs. *This is a policy decision that will need to be made as some people felt that since THC and drugs cannot be presently measured or tested with a breath test, that that particular language should be removed from statute.*

1 (3) ~~|(Except as provided in this section, the test administered~~  
2 ~~shall be of the breath only. If an individual is unconscious or is~~  
3 ~~under arrest for the crime of felony driving under the influence of~~  
4 ~~intoxicating liquor or drugs under RCW 46.61.502(6), felony physical~~  
5 ~~control of a motor vehicle while under the influence of intoxicating~~  
6 ~~liquor or any drug under RCW 46.61.504(6), vehicular homicide as~~  
7 ~~provided in RCW 46.61.520, or vehicular assault as provided in RCW~~  
8 ~~46.61.522, or if an individual is under arrest for the crime of~~  
9 ~~driving while under the influence of intoxicating liquor or drugs as~~  
10 ~~provided in RCW 46.61.502, which arrest results from an accident in~~  
11 ~~which there has been serious bodily injury to another person, a~~  
12 ~~breath or blood test may be administered without the consent of the~~  
13 ~~individual so arrested pursuant to a search warrant, a valid waiver~~  
14 ~~of the warrant requirement, or when exigent circumstances exist.~~

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

21 ~~(4) An arresting officer who at the time of arrest has~~  
22 ~~reasonable grounds to believe that a person arrested for any offense~~  
23 ~~had been driving or was in actual physical control of a motor~~  
24 ~~vehicle while under the influence of intoxicating liquor or any drug~~  
25 ~~or was in violation of RCW 46.61.503 may require that a breath or~~  
26 ~~blood test be administered pursuant to a search warrant, a valid~~  
27 ~~waiver of the warrant requirement, or when exigent circumstances~~  
28 ~~exist.~~

29 (5) If, after arrest and after the other applicable conditions  
30 and requirements of this section have been satisfied, a test or  
31 tests of the person's blood or breath is administered and the test  
32 results indicate that the alcohol concentration of the person's  
33 breath or blood is 0.08 or more, or the THC concentration of the  
34 person's blood is 5.00 or more, if the person is age twenty-one or

**Commented [WY17]:** Amendment from Erin Norgaard and Tom McBride, WAPA- Cleans up implied consent statutes as it relates to the US Supreme Court Case of *Missouri v. McNeely* where it was found that taking a person's blood without warrant violates a person's Fourth Amendment right and was therefore unconstitutional.

1 over, or that the alcohol concentration of the person's breath or  
2 blood is 0.02 or more, or the THC concentration of the person's  
3 blood is above 0.00, if the person is under the age of twenty-one,  
4 or the person refuses to submit to a test, the arresting officer or  
5 other law enforcement officer at whose direction any test has been  
6 given, or the department, where applicable, if the arrest results in  
7 a test of the person's blood, shall:

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

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

17 (c) Serve notice in writing that the license or permit, if any,  
18 is a temporary license that is valid for sixty days from the date of  
19 arrest or from the date notice has been given in the event notice is  
20 given by the department following a blood test, or until the  
21 suspension, revocation, or denial of the person's license, permit,  
22 or privilege to drive is sustained at a hearing pursuant to  
23 subsection (7) of this section, whichever occurs first. No temporary  
24 license is valid to any greater degree than the license or permit  
25 that it replaces; and

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

30 (i) That the officer had reasonable grounds to believe the  
31 arrested person had been driving or was in actual physical control  
32 of a motor vehicle within this state while under the influence of  
33 intoxicating liquor or drugs, or both, or was under the age of  
34 twenty-one years and had been driving or was in actual physical

1 control of a motor vehicle while having an alcohol or THC  
2 concentration in violation of RCW 46.61.503;

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

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

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

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

**Commented [WY18]:** Clean up language from HB  
2728

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

**Commented [WY19]:** Clean up language from HB 2728

**Commented [WY20]:** Clean up language from HB 2728 as it relates to the *Missouri v. McNeely* case

1 blood was 0.08 or more, or the THC concentration of the person's  
2 blood was 5.00 or more, if the person was age twenty-one or over at  
3 the time of the arrest, or that the alcohol concentration of the  
4 person's breath or blood was 0.02 or more, or the THC concentration  
5 of the person's blood was above 0.00, if the person was under the  
6 age of twenty-one at the time of the arrest. The sworn report or  
7 report under a declaration authorized by RCW 9A.72.085 submitted by  
8 a law enforcement officer is prima facie evidence that the officer  
9 had reasonable grounds to believe the person had been driving or was  
10 in actual physical control of a motor vehicle within this state  
11 while under the influence of intoxicating liquor or drugs, or both,  
12 or the person had been driving or was in actual physical control of  
13 a motor vehicle within this state while having alcohol in his or her  
14 system in a concentration of 0.02 or more, or THC in his or her  
15 system in a concentration above 0.00, and was under the age of  
16 twenty-one and that the officer complied with the requirements of  
17 this section.

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

33 (8) If the suspension, revocation, or denial is sustained after  
34 such a hearing, the person whose license, privilege, or permit is



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

33 (9) (a) If a person whose driver's license, permit, or privilege  
34 to drive has been or will be suspended, revoked, or denied under

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

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

33 (c) The provisions of (b) of this subsection relating to a stay  
34 of a suspension, revocation, or denial and the cancellation of any

**Commented [WY21]:** Clean up language from HB  
2728

1 suspension, revocation, or denial do not apply to the suspension,  
2 revocation, denial, or disqualification of a person's commercial  
3 driver's license or privilege to operate a commercial motor vehicle.

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

10  
11 **Circumventing ignition interlock -- Penalty.**

12  
13 **Sec. 6.** RCW 46.20.750 and 2005 c 200 s 2 are each amended to  
14 read as follows:

15 (1) A person who is restricted to the use of a vehicle equipped  
16 with an ignition interlock device ~~((and who tampers with the device  
17 or directs, authorizes, or requests another to tamper with the  
18 device, in order to circumvent the device by modifying, detaching,  
19 disconnecting, or otherwise disabling it,))~~ is guilty of a gross  
20 misdemeanor if the person:

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

23 (b) Uses or requests another person to use a filter or other  
24 device to circumvent the ignition interlock or to start or operate  
25 the vehicle;

26 (c) Has, directs, authorizes, or requests another person to  
27 tamper with the device by modifying, detaching, disconnecting, or  
28 otherwise disabling it; or

29 (d) Has, allows, directs, authorizes, or requests another person  
30 to blow or otherwise exhale into the device.

31 (2) A person who knowingly assists another person who is  
32 restricted to the use of a vehicle equipped with an ignition  
33 interlock device to circumvent the device or to start and operate  
34 that vehicle ~~((in violation of a court order))~~ is guilty of a gross

Draft

**Commented [WY22]:** Amendment requested by the WSP, Traffic Safety Commission and Corrie Moore (Auto Safe), that addresses allowing another person to tamper with or low into anIID device.

**Commented [WY23]:** DUI workgroup requested this amendment on 11/17/14

1 misdemeanor. The provisions of this subsection do not apply if the  
2 starting of a motor vehicle, or the request to start a motor  
3 vehicle, equipped with an ignition interlock device is done for the  
4 purpose of safety or mechanical repair of the device or the vehicle  
5 and the person subject to the court order does not operate the  
6 vehicle.

7  
8 **Commercial Vehicles - Test for alcohol or drugs --**  
9 **Disqualification for refusal of test or positive test --**  
10 **Procedures.**

11  
12 **Sec. 7.** RCW 46.25.120 and 2013 2nd sp.s. c 35 s 12 are each  
13 amended to read as follows:

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

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

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

30 (4) A law enforcement officer who at the time of stopping or  
31 detaining a commercial motor vehicle driver has reasonable suspicion  
32 to believe that driver was driving a commercial motor vehicle while  
33 having alcohol, marijuana, or any drug in his or her system or while  
34

1 under the influence of alcohol, marijuana, or any drug may require  
2 that a breath or blood test be administered pursuant to a search  
3 warrant, a valid waiver of the warrant requirement, or when exigent  
4 circumstances exist.

5 ~~(5)~~ If the person refuses testing, or ~~((submit to))~~ a test is  
6 administered that discloses an alcohol concentration of 0.04 or more  
7 or any measurable amount of THC concentration, the law enforcement  
8 officer shall submit a sworn report to the department certifying  
9 that the test was requested pursuant to subsection (1) of this  
10 section or a breath or blood test was administered pursuant to  
11 subsection (4) of this section and that the person refused to submit  
12 to testing, or ~~((submitted to))~~ a test was administered that  
13 disclosed an alcohol concentration of 0.04 or more or any measurable  
14 amount of THC concentration.

15 ~~((4))~~ (6) Upon receipt of the sworn report of a law  
16 enforcement officer under subsection ~~((4))~~ (5) of this section,  
17 the department shall disqualify the driver from driving a commercial  
18 motor vehicle under RCW 46.25.090, subject to the hearing provisions  
19 of RCW 46.20.329 and 46.20.332. The hearing shall be conducted in  
20 the county of the arrest. For the purposes of this section, the  
21 hearing shall cover the issues of whether a law enforcement officer  
22 had reasonable grounds to believe the person had been driving or was  
23 in actual physical control of a commercial motor vehicle within this  
24 state while having alcohol in the person's system or while under the  
25 influence of any drug, whether the person refused to submit to the  
26 test or tests upon request of the officer after having been informed  
27 that the refusal would result in the disqualification of the person  
28 from driving a commercial motor vehicle, if applicable, and, if the  
29 test was administered, whether the results indicated an alcohol  
30 concentration of 0.04 percent or more or any measurable amount of  
31 THC concentration. The department shall order that the  
32 disqualification of the person either be rescinded or sustained. Any  
33 decision by the department disqualifying a person from driving a  
34 commercial motor vehicle is stayed and does not take effect while a

**Commented [WY24]:** • Cleans up the implied consent statutes as it relates to the *Missouri v. McNeely* case.

• Provides that an officer can stop a person based on "reasonable suspicion" that the person is driving impaired instead of based on probable cause.- DUI workgroup requested this amendment on 11/17/14

• Removes references to the testing of a person's breath for purposes of determining THC concentration or the presence of drugs. **However this is a policy decision that will need to be made as some people felt that since THC and drugs cannot be presently measured or tested with a breath test, that that particular language should be removed from statute.**

1 formal hearing is pending under this section or during the pendency  
2 of a subsequent appeal to superior court so long as there is no  
3 conviction for a moving violation or no finding that the person has  
4 committed a traffic infraction that is a moving violation during the  
5 pendency of the hearing and appeal. If the disqualification of the  
6 person is sustained after the hearing, the person who is  
7 disqualified may file a petition in the superior court of the county  
8 of arrest to review the final order of disqualification by the  
9 department in the manner provided in RCW 46.20.334.

10 ~~((6))~~ (7) If a motor carrier or employer who is required to  
11 have a testing program under 49 C.F.R. 382 knows that a commercial  
12 driver in his or her employ has refused to submit to testing under  
13 this section and has not been disqualified from driving a commercial  
14 motor vehicle, the employer may notify law enforcement or his or her  
15 medical review officer or breath alcohol technician that the driver  
16 has refused to submit to the required testing.

17 ~~((7))~~ (8) The hearing provisions of this section do not apply  
18 to those persons disqualified from driving a commercial motor  
19 vehicle under RCW 46.25.090(7).

20

21 **Open Contain Law for Marijuana**

22

23 NEW SECTION. Sec. 8. A new section is added to chapter 46.61  
24 RCW to read as follows:

25 (1) **It is a traffic infraction:**

26 (a) For the registered owner of a motor vehicle, or the driver  
27 if the registered owner is not then present in the vehicle, to keep  
28 in a motor vehicle when the vehicle is upon a highway a bag or other  
29 receptacle containing marijuana unless the container is kept in the  
30 trunk of the vehicle or in some other area of the vehicle not  
31 normally occupied by the driver or passengers if the vehicle does  
32 not have a trunk. A utility compartment or glove compartment is  
33 deemed to be within the area occupied by the driver and passengers;

34

**Commented [WY25]:** Requires "all" containers or marijuana to be carried and stored in the trunk of the car otherwise it is a traffic infraction.

1 (b) To smoke or ingest marijuana in a motor vehicle when the  
2 vehicle is upon the public highway;

3 (c) To incorrectly label the original container of marijuana and  
4 to then violate (a) of this subsection; or

5 (d) To place marijuana in a container specifically labeled by  
6 the manufacturer of the container as containing a nonmarijuana  
7 substance and to then violate (a) of this subsection.

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

**Commented [WY26]:** Amendment provided by the WSP to define marijuana.

19 **Physical control of vehicle under the influence.**

21 **Sec. 9.** RCW 46.61.504 and 2013 c 3 s 35 are each amended to  
22 read as follows:

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

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

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

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

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

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

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

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

33 (4) (a) Analyses of blood or breath samples obtained more than  
34 two hours after the alleged being in actual physical control of a

**Commented [WY27]: Amendment from John Schochet (Seattle City Attorney's Office) -**  
Eliminates the provision that states that a person can't be convicted of Physical Control of a vehicle if, prior to being pursued by an officer, the person has moved the vehicle safely off the roadway.

Tries to clarify PC standards.



1 vehicle may be used as evidence that within two hours of the alleged  
2 being in such control, a person had an alcohol concentration of 0.08  
3 or more in violation of subsection (1) (a) of this section, and in  
4 any case in which the analysis shows an alcohol concentration above  
5 0.00 may be used as evidence that a person was under the influence  
6 of or affected by intoxicating liquor or any drug in violation of  
7 subsection (1) (c) or (d) of this section.

8 (b) Analyses of blood samples obtained more than two hours after  
9 the alleged being in actual physical control of a vehicle may be  
10 used as evidence that within two hours of the alleged being in  
11 control of the vehicle, a person had a THC concentration of 5.00 or  
12 more in violation of subsection (1) (b) of this section, and in any  
13 case in which the analysis shows a THC concentration above 0.00 may  
14 be used as evidence that a person was under the influence of or  
15 affected by marijuana in violation of subsection (1) (c) or (d) of  
16 this section.

17 (5) For purposes of this section, a person has actual physical  
18 control of a vehicle if:

19 (a) The person is in a seat from which the vehicle can be  
20 operated and in such condition that, except for impairment by  
21 intoxicating liquor, a drug, or any combination thereof, he or she  
22 is physically capable of starting the engine and causing the vehicle  
23 to move; and

24 (b) The vehicle is operable or reasonably capable of being  
25 rendered operable.

26 (6) Except as provided in subsection (~~(+6)~~) (7) of this  
27 section, a violation of this section is a gross misdemeanor.

28 (~~(+6)~~) (7) It is a class C felony punishable under chapter  
29 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

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

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

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

**Commented [WY28]:** Amendment from John Schochet (Seattle City Attorney's Office) - Provides that a person is in physical control of a vehicle if the driver is in the driver's seat and is in a condition where he/she is physically capable of starting and moving the vehicle and the vehicle is reasonable capable of being moved.  
Tries to clarify PC standards.

- 1 (ii) Vehicular assault while under the influence of intoxicating  
2 liquor or any drug, RCW 46.61.522(1)(b);  
3 (iii) An out-of-state offense comparable to the offense  
4 specified in (b)(i) or (ii) of this subsection; or  
5 (iv) A violation of this subsection (~~(6)~~) (7) or RCW  
6 46.61.502(6).  
7

8 **Driving on roadways laned for traffic.**  
9

10 **Sec. 10.** RCW 46.61.140 and 1965 ex.s. c 155 s 23 are each  
11 amended to read as follows:

12 Whenever any roadway has been divided into two or more clearly  
13 marked lanes for traffic the following rules in addition to all  
14 others consistent herewith shall apply:

15 (1) A vehicle shall be driven as nearly as practicable entirely  
16 within a single lane and shall not be moved from such lane until the  
17 driver has first ascertained that such movement can be made with  
18 safety.

19 (2) Upon a roadway which is divided into three lanes and  
20 provides for two-way movement of traffic, a vehicle shall not be  
21 driven in the center lane except when overtaking and passing another  
22 vehicle traveling in the same direction when such center lane is  
23 clear of traffic within a safe distance, or in preparation for  
24 making a left turn or where such center lane is at the time  
25 allocated exclusively to traffic moving in the same direction that  
26 the vehicle is proceeding and such allocation is designated by  
27 official traffic-control devices.

28 (3) Official traffic-control devices may be erected directing  
29 slow moving or other specified traffic to use a designated lane or  
30 designating those lanes to be used by traffic moving in a particular  
31 direction regardless of the center of the roadway and drivers of  
32 vehicles shall obey the directions of every such device.  
33  
34

1 (4) Official traffic-control devices may be installed  
2 prohibiting the changing of lanes on sections of roadway and drivers  
3 of vehicles shall obey the directions of every such device.

4 (5) (a) For purposes of this section, a vehicle is driven as  
5 nearly as practicable entirely within a single lane as long as the  
6 vehicle remains entirely within a single lane.

7 (b) It is an affirmative defense to a violation of this section,  
8 which the driver must establish by a preponderance of the evidence,  
9 that the vehicle crossed into another lane as a result of an act,  
10 omission, or occurrence outside of the driver's immediate control  
11 and only to the minimum extent reasonably necessary under the  
12 circumstances.

13  
14 **Alcohol and drug violators -- Penalty schedule.**

15  
16 **Sec. 11.** RCW 46.61.5055 and 2014 c 100 s 1 are each amended to  
17 read as follows:

18 (1) **No prior offenses in seven years.** Except as provided in RCW  
19 46.61.502(6) or 46.61.504(~~(+6)~~) (7), a person who is convicted of a  
20 violation of RCW 46.61.502 (~~(+6)~~), 46.61.504, or section ~~11~~ 12 of  
21 this act and who has no prior offense within seven years shall be  
22 punished as follows:

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

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

Draft

p.27

**Commented [WY29]: Amendment from John Schochet (Seattle City Attorney's Office)-**  
Provides that a vehicle remains in a lane so long as the vehicle remains entirely within a single lane. Provides an affirmative defense the driver must establish, that vehicle crossed into another lane as a result of an act outside of the driver's immediate control and only to the minimum extent reasonably necessary under the circumstances.

Clarifies authority to pull a driver over for failing to stay within a lane.

**Commented [WY30]:** This comment relates to subsection 1 thru 6 of this section (section 10).

**Amendment from John Schochet (Seattle City Attorney's Office) -** Makes the crime of refusing to submit to a breath test count and to be penalized similarly to other prior DUI convictions.

See section 12 of the bill draft which makes it a gross misdemeanor for a person arrested for DUI to refuse to submit to a breath test.

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

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

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

21 (i) By imprisonment for not less than two days nor more than  
22 three hundred sixty-four days. Forty-eight consecutive hours of the  
23 imprisonment may not be suspended unless the court finds that the  
24 imposition of this mandatory minimum sentence would impose a  
25 substantial risk to the offender's physical or mental well-being.  
26 Whenever the mandatory minimum sentence is suspended, the court  
27 shall state in writing the reason for granting the suspension and  
28 the facts upon which the suspension is based. In lieu of the  
29 mandatory minimum term of imprisonment required under this  
30 subsection (1) (b) (i), the court may order not less than thirty days  
31 of electronic home monitoring. The offender shall pay the cost of  
32 electronic home monitoring. The county or municipality in which the  
33 penalty is being imposed shall determine the cost. The court may  
34 also require the offender's electronic home monitoring device to

1 include an alcohol detection breathalyzer or other separate alcohol  
2 monitoring device, and the court may restrict the amount of alcohol  
3 the offender may consume during the time the offender is on  
4 electronic home monitoring; and

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

8 (2) **One prior offense in seven years.** Except as provided in RCW  
9 46.61.502(6) or 46.61.504(~~(6)~~) (7), a person who is convicted of a  
10 violation of RCW 46.61.502 (~~(6)~~), 46.61.504, or section 11 12 of  
11 this act and who has one prior offense within seven years shall be  
12 punished as follows:

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

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

1 finds that the imposition of this mandatory minimum sentence would  
2 impose a substantial risk to the offender's physical or mental well-  
3 being. Whenever the mandatory minimum sentence is suspended, the  
4 court shall state in writing the reason for granting the suspension  
5 and the facts upon which the suspension is based; and

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

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

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

34

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

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

7 (3) **Two or three prior offenses in seven years.** Except as  
8 provided in RCW 46.61.502(6) (~~(6)~~), 46.61.504(~~(6)~~) (7), or  
9 section 11 12 of this act, a person who is convicted of a violation  
10 of RCW 46.61.502 or 46.61.504 and who has two or three prior  
11 offenses within seven years shall be punished as follows:

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

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

1 would impose a substantial risk to the offender's physical or mental  
2 well-being. Whenever the mandatory minimum sentence is suspended,  
3 the court shall state in writing the reason for granting the  
4 suspension and the facts upon which the suspension is based; and

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

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

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



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

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

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

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

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

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

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

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

19 (iv) A violation of RCW 46.61.502(6) or 46.61.504(~~(+6)~~) (7).

20 (5) **Monitoring.**

21 (a) **Ignition interlock device.** The court shall require any  
22 person convicted of a violation of RCW 46.61.502 (~~(6)~~) 46.61.504,  
23 or section 11 12 of this act or an equivalent local ordinance to  
24 comply with the rules and requirements of the department regarding  
25 the installation and use of a functioning ignition interlock device  
26 installed on all motor vehicles operated by the person.

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

1 municipality where the penalty is being imposed shall determine the  
2 cost.

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

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

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

12 or

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

17 (6) **Penalty for having a minor passenger in vehicle.** If a person  
18 who is convicted of a violation of RCW 46.61.502 (~~(6)~~) 46.61.504,  
19 or section 11-12 of this act committed the offense while a passenger  
20 under the age of sixteen was in the vehicle, the court shall:

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

23 (b) In any case in which the person has no prior offenses within  
24 seven years, and except as provided in RCW 46.61.502(6) or  
25 46.61.504(~~(6)~~) (7), order an additional twenty-four hours of  
26 imprisonment and a fine of not less than one thousand dollars and  
27 not more than five thousand dollars. One thousand dollars of the  
28 fine may not be suspended unless the court finds the offender to be  
29 indigent;

30 (c) In any case in which the person has one prior offense within  
31 seven years, and except as provided in RCW 46.61.502(6) or  
32 46.61.504(~~(6)~~) (7), order an additional five days of imprisonment  
33 and a fine of not less than two thousand dollars and not more than  
34

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

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

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

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

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

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

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

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

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

31 (a) **Penalty for alcohol concentration less than 0.15.** If the  
32 person's alcohol concentration was less than 0.15, or if for reasons  
33 other than the person's refusal to take a test offered under RCW  
34

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

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

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

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

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

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

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

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

17 or

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

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

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

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

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

31 Upon its own motion or upon motion by a person, a court may  
32 find, on the record, that notice to the department under RCW  
33 46.20.270 has been delayed for three years or more as a result of a  
34 clerical or court error. If so, the court may order that the

1 person's license, permit, or nonresident privilege shall not be  
2 revoked, suspended, or denied for that offense. The court shall send  
3 notice of the finding and order to the department and to the person.  
4 Upon receipt of the notice from the court, the department shall not  
5 revoke, suspend, or deny the license, permit, or nonresident  
6 privilege of the person for that offense.

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

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

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

**Commented [WY31]:** Amendment from John Schochet (Seattle City Attorney's Office) - Provides that maintaining a valid license and insurance are independent conditions of probation.

1 nonrepetition, installation of an ignition interlock device on the  
2 probationer's motor vehicle, alcohol or drug treatment, supervised  
3 probation, or other conditions that may be appropriate. The sentence  
4 may be imposed in whole or in part upon violation of a condition of  
5 probation during the suspension period.

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

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

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

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

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

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

32 Whenever the mandatory minimum term of electronic home  
33 monitoring is waived, the court shall state in writing the reason  
34 for granting the waiver and the facts upon which the waiver is

1 based, and shall impose an alternative sentence with similar  
2 punitive consequences. The alternative sentence may include, but is  
3 not limited to, use of an ignition interlock device, the 24/7  
4 sobriety program monitoring, additional jail time, work crew, or  
5 work camp.

6 Whenever the combination of jail time and electronic home  
7 monitoring or alternative sentence would exceed three hundred sixty-  
8 four days, the offender shall serve the jail portion of the sentence  
9 first, and the electronic home monitoring or alternative portion of  
10 the sentence shall be reduced so that the combination does not  
11 exceed three hundred sixty-four days.

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

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

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

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

22 ~~(ii) A conviction for a violation of RCW 46.61.503 or an~~  
23 ~~equivalent local ordinance;~~

24 ~~(iii) A conviction for a violation of RCW 46.61.504 or an~~  
25 ~~equivalent local ordinance;~~

26 ~~((~~(iii)~~)) (iv) A conviction for a violation of RCW 46.25.110 or~~  
27 ~~an equivalent local ordinance;~~

28 ~~((~~((~~(iv)~~)) (v) A conviction for a violation of RCW 79A.60.040(1)~~~~  
29 ~~or an equivalent local ordinance;))~~

30 ~~((~~(v)~~)) (vi) A conviction for a violation of RCW 79A.60.040(2)~~  
31 ~~or an equivalent local ordinance;~~

32 ~~(vii) A conviction for a violation of RCW 79A.60.040(1) or an~~  
33 ~~equivalent local ordinance committed in a reckless manner if the~~  
34

**Commented [WY32]:** RCW 79A.60.040 (1) is Boating in a reckless manner and RCW 79A.60.040 ((2)) is BUI. This section is no longer needed since it is included in (vi) and (vii) below.

1 conviction is the result of a charge that was originally filed as a  
2 violation of RCW 79A.60.040(2) or an equivalent local ordinance;

3 (viii) A conviction for a violation of RCW 47.68.220 or an  
4 equivalent local ordinance committed while under the influence of  
5 intoxicating liquor or any drug;

6 (ix) A conviction for a violation of RCW 47.68.220 or an  
7 equivalent local ordinance committed in a careless or reckless  
8 manner if the conviction is the result of a charge that was  
9 originally filed as a violation of RCW 47.68.220 or an equivalent  
10 local ordinance while under the influence of intoxicating liquor or  
11 any drug;

12 (x) A conviction for a violation of RCW 79A.60.060(2) (b) or an  
13 equivalent local ordinance;

14 (xi) A conviction for a violation of RCW 79A.60.060(2) (a) or an  
15 equivalent local ordinance if the conviction is the result of a  
16 charge that was originally filed as a violation of RCW  
17 79A.60.060(2) (b) or an equivalent local ordinance;

18 (xii) A conviction for a violation of RCW 79A.60.050(1) (a) or an  
19 equivalent local ordinance;

20 (xiii) A conviction for a violation of RCW 79A.60.050(1) (b) or  
21 (c), or an equivalent local ordinance if the conviction is the  
22 result of a charge that was originally filed as a violation of RCW  
23 79A.60.050(1) (a) or an equivalent local ordinance;

24 ~~(((xiv) A conviction for a violation of RCW 47.68.220 or an~~  
25 ~~equivalent local ordinance;))~~

26 ~~(((vi)))~~ (xv) A conviction for a violation of RCW 46.09.470(2)  
27 or an equivalent local ordinance;

28 ~~(((vii)))~~ (xvi) A conviction for a violation of RCW 46.10.490(2)  
29 or an equivalent local ordinance;

30 ~~(((viii)))~~ (xvii) A conviction for a violation of RCW 46.61.520  
31 committed while under the influence of intoxicating liquor or any  
32 drug, or a conviction for a violation of RCW 46.61.520 committed in  
33 a reckless manner or with the disregard for the safety of others if  
34 the conviction is the result of a charge that was originally filed

**Commented [WY33]:** Amendment from Erin Norgaard and Amy Freedheim - Makes boating (under the influence) and aircraft (under the influence) offenses count as prior offenses in the DUI statute.

**Commented [WY34]:** Operating an aircraft recklessly or under the influence of alcohol/drugs are punishable as gross misdemeanors under the same statute (RCW 47.68.220). As a result this is being eliminated since it is included in (viii) and (ix) above in this subsection.



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

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

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

15 ~~((~~xii~~))~~ (xx) An out-of-state conviction for a violation that  
16 would have been a violation of (a) (i), ~~((~~ii~~), ~~(viii)~~, ~~(ix)~~)~~ (iii),  
17 (xvii), (xviii), or ~~((~~x~~))~~ (xix) of this subsection if committed in  
18 this state;

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

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

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

1 ~~(xxv)~~) (xxiv) A deferred sentence imposed in a prosecution for a  
2 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an  
3 equivalent local ordinance, if the charge under which the deferred  
4 sentence was imposed was originally filed as a violation of RCW  
5 46.61.502 or 46.61.504, or an equivalent local ordinance, or a  
6 violation of RCW 46.61.520 or 46.61.522;

7 If a deferred prosecution is revoked based on a subsequent  
8 conviction for an offense listed in this subsection (14) (a), the  
9 subsequent conviction shall not be treated as a prior offense of the  
10 revoked deferred prosecution for the purposes of sentencing; or

11 (xxv) A conviction for a violation of section ~~11~~ 12 of this act  
12 or an equivalent local ordinance;

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

15 (c) "Within seven years" means that the arrest for a prior  
16 offense occurred within seven years before or after the arrest for  
17 the current offense; and

18 (d) "Within ten years" means that the arrest for a prior offense  
19 occurred within ten years before or after the arrest for the current  
20 offense.

**Commented [WY35]:** Amendment from John Schochet (Seattle City Attorney's Office) - Makes the new crime of refusing to submit to a breath test a "prior" DUI offense.

21  
22 **Creates New Crime of Refusing to Take a Breath Test**

23  
24 NEW SECTION. Sec. 12. A new section is added to chapter 46.61  
25 RCW to read as follows:

26 (1) A person is guilty of a gross misdemeanor offense under  
27 chapter 9A.20 RCW if he or she, after being: (a) Arrested for a  
28 violation of RCW 46.61.502, 46.61.504, or 79A.60.040, or an  
29 equivalent local ordinance, and (b) read any applicable warnings,  
30 refuses, by behavior, statement, or any other act to submit to the  
31 breath test required by RCW 46.20.308.

32 (2) An offense under this section is a separate offense from a  
33 violation of RCW 46.61.502, 46.61.504, or 79A.60.040 or an  
34 equivalent local ordinance.

**Commented [WY36]:** Amendment from John Schochet (Seattle City Attorney's Office) - Creates a new crime. Makes it a gross misdemeanor for a person arrested for DUI or BUI to refuse to submit to a breath test.

1  
2 **Violations as traffic infractions -- Exceptions.**  
3 **(Effective July 1, 2015.)**  
4

5 **Sec. 13.** RCW 46.63.020 and 2014 c 124 s 9 are each amended to  
6 read as follows:

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

16 (1) RCW 46.09.457(1)(b)(i) relating to a false statement  
17 regarding the inspection of and installation of equipment on wheeled  
18 all-terrain vehicles;

19 (2) RCW 46.09.470(2) relating to the operation of a nonhighway  
20 vehicle while under the influence of intoxicating liquor or a  
21 controlled substance;

22 (3) RCW 46.09.480 relating to operation of nonhighway vehicles;

23 (4) RCW 46.10.490(2) relating to the operation of a snowmobile  
24 while under the influence of intoxicating liquor or narcotics or  
25 habit-forming drugs or in a manner endangering the person of  
26 another;

27 (5) RCW 46.10.495 relating to the operation of snowmobiles;

28 (6) Chapter 46.12 RCW relating to certificates of title,  
29 registration certificates, and markings indicating that a vehicle  
30 has been destroyed or declared a total loss;

31 (7) RCW 46.16A.030 and 46.16A.050(3) relating to the nonpayment  
32 of taxes and fees by failure to register a vehicle and falsifying  
33 residency when registering a motor vehicle;

34

- 1 (8) RCW 46.16A.520 relating to permitting unauthorized persons  
2 to drive;
- 3 (9) RCW 46.16A.320 relating to vehicle trip permits;
- 4 (10) RCW 46.19.050(1) relating to knowingly providing false  
5 information in conjunction with an application for a special placard  
6 or license plate for disabled persons' parking;
- 7 (11) RCW 46.19.050(8) relating to illegally obtaining a parking  
8 placard, special license plate, special year tab, or identification  
9 card;
- 10 (12) RCW 46.19.050(9) relating to sale of a parking placard,  
11 special license plate, special year tab, or identification card;
- 12 (13) RCW 46.20.005 relating to driving without a valid driver's  
13 license;
- 14 (14) RCW 46.20.091 relating to false statements regarding a  
15 driver's license or instruction permit;
- 16 (15) RCW 46.20.0921 relating to the unlawful possession and use  
17 of a driver's license;
- 18 (16) RCW 46.20.342 relating to driving with a suspended or  
19 revoked license or status;
- 20 (17) RCW 46.20.345 relating to the operation of a motor vehicle  
21 with a suspended or revoked license;
- 22 (18) RCW 46.20.410 relating to the violation of restrictions of  
23 an occupational driver's license, temporary restricted driver's  
24 license, or ignition interlock driver's license;
- 25 (19) RCW 46.20.740 relating to operation of a motor vehicle  
26 without an ignition interlock device in violation of a license  
27 notation that the device is required;
- 28 (20) RCW 46.20.750 relating to circumventing an ignition  
29 interlock device;
- 30 (21) RCW 46.25.170 relating to commercial driver's licenses;
- 31 (22) Chapter 46.29 RCW relating to financial responsibility;
- 32 (23) RCW 46.30.040 relating to providing false evidence of  
33 financial responsibility;
- 34 (24) RCW 46.35.030 relating to recording device information;

- 1 (25) RCW 46.37.435 relating to wrongful installation of  
2 suncreening material;
- 3 (26) RCW 46.37.650 relating to the sale, resale, distribution,  
4 or installation of a previously deployed air bag;
- 5 (27) RCW 46.37.671 through 46.37.675 relating to signal  
6 preemption devices;
- 7 (28) RCW 46.37.685 relating to switching or flipping license  
8 plates, utilizing technology to flip or change the appearance of a  
9 license plate, selling a license plate flipping device or technology  
10 used to change the appearance of a license plate, or falsifying a  
11 vehicle registration;
- 12 (29) RCW 46.44.180 relating to operation of mobile home pilot  
13 vehicles;
- 14 (30) RCW 46.48.175 relating to the transportation of dangerous  
15 articles;
- 16 (31) RCW 46.52.010 relating to duty on striking an unattended  
17 car or other property;
- 18 (32) RCW 46.52.020 relating to duty in case of injury to or  
19 death of a person or damage to an attended vehicle;
- 20 (33) RCW 46.52.090 relating to reports by repairers, storage  
21 persons, and appraisers;
- 22 (34) RCW 46.52.130 relating to confidentiality of the driving  
23 record to be furnished to an insurance company, an employer, and an  
24 alcohol/drug assessment or treatment agency;
- 25 (35) RCW 46.55.020 relating to engaging in the activities of a  
26 registered tow truck operator without a registration certificate;
- 27 (36) RCW 46.55.035 relating to prohibited practices by tow truck  
28 operators;
- 29 (37) RCW 46.55.300 relating to vehicle immobilization;
- 30 (38) RCW 46.61.015 relating to obedience to police officers,  
31 flaggers, or firefighters;
- 32 (39) RCW 46.61.020 relating to refusal to give information to or  
33 cooperate with an officer;
- 34

- 1 (40) RCW 46.61.022 relating to failure to stop and give  
2 identification to an officer;
- 3 (41) RCW 46.61.024 relating to attempting to elude pursuing  
4 police vehicles;
- 5 (42) RCW 46.61.212(4) relating to reckless endangerment of  
6 emergency zone workers;
- 7 (43) RCW 46.61.500 relating to reckless driving;
- 8 (44) RCW 46.61.502 and 46.61.504 relating to persons under the  
9 influence of intoxicating liquor or drugs;
- 10 (45) RCW 46.61.503 relating to a person under age twenty-one  
11 driving a motor vehicle after consuming alcohol;
- 12 (46) RCW 46.61.520 relating to vehicular homicide by motor  
13 vehicle;
- 14 (47) RCW 46.61.522 relating to vehicular assault;
- 15 (48) RCW 46.61.5249 relating to first degree negligent driving;
- 16 (49) RCW 46.61.527(4) relating to reckless endangerment of  
17 roadway workers;
- 18 (50) RCW 46.61.530 relating to racing of vehicles on highways;
- 19 (51) RCW 46.61.655(7) (a) and (b) relating to failure to secure  
20 a load;
- 21 (52) RCW 46.61.685 relating to leaving children in an unattended  
22 vehicle with the motor running;
- 23 (53) RCW 46.61.740 relating to theft of motor vehicle fuel;
- 24 (54) RCW 46.64.010 relating to unlawful cancellation of or  
25 attempt to cancel a traffic citation;
- 26 (55) RCW 46.64.048 relating to attempting, aiding, abetting,  
27 coercing, and committing crimes;
- 28 (56) Chapter 46.65 RCW relating to habitual traffic offenders;
- 29 (57) RCW 46.68.010 relating to false statements made to obtain a  
30 refund;
- 31 (58) Chapter 46.70 RCW relating to unfair motor vehicle business  
32 practices, except where that chapter provides for the assessment of  
33 monetary penalties of a civil nature;
- 34

1 (59) Chapter 46.72 RCW relating to the transportation of  
2 passengers in for hire vehicles;  
3 (60) RCW 46.72A.060 relating to limousine carrier insurance;  
4 (61) RCW 46.72A.070 relating to operation of a limousine without  
5 a vehicle certificate;  
6 (62) RCW 46.72A.080 relating to false advertising by a limousine  
7 carrier;  
8 (63) Chapter 46.80 RCW relating to motor vehicle wreckers;  
9 (64) Chapter 46.82 RCW relating to driver's training schools;  
10 (65) RCW 46.87.260 relating to alteration or forgery of a cab  
11 card, letter of authority, or other temporary authority issued under  
12 chapter 46.87 RCW;  
13 (66) RCW 46.87.290 relating to operation of an unregistered or  
14 unlicensed vehicle under chapter 46.87 RCW;  
15 (67) Section ~~11~~ 12 of this act relating to refusing to take a  
16 breath test.

**Commented [WY37]:** Classifies the new crime created in section 12 (making it a gross misdemeanor offense for a person arrested for DUI to refuse to submit to a breath test) as a criminal offense instead of a traffic infraction.

### 18 Reckless driving -- Penalty.

19  
20 **Sec. 14.** RCW 46.61.500 and 2012 c 183 s 11 are each amended to  
21 read as follows:

22 (1) Any person who drives any vehicle in willful or wanton  
23 disregard for the safety of persons or property is guilty of  
24 reckless driving. Violation of the provisions of this section is a  
25 gross misdemeanor punishable by imprisonment for up to three hundred  
26 sixty-four days and by a fine of not more than five thousand  
27 dollars.

28 (2) (a) Subject to (b) of this subsection, the license or permit  
29 to drive or any nonresident privilege of any person convicted of  
30 reckless driving shall be suspended by the department for not less  
31 than thirty days.

32 (b) When a reckless driving conviction is a result of a charge  
33 that was originally filed as a violation of RCW 46.61.502 (~~(or)~~)  
34 46.61.504, or section ~~11~~ 12 of this act, or an equivalent local

1 ordinance, the department shall grant credit on a day-for-day basis  
2 for any portion of a suspension, revocation, or denial already  
3 served under an administrative action arising out of the same  
4 incident. During any period of suspension, revocation, or denial due  
5 to a conviction for reckless driving as the result of a charge  
6 originally filed as a violation of RCW 46.61.502 (~~(e)~~), 46.61.504,  
7 or section ~~11~~ 12 of this act, any person who has obtained an  
8 ignition interlock driver's license under RCW 46.20.385 may continue  
9 to drive a motor vehicle pursuant to the provision of the ignition  
10 interlock driver's license without obtaining a separate temporary  
11 restricted driver's license under RCW 46.20.391.

12 (3) (a) Except as provided under (b) of this subsection, a person  
13 convicted of reckless driving who has one or more prior offenses as  
14 defined in RCW 46.61.5055(14) within seven years shall be required,  
15 under RCW 46.20.720, to install an ignition interlock device on all  
16 vehicles operated by the person if the conviction is the result of a  
17 charge that was originally filed as a violation of RCW 46.61.502,  
18 46.61.504, or an equivalent local ordinance.

19 (b) A person convicted of reckless driving shall be required,  
20 under RCW 46.20.720, to install an ignition interlock device on all  
21 vehicles operated by the person if the conviction is the result of a  
22 charge that was originally filed as a violation of RCW 46.61.520  
23 committed while under the influence of intoxicating liquor or any  
24 drug or RCW 46.61.522 committed while under the influence of  
25 intoxicating liquor or any drug.

26

27 **Alcohol violators -- Vehicle seizure and forfeiture.**

28

29 **Sec. 15.** RCW 46.61.5058 and 2013 2nd sp.s. c 35 s 18 are each  
30 amended to read as follows:

31 (1) Upon the arrest of a person or upon the filing of a  
32 complaint, citation, or information in a court of competent  
33 jurisdiction, based upon probable cause to believe that a person has  
34 violated RCW 46.20.740, 46.61.502, (~~(e)~~) 46.61.504, or section ~~11~~



1 12 of this act or any similar municipal ordinance, if such person  
2 has a prior offense within seven years as defined in RCW 46.61.5055,  
3 and where the person has been provided written notice that any  
4 transfer, sale, or encumbrance of such person's interest in the  
5 vehicle over which that person was actually driving or had physical  
6 control when the violation occurred, is unlawful pending either  
7 acquittal, dismissal, sixty days after conviction, or other  
8 termination of the charge, such person shall be prohibited from  
9 encumbering, selling, or transferring his or her interest in such  
10 vehicle, except as otherwise provided in (a), (b), and (c) of this  
11 subsection, until either acquittal, dismissal, sixty days after  
12 conviction, or other termination of the charge. The prohibition  
13 against transfer of title shall not be stayed pending the  
14 determination of an appeal from the conviction.

15 (a) A vehicle encumbered by a bona fide security interest may be  
16 transferred to the secured party or to a person designated by the  
17 secured party;

18 (b) A leased or rented vehicle may be transferred to the lessor,  
19 rental agency, or to a person designated by the lessor or rental  
20 agency; and

21 (c) A vehicle may be transferred to a third party or a vehicle  
22 dealer who is a bona fide purchaser or may be subject to a bona fide  
23 security interest in the vehicle unless it is established that (i)  
24 in the case of a purchase by a third party or vehicle dealer, such  
25 party or dealer had actual notice that the vehicle was subject to  
26 the prohibition prior to the purchase, or (ii) in the case of a  
27 security interest, the holder of the security interest had actual  
28 notice that the vehicle was subject to the prohibition prior to the  
29 encumbrance of title.

30 (2) On conviction for a violation of either RCW 46.20.740,  
31 46.61.502, (~~or~~) 46.61.504, or section 11 12 of this act or any  
32 similar municipal ordinance where the person convicted has a prior  
33 offense within seven years as defined in RCW 46.61.5055, the motor  
34 vehicle the person was driving or over which the person had actual

1 physical control at the time of the offense, if the person has a  
2 financial interest in the vehicle, the court shall consider at  
3 sentencing whether the vehicle shall be seized and forfeited  
4 pursuant to this section if a seizure or forfeiture has not yet  
5 occurred.

6 (3) A vehicle subject to forfeiture under this chapter may be  
7 seized by a law enforcement officer of this state upon process  
8 issued by a court of competent jurisdiction. Seizure of a vehicle  
9 may be made without process if the vehicle subject to seizure has  
10 been the subject of a prior judgment in favor of the state in a  
11 forfeiture proceeding based upon this section.

12 (4) Seizure under subsection (3) of this section automatically  
13 commences proceedings for forfeiture. The law enforcement agency  
14 under whose authority the seizure was made shall cause notice of the  
15 seizure and intended forfeiture of the seized vehicle to be served  
16 within fifteen days after the seizure on the owner of the vehicle  
17 seized, on the person in charge of the vehicle, and on any person  
18 having a known right or interest in the vehicle, including a  
19 community property interest. The notice of seizure may be served by  
20 any method authorized by law or court rule, including but not  
21 limited to service by certified mail with return receipt requested.  
22 Service by mail is complete upon mailing within the fifteen-day  
23 period after the seizure. Notice of seizure in the case of property  
24 subject to a security interest that has been perfected on a  
25 certificate of title shall be made by service upon the secured party  
26 or the secured party's assignee at the address shown on the  
27 financing statement or the certificate of title.

28 (5) If no person notifies the seizing law enforcement agency in  
29 writing of the person's claim of ownership or right to possession of  
30 the seized vehicle within forty-five days of the seizure, the  
31 vehicle is deemed forfeited.

32 (6) If a person notifies the seizing law enforcement agency in  
33 writing of the person's claim of ownership or right to possession of  
34 the seized vehicle within forty-five days of the seizure, the law

1 enforcement agency shall give the person or persons a reasonable  
2 opportunity to be heard as to the claim or right. The hearing shall  
3 be before the chief law enforcement officer of the seizing agency or  
4 the chief law enforcement officer's designee, except where the  
5 seizing agency is a state agency as defined in RCW 34.12.020, the  
6 hearing shall be before the chief law enforcement officer of the  
7 seizing agency or an administrative law judge appointed under  
8 chapter 34.12 RCW, except that any person asserting a claim or right  
9 may remove the matter to a court of competent jurisdiction. Removal  
10 may only be accomplished according to the rules of civil procedure.  
11 The person seeking removal of the matter must serve process against  
12 the state, county, political subdivision, or municipality that  
13 operates the seizing agency, and any other party of interest, in  
14 accordance with RCW 4.28.080 or 4.92.020, within forty-five days  
15 after the person seeking removal has notified the seizing law  
16 enforcement agency of the person's claim of ownership or right to  
17 possession. The court to which the matter is to be removed shall be  
18 the district court when the aggregate value of the vehicle is within  
19 the jurisdictional limit set forth in RCW 3.66.020. A hearing before  
20 the seizing agency and any appeal therefrom shall be under Title 34  
21 RCW. In a court hearing between two or more claimants to the vehicle  
22 involved, the prevailing party shall be entitled to a judgment for  
23 costs and reasonable attorneys' fees. The burden of producing  
24 evidence shall be upon the person claiming to be the legal owner or  
25 the person claiming to have the lawful right to possession of the  
26 vehicle. The seizing law enforcement agency shall promptly return  
27 the vehicle to the claimant upon a determination by the  
28 administrative law judge or court that the claimant is the present  
29 legal owner under this title or is lawfully entitled to possession  
30 of the vehicle.

31 (7) When a vehicle is forfeited under this chapter the seizing  
32 law enforcement agency may sell the vehicle, retain it for official  
33 use, or upon application by a law enforcement agency of this state  
34 release the vehicle to that agency for the exclusive use of

1 enforcing this title; provided, however, that the agency shall first  
2 satisfy any bona fide security interest to which the vehicle is  
3 subject under subsection (1)(a) or (c) of this section.

4 (8) When a vehicle is forfeited, the seizing agency shall keep a  
5 record indicating the identity of the prior owner, if known, a  
6 description of the vehicle, the disposition of the vehicle, the  
7 value of the vehicle at the time of seizure, and the amount of  
8 proceeds realized from disposition of the vehicle.

9 (9) Each seizing agency shall retain records of forfeited  
10 vehicles for at least seven years.

11 (10) Each seizing agency shall file a report including a copy of  
12 the records of forfeited vehicles with the state treasurer each  
13 calendar quarter.

14 (11) The quarterly report need not include a record of a  
15 forfeited vehicle that is still being held for use as evidence  
16 during the investigation or prosecution of a case or during the  
17 appeal from a conviction.

18 (12) By January 31st of each year, each seizing agency shall  
19 remit to the state treasurer an amount equal to ten percent of the  
20 net proceeds of vehicles forfeited during the preceding calendar  
21 year. Money remitted shall be deposited in the state general fund.

22 (13) The net proceeds of a forfeited vehicle is the value of the  
23 forfeitable interest in the vehicle after deducting the cost of  
24 satisfying a bona fide security interest to which the vehicle is  
25 subject at the time of seizure; and in the case of a sold vehicle,  
26 after deducting the cost of sale, including reasonable fees or  
27 commissions paid to independent selling agents.

28 (14) The value of a sold forfeited vehicle is the sale price.  
29 The value of a retained forfeited vehicle is the fair market value  
30 of the vehicle at the time of seizure, determined when possible by  
31 reference to an applicable commonly used index, such as the index  
32 used by the department of licensing. A seizing agency may, but need  
33 not, use an independent qualified appraiser to determine the value  
34

1 of retained vehicles. If an appraiser is used, the value of the  
2 vehicle appraised is net of the cost of the appraisal.

3  
4 **Arrest upon driving under the influence or being in**  
5 **physical control of vehicle under the influence, notation**  
6 **required if child is present -- Arrest upon drug or**  
7 **alcohol-related driving offense, child protective services**  
8 **notified if child is present and operator is child's**  
9 **parent, guardian, or custodian.**  
10

11  
12 **Sec. 16.** RCW 46.61.507 and 2012 c 42 s 1 are each amended to  
13 read as follows:

14 (1) In every case where a person is arrested for a violation of  
15 RCW 46.61.502 (~~or~~), 46.61.504, or section 11 12 of this act, the  
16 law enforcement officer shall make a clear notation if a child under  
17 the age of sixteen was present in the vehicle.

18 (2) A law enforcement officer shall promptly notify child  
19 protective services whenever a child is present in a vehicle being  
20 driven by his or her parent, guardian, legal custodian, or sibling  
21 or half-sibling and that person is being arrested for a drug or  
22 alcohol-related driving offense. This section does not require law  
23 enforcement to take custody of the child unless there is no other  
24 responsible person, or an agency having the right to physical  
25 custody of the child that can be contacted, or the officer has  
26 reasonable grounds to believe the child should be taken into custody  
27 pursuant to RCW 13.34.050 or 26.44.050.

28 (3) For purposes of this section, "child" means any person under  
29 sixteen years of age.

30  
31 **Criminal history and driving record.**  
32  
33  
34

1       **Sec. 17.** RCW 46.61.513 and 1998 c 211 s 5 are each amended to  
2 read as follows:

3       (1) Immediately before the court defers prosecution under RCW  
4 10.05.020, dismisses a charge, or orders a sentence for any offense  
5 listed in subsection (2) of this section, the court and prosecutor  
6 shall verify the defendant's criminal history and driving record.  
7 The order shall include specific findings as to the criminal history  
8 and driving record. For purposes of this section, the criminal  
9 history shall include all previous convictions and orders of  
10 deferred prosecution, as reported through the judicial information  
11 system or otherwise available to the court or prosecutor, current to  
12 within the period specified in subsection (3) of this section before  
13 the date of the order. For purposes of this section, the driving  
14 record shall include all information reported to the court by the  
15 department of licensing.

16       (2) The offenses to which this section applies are violations  
17 of: (a) RCW 46.61.502 or an equivalent local ordinance; (b) RCW  
18 46.61.504 or an equivalent local ordinance; (c) RCW 46.61.520  
19 committed while under the influence of intoxicating liquor or any  
20 drug; (d) RCW 46.61.522 committed while under the influence of  
21 intoxicating liquor or any drug; ~~(and)~~ (e) RCW 46.61.5249,  
22 46.61.500, or 9A.36.050, or an equivalent local ordinance, if the  
23 conviction is the result of a charge that was originally filed as a  
24 violation of RCW 46.61.502 ~~((or))~~, 46.61.504, or section 11 12 of  
25 this act or an equivalent local ordinance, or of RCW 46.61.520 or  
26 46.61.522; and (f) section 11 12 of this act or an equivalent local  
27 ordinance.

28       (3) The periods applicable to previous convictions and orders of  
29 deferred prosecution are: (a) One working day, in the case of  
30 previous actions of courts that fully participate in the state  
31 judicial information system; and (b) seven calendar days, in the  
32 case of previous actions of courts that do not fully participate in  
33 the judicial information system. For purposes of this subsection,  
34 "fully participate" means regularly providing records to and

1 receiving records from the system by electronic means on a daily  
2 basis.

3  
4 **Sentences -- Intermittent fulfillment -- Restrictions.**

5  
6 **Sec. 18.** RCW 46.61.5151 and 2006 c 73 s 18 are each amended to  
7 read as follows:

8 A sentencing court may allow a person convicted of a nonfelony  
9 violation of RCW 46.61.502 (~~(e)~~), 46.61.504, or section ~~11~~12 of  
10 this act to fulfill the terms of the sentence provided in RCW  
11 46.61.5055 in nonconsecutive or intermittent time periods. However,  
12 any mandatory minimum sentence under RCW 46.61.5055 shall be served  
13 consecutively unless suspended or deferred as otherwise provided by  
14 law.

15  
16 **Attendance at program focusing on victims.**

17  
18 **Sec. 19.** RCW 46.61.5152 and 2011 c 293 s 14 are each amended to  
19 read as follows:

20 In addition to penalties that may be imposed under RCW  
21 46.61.5055, the court may require a person who is convicted of a  
22 nonfelony violation of RCW 46.61.502 (~~(e)~~), 46.61.504, or section  
23 ~~11~~ 12 of this act or who enters a deferred prosecution program under  
24 RCW 10.05.020 based on a nonfelony violation of RCW 46.61.502  
25 (~~(e)~~), 46.61.504, or section ~~11~~ 12 of this act, to attend an  
26 educational program, such as a victim impact panel, focusing on the  
27 emotional, physical, and financial suffering of victims who were  
28 injured by persons convicted of driving while under the influence of  
29 intoxicants. The victim impact panel program must meet the minimum  
30 standards established under RCW 10.01.230.

31  
32  
33 **Ignition interlock devices -- Standards -- Compliance.**

1       **Sec. 20.** RCW 43.43.395 and 2013 2nd sp.s. c 35 s 9 are each  
2 amended to read as follows:

3       (1) The state patrol shall by rule provide standards for the  
4 certification, installation, repair, maintenance, monitoring,  
5 inspection, and removal of ignition interlock devices, as defined  
6 under RCW 46.04.215, and equipment as outlined under this section,  
7 and may inspect the records and equipment of manufacturers and  
8 vendors during regular business hours for compliance with statutes  
9 and rules and may suspend or revoke certification for any  
10 noncompliance.

11       (2) (a) When a certified service provider or individual installer  
12 of ignition interlock devices is found to be out of compliance, the  
13 installation privileges of that certified service provider or  
14 individual installer may be suspended or revoked until the certified  
15 service provider or individual installer comes into compliance.  
16 During any suspension or revocation period, the certified service  
17 provider or individual installer is responsible for notifying  
18 affected customers of any changes in their service agreement.

19       (b) A certified service provider or individual installer whose  
20 certification is suspended or revoked for noncompliance has a right  
21 to an administrative hearing under chapter 34.05 RCW to contest the  
22 suspension or revocation, or both. For the administrative hearing,  
23 the procedure and rules of evidence are as specified in chapter  
24 34.05 RCW, except as otherwise provided in this chapter. Any request  
25 for an administrative hearing must be made in writing and must be  
26 received by the state patrol within twenty days after the receipt of  
27 the notice of suspension or revocation.

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

29       (i) Fuel cell technology. For the purposes of this subsection,  
30 "fuel cell technology" consists of the following electrochemical  
31 method: An electrolyte designed to oxidize the alcohol and release  
32 electrons to be collected by an active electrode; a current flow is  
33 generated within the electrode proportional to the amount of alcohol  
34 oxidized on the fuel cell surface; and the electrical current is



1 measured and reported as breath alcohol concentration. Fuel cell  
2 technology is highly specific for alcohols(~~(-~~  
3 ~~(b) When reasonably available in the area, as determined by the~~  
4 ~~state patrol, an ignition interlock device must employ~~);  
5 (ii) Technology capable of taking a photo identification of the  
6 user giving the breath sample and recording on the photo the time  
7 the breath sample was given; and  
8 (iii) Technology capable of providing the global positioning  
9 coordinates at the time of each test sequence. Such coordinates must  
10 be displayed within the data log that is downloaded by the  
11 manufacturer and must be made available to the state patrol to be  
12 used for circumvention and tampering investigations.

13 ((~~e~~)) (b) To be certified, an ignition interlock device must:  
14 (i) Meet or exceed the minimum test standards according to rules  
15 adopted by the state patrol. Only a notarized statement from a  
16 laboratory that is certified by the international organization of  
17 standardization and is capable of performing the tests specified  
18 will be accepted as proof of meeting or exceeding the standards. The  
19 notarized statement must include the name and signature of the  
20 person in charge of the tests under the certification statement. The  
21 state patrol must adopt by rule the required language of the  
22 certification statement that must, at a minimum, outline that the  
23 testing meets or exceeds all specifications listed in the federal  
24 register adopted in rule by the state patrol; and  
25 (ii) Be maintained in accordance with the rules and standards  
26 adopted by the state patrol.

**Commented [WY38]:** Amendment provided by the WSP - Requires GPS technology be used for ignition interlock devices. This will help to see where the IID violation occurred and what court/jurisdiction the violation should be prosecuted in.

## 28 Adjustments to standard sentences.

29  
30 **Sec. 21.** RCW 9.94A.533 and 2013 c 270 s 2 are each amended to  
31 read as follows:

32 (1) The provisions of this section apply to the standard  
33 sentence ranges determined by RCW 9.94A.510 or 9.94A.517.  
34

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

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

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

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

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

33 (d) If the offender is being sentenced for any firearm  
34 enhancements under (a), (b), and/or (c) of this subsection and the

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

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

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

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

27 (4) The following additional times shall be added to the  
28 standard sentence range for felony crimes committed after July 23,  
29 1995, if the offender or an accomplice was armed with a deadly  
30 weapon other than a firearm as defined in RCW 9.41.010 and the  
31 offender is being sentenced for one of the crimes listed in this  
32 subsection as eligible for any deadly weapon enhancements based on  
33 the classification of the completed felony crime. If the offender is  
34 being sentenced for more than one offense, the deadly weapon

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

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

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

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

21 (d) If the offender is being sentenced under (a), (b), and/or  
22 (c) of this subsection for any deadly weapon enhancements and the  
23 offender has previously been sentenced for any deadly weapon  
24 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
25 subsection or subsection (3) (a), (b), and/or (c) of this section, or  
26 both, all deadly weapon enhancements under this subsection shall be  
27 twice the amount of the enhancement listed;

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

1 extraordinary medical placement when authorized under RCW  
2 9.94A.728(3);

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

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

15 (5) The following additional times shall be added to the  
16 standard sentence range if the offender or an accomplice committed  
17 the offense while in a county jail or state correctional facility  
18 and the offender is being sentenced for one of the crimes listed in  
19 this subsection. If the offender or an accomplice committed one of  
20 the crimes listed in this subsection while in a county jail or state  
21 correctional facility, and the offender is being sentenced for an  
22 anticipatory offense under chapter 9A.28 RCW to commit one of the  
23 crimes listed in this subsection, the following additional times  
24 shall be added to the standard sentence range determined under  
25 subsection (2) of this section:

26 (a) Eighteen months for offenses committed under RCW  
27 69.50.401(2) (a) or (b) or 69.50.410;

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

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

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

34

1 (6) An additional twenty-four months shall be added to the  
2 standard sentence range for any ranked offense involving a violation  
3 of chapter 69.50 RCW if the offense was also a violation of RCW  
4 69.50.435 or 9.94A.827. All enhancements under this subsection shall  
5 run consecutively to all other sentencing provisions, for all  
6 offenses sentenced under this chapter.

7 (7) An additional two years shall be added to the standard  
8 sentence range for vehicular homicide committed while under the  
9 influence of intoxicating liquor or any drug as defined by RCW  
10 46.61.502 for each prior offense as defined in RCW 46.61.5055. All  
11 enhancements under this subsection shall be mandatory, shall be  
12 served in total confinement, and shall run consecutively to all  
13 other sentencing provisions and without earned release time.

14 (8) (a) The following additional times shall be added to the  
15 standard sentence range for felony crimes committed on or after July  
16 1, 2006, if the offense was committed with sexual motivation, as  
17 that term is defined in RCW 9.94A.030. If the offender is being  
18 sentenced for more than one offense, the sexual motivation  
19 enhancement must be added to the total period of total confinement  
20 for all offenses, regardless of which underlying offense is subject  
21 to a sexual motivation enhancement. If the offender committed the  
22 offense with sexual motivation and the offender is being sentenced  
23 for an anticipatory offense under chapter 9A.28 RCW, the following  
24 additional times shall be added to the standard sentence range  
25 determined under subsection (2) of this section based on the felony  
26 crime of conviction as classified under RCW 9A.28.020:

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

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

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

**Commented [WY39]:** Amendment from Amy  
Freedheim (King County Prosecuting Attorney's  
Office)- According to the DOC, this language  
is needed to clarify that no good time can be  
earned on these felony level DUI enhancements.

1 (iv) If the offender is being sentenced for any sexual  
2 motivation enhancements under (a) (i), (ii), and/or (iii) of this  
3 subsection and the offender has previously been sentenced for any  
4 sexual motivation enhancements on or after July 1, 2006, under  
5 (a) (i), (ii), and/or (iii) of this subsection, all sexual motivation  
6 enhancements under this subsection shall be twice the amount of the  
7 enhancement listed;

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

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

19 (d) If the standard sentence range under this subsection exceeds  
20 the statutory maximum sentence for the offense, the statutory  
21 maximum sentence shall be the presumptive sentence unless the  
22 offender is a persistent offender. If the addition of a sexual  
23 motivation enhancement increases the sentence so that it would  
24 exceed the statutory maximum for the offense, the portion of the  
25 sentence representing the enhancement may not be reduced;

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

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

32 (9) An additional one-year enhancement shall be added to the  
33 standard sentence range for the felony crimes of RCW 9A.44.073,  
34 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed

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

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

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

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

34



1 (11) An additional twelve months and one day shall be added to  
2 the standard sentence range for a conviction of attempting to elude  
3 a police vehicle as defined by RCW 46.61.024, if the conviction  
4 included a finding by special allegation of endangering one or more  
5 persons under RCW 9.94A.834.

6 (12) An additional twelve months shall be added to the standard  
7 sentence range for an offense that is also a violation of RCW  
8 9.94A.831.

9 (13) An additional twelve months shall be added to the standard  
10 sentence range for vehicular homicide committed while under the  
11 influence of intoxicating liquor or any drug as defined by RCW  
12 46.61.520 or for vehicular assault committed while under the  
13 influence of intoxicating liquor or any drug as defined by RCW  
14 46.61.522, or for any felony driving under the influence (RCW  
15 46.61.502(6)) or felony physical control under the influence (RCW  
16 46.61.504(~~(6)~~) (7)) for each child passenger under the age of  
17 sixteen who is an occupant in the defendant's vehicle. These  
18 enhancements shall be mandatory, shall be served in total  
19 confinement, and shall run consecutively to all other sentencing  
20 provisions **and without earned release time**. If the addition of a  
21 minor child enhancement increases the sentence so that it would  
22 exceed the statutory maximum for the offense, the portion of the  
23 sentence representing the enhancement may not be reduced.

24 (14) An additional twelve months shall be added to the standard  
25 sentence range for an offense that is also a violation of RCW  
26 9.94A.832.

27  
28 **Juvenile court -- Exclusive original jurisdiction --**  
29 **Exceptions.**

30  
31 **Sec. 22.** RCW 13.04.030 and 2009 c 526 s 1 and 2009 c 454 s 1  
32 are each reenacted and amended to read as follows:  
33  
34

**Commented [WY40]:** Amendment from Amy  
Freedheim (King County Prosecuting Attorney's  
Office) - According to the DOC, this language  
is needed to clarify that no good time can be  
earned on these felony level DUI enhancements.

1 (1) Except as provided in this section, the juvenile courts in  
2 this state shall have exclusive original jurisdiction over all  
3 proceedings:

4 (a) Under the interstate compact on placement of children as  
5 provided in chapter 26.34 RCW;

6 (b) Relating to children alleged or found to be dependent as  
7 provided in chapter 26.44 RCW and in RCW 13.34.030 through  
8 13.34.161;

9 (c) Relating to the termination of a parent and child  
10 relationship as provided in RCW 13.34.180 through 13.34.210;

11 (d) To approve or disapprove out-of-home placement as provided  
12 in RCW 13.32A.170;

13 (e) Relating to juveniles alleged or found to have committed  
14 offenses, traffic or civil infractions, or violations as provided in  
15 RCW 13.40.020 through 13.40.230, unless:

16 (i) The juvenile court transfers jurisdiction of a particular  
17 juvenile to adult criminal court pursuant to RCW 13.40.110;

18 (ii) The statute of limitations applicable to adult prosecution  
19 for the offense, traffic or civil infraction, or violation has  
20 expired;

21 (iii) The alleged offense or infraction is a civil, noncriminal  
22 violation relating to a traffic, fish, boating, or game offense (~~(7~~  
23 ~~or traffic or civil infraction)) committed by a juvenile sixteen  
24 years of age or older and would, if committed by an adult, be tried  
25 or heard in a court of limited jurisdiction, in which instance the  
26 appropriate court of limited jurisdiction shall have jurisdiction  
27 over the alleged offense or infraction, and no guardian ad litem is  
28 required in any such proceeding due to the juvenile's age. If such  
29 an alleged offense or infraction and an alleged offense or  
30 infraction subject to juvenile court jurisdiction arise out of the  
31 same event or incident, the juvenile court may have jurisdiction of  
32 both matters. The jurisdiction under this subsection does not  
33 constitute "transfer" or a "decline" for purposes of RCW 13.40.110  
34 (1) and (2) or (e)(i) of this subsection. Courts of limited~~

**Commented [WY41]:** Amendment from Patricia  
Fulton - Changes the juvenile statute to move  
criminal traffic charges for 16 & 17 years old  
back to juvenile court.

1 jurisdiction which confine juveniles for an alleged offense or  
2 infraction may place juveniles in juvenile detention facilities  
3 under an agreement with the officials responsible for the  
4 administration of the juvenile detention facility in RCW 13.04.035  
5 and 13.20.060;

6 (iv) The alleged offense is a traffic or civil infraction, a  
7 violation of compulsory school attendance provisions under chapter  
8 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction  
9 has assumed concurrent jurisdiction over those offenses as provided  
10 in RCW 13.04.0301; or

11 (v) The juvenile is sixteen or seventeen years old on the date  
12 the alleged offense is committed and the alleged offense is:

13 (A) A serious violent offense as defined in RCW 9.94A.030;

14 (B) A violent offense as defined in RCW 9.94A.030 and the  
15 juvenile has a criminal history consisting of: (I) One or more prior  
16 serious violent offenses; (II) two or more prior violent offenses;  
17 or (III) three or more of any combination of the following offenses:  
18 Any class A felony, any class B felony, vehicular assault, or  
19 manslaughter in the second degree, all of which must have been  
20 committed after the juvenile's thirteenth birthday and prosecuted  
21 separately;

22 (C) Robbery in the first degree, rape of a child in the first  
23 degree, or drive-by shooting, committed on or after July 1, 1997;

24 (D) Burglary in the first degree committed on or after July 1,  
25 1997, and the juvenile has a criminal history consisting of one or  
26 more prior felony or misdemeanor offenses; or

27 (E) Any violent offense as defined in RCW 9.94A.030 committed on  
28 or after July 1, 1997, and the juvenile is alleged to have been  
29 armed with a firearm.

30 (I) In such a case the adult criminal court shall have exclusive  
31 original jurisdiction, except as provided in (e) (v) (E) (II) and (III)  
32 of this subsection.

33 (II) The juvenile court shall have exclusive jurisdiction over  
34 the disposition of any remaining charges in any case in which the

1 juvenile is found not guilty in the adult criminal court of the  
2 charge or charges for which he or she was transferred, or is  
3 convicted in the adult criminal court of a lesser included offense  
4 that is not also an offense listed in (e)(v) of this subsection. The  
5 juvenile court shall enter an order extending juvenile court  
6 jurisdiction if the juvenile has turned eighteen years of age during  
7 the adult criminal court proceedings pursuant to RCW 13.40.300.  
8 However, once the case is returned to juvenile court, the court may  
9 hold a decline hearing pursuant to RCW 13.40.110 to determine  
10 whether to retain the case in juvenile court for the purpose of  
11 disposition or return the case to adult criminal court for  
12 sentencing.

13 (III) The prosecutor and respondent may agree to juvenile court  
14 jurisdiction and waive application of exclusive adult criminal  
15 jurisdiction in (e)(v)(A) through (E) of this subsection and remove  
16 the proceeding back to juvenile court with the court's approval.

17 If the juvenile challenges the state's determination of the  
18 juvenile's criminal history under (e)(v) of this subsection, the  
19 state may establish the offender's criminal history by a  
20 preponderance of the evidence. If the criminal history consists of  
21 adjudications entered upon a plea of guilty, the state shall not  
22 bear a burden of establishing the knowing and voluntariness of the  
23 plea;

24 (f) Under the interstate compact on juveniles as provided in  
25 chapter 13.24 RCW;

26 (g) Relating to termination of a diversion agreement under RCW  
27 13.40.080, including a proceeding in which the divertee has attained  
28 eighteen years of age;

29 (h) Relating to court validation of a voluntary consent to an  
30 out-of-home placement under chapter 13.34 RCW, by the parent or  
31 Indian custodian of an Indian child, except if the parent or Indian  
32 custodian and child are residents of or domiciled within the  
33 boundaries of a federally recognized Indian reservation over which  
34 the tribe exercises exclusive jurisdiction;

1 (i) Relating to petitions to compel disclosure of information  
2 filed by the department of social and health services pursuant to  
3 RCW 74.13.042; and

4 (j) Relating to judicial determinations and permanency planning  
5 hearings involving developmentally disabled children who have been  
6 placed in out-of-home care pursuant to a voluntary placement  
7 agreement between the child's parent, guardian, or legal custodian  
8 and the department of social and health services.

9 (2) The family court shall have concurrent original jurisdiction  
10 with the juvenile court over all proceedings under this section if  
11 the superior court judges of a county authorize concurrent  
12 jurisdiction as provided in RCW 26.12.010.

13 (3) The juvenile court shall have concurrent original  
14 jurisdiction with the family court over child custody proceedings  
15 under chapter 26.10 RCW and parenting plans or residential schedules  
16 under chapters 26.09 and 26.26 RCW as provided for in RCW 13.34.155.

17 (4) A juvenile subject to adult superior court jurisdiction  
18 under subsection (1) (e) (i) through (v) of this section, who is  
19 detained pending trial, may be detained in a detention facility as  
20 defined in RCW 13.40.020 pending sentencing or a dismissal.

21

22 **Abstract of driving record -- Access -- Fee --**  
23 **Violations.**

24

25 **Sec. 23.** RCW 46.52.130 and 2012 c 74 s 6 and 2012 c 73 s 1 are  
26 each reenacted and amended to read as follows:

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

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

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

33 (i) The total number of vehicles involved;

34

- 1 (ii) Whether the vehicles were legally parked or moving;  
2 (iii) Whether the vehicles were occupied at the time of the  
3 accident; and  
4 (iv) Whether the accident resulted in a fatality;  
5 (b) Any reported convictions, forfeitures of bail, or findings  
6 that an infraction was committed based upon a violation of any motor  
7 vehicle law;  
8 (c) The status of the person's driving privilege in this state;  
9 and  
10 (d) Any reports of failure to appear in response to a traffic  
11 citation or failure to respond to a notice of infraction served upon  
12 the named individual by an arresting officer.

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

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

19 (ii) Nothing in this section prevents a court from providing a  
20 copy of the driver's abstract to the individual named in the  
21 abstract **or that named individual's attorney**, provided that the  
22 named individual has a pending or open infraction or criminal case  
23 in that court. A pending case includes criminal cases that have not  
24 reached a disposition by plea, stipulation, trial, or amended  
25 charge. An open infraction or criminal case includes cases on  
26 probation, payment agreement or subject to, or in collections.  
27 Courts may charge a reasonable fee for the production and copying of  
28 the abstract for the individual.

29 (b) **Employers or prospective employers.** (i) (A) An abstract of  
30 the full driving record maintained by the department may be  
31 furnished to an employer or prospective employer or an agent acting  
32 on behalf of an employer or prospective employer of the named  
33 individual for purposes related to driving by the individual as a  
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**Commented [WY42]: Amendment from Patricia Fulton** - provides that the DOL can provide a copy of a person's driving record to the person's attorney or record.

1 condition of employment or otherwise at the direction of the  
2 employer.

3 (B) Release of an abstract of the driving record of an employee  
4 or prospective employee requires a statement signed by: (I) The  
5 employee or prospective employee that authorizes the release of the  
6 record; and (II) the employer attesting that the information is  
7 necessary for employment purposes related to driving by the  
8 individual as a condition of employment or otherwise at the  
9 direction of the employer. If the employer or prospective employer  
10 authorizes an agent to obtain this information on their behalf, this  
11 must be noted in the statement.

12 (C) Upon request of the person named in the abstract provided  
13 under this subsection, and upon that same person furnishing copies  
14 of court records ruling that the person was not at fault in a motor  
15 vehicle accident, the department must indicate on any abstract  
16 provided under this subsection that the person was not at fault in  
17 the motor vehicle accident.

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

28 (c) **Volunteer organizations.** (i) An abstract of the full driving  
29 record maintained by the department may be furnished to a volunteer  
30 organization or an agent for a volunteer organization for which the  
31 named individual has submitted an application for a position that  
32 would require driving by the individual at the direction of the  
33 volunteer organization.

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

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

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

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

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

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

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

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

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

33 (C) Exclude any deferred prosecution under RCW 10.05.060, except  
34 that if a person is removed from a deferred prosecution under RCW



1 10.05.090, the abstract must show the deferred prosecution as well  
2 as the removal.

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

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

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

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

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

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

6 (g) City attorneys ((and)), county prosecuting attorneys, and  
7 named individual's attorney of record. An abstract of the full  
8 driving record maintained by the department, including whether a  
9 recorded violation is an alcohol-related offense, as defined in RCW  
10 46.01.260(2), that was originally charged as a violation of either  
11 RCW 46.61.502 or 46.61.504, may be furnished to city attorneys  
12 ((or)), county prosecuting attorneys, or the named individual's  
13 attorney of record. City attorneys ((and)), county prosecuting  
14 attorneys, or the named individual's attorney of record may provide  
15 the driving record to alcohol/drug assessment or treatment agencies  
16 approved by the department of social and health services to which  
17 the named individual has applied or been assigned for evaluation or  
18 treatment.

19 (h) **State colleges, universities, or agencies, or units of local**  
20 **government.** An abstract of the full driving record maintained by the  
21 department may be furnished to (i) state colleges, universities, or  
22 agencies for employment and risk management purposes or (ii) units  
23 of local government authorized to self-insure under RCW 48.62.031  
24 for employment and risk management purposes.

25 (i) **Superintendent of public instruction.** An abstract of the  
26 full driving record maintained by the department may be furnished to  
27 the superintendent of public instruction for review of public school  
28 bus driver records. The superintendent or superintendent's designee  
29 may discuss information on the driving record with an authorized  
30 representative of the employing school district for employment and  
31 risk management purposes.

32 (3) **Release to third parties prohibited.** Any person or entity  
33 receiving an abstract of a person's driving record under subsection  
34 (2)(b) through (i) of this section shall use the abstract

**Commented [WY43]: Amendment from Patricia Fulton** - provides that the DOL can provide a copy of a person's driving record to the person's attorney or record.

1 exclusively for his, her, or its own purposes or as otherwise  
2 expressly permitted under this section, and shall not divulge any  
3 information contained in the abstract to a third party.

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

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

11 (b) Any intentional violation of this section is a class C  
12 felony.

13

14 **Right to control disposition of remains -- Liability of funeral establishment or**  
15 **cemetery authority--Liability for cost.**

16

17 **Sec. 24.** RCW 68.50.160 and 2012 c 5 s 1 are each amended to  
18 read as follows:

19 (1) A person has the right to control the disposition of his or  
20 her own remains without the predeath or postdeath consent of another  
21 person. A valid written document expressing the decedent's wishes  
22 regarding the place or method of disposition of his or her remains,  
23 signed by the decedent in the presence of a witness, is sufficient  
24 legal authorization for the procedures to be accomplished.

25 (2) Prearrangements that are prepaid, or filed with a licensed  
26 funeral establishment or cemetery authority, under RCW 18.39.280  
27 through 18.39.345 and chapter 68.46 RCW are not subject to  
28 cancellation or substantial revision by survivors. Absent actual  
29 knowledge of contrary legal authorization under this section, a  
30 licensed funeral establishment or cemetery authority shall not be  
31 held criminally nor civilly liable for acting upon such  
32 prearrangements.

33

34

1 (3) If the decedent has not made a prearrangement as set forth  
2 in subsection (2) of this section or the costs of executing the  
3 decedent's wishes regarding the disposition of the decedent's  
4 remains exceeds a reasonable amount or directions have not been  
5 given by the decedent, the right to control the disposition of the  
6 remains of a deceased person vests in, and the duty of disposition  
7 and the liability for the reasonable cost of preparation, care, and  
8 disposition of such remains devolves upon the following in the order  
9 named:

10 (a) The person designated by the decedent as authorized to  
11 direct disposition as listed on the decedent's United States  
12 department of defense record of emergency data, DD form 93, or its  
13 successor form, if the decedent died while serving in military  
14 service as described in 10 U.S.C. Sec. 1481(a) (1)-(8) in any branch  
15 of the United States armed forces, United States reserve forces, or  
16 national guard;

17 (b) The designated agent of the decedent as directed through a  
18 written document signed and dated by the decedent in the presence of  
19 a witness. The direction of the designated agent is sufficient to  
20 direct the type, place, and method of disposition;

21 (c) The surviving spouse or state registered domestic partner;

22 (d) The majority of the surviving adult children of the  
23 decedent;

24 (e) The surviving parents of the decedent;

25 (f) The majority of the surviving siblings of the decedent;

26 (g) A court-appointed guardian for the person at the time of the  
27 person's death.

28 (4) If any person to whom the right of control has vested  
29 pursuant to subsection (3) of this section has been arrested or  
30 charged with first or second degree murder (~~or~~), first degree  
31 manslaughter, or vehicular homicide in connection with the  
32 decedent's death, the right of control is relinquished and passed on  
33 in accordance with subsection (3) of this section.  
34

**Commented [WY44]:** Amendment from Amy  
Freedheim (King County Prosecuting Attorney's  
Office)- If any person to whom the right of  
control has been vested has been arrested or  
charged with vehicular homicide in connection  
with the decedent's death, then the right of  
control is relinquished.

1 (5) If a cemetery authority as defined in RCW 68.04.190 or a  
2 funeral establishment licensed under chapter 18.39 RCW has made a  
3 good faith effort to locate the person cited in subsection (3) (a)  
4 through (g) of this section or the legal representative of the  
5 decedent's estate, the cemetery authority or funeral establishment  
6 shall have the right to rely on an authority to bury or cremate the  
7 human remains, executed by the most responsible party available, and  
8 the cemetery authority or funeral establishment may not be held  
9 criminally or civilly liable for burying or cremating the human  
10 remains. In the event any government agency or charitable  
11 organization provides the funds for the disposition of any human  
12 remains, the cemetery authority or funeral establishment may not be  
13 held criminally or civilly liable for cremating the human remains.

14 (6) The liability for the reasonable cost of preparation, care,  
15 and disposition devolves jointly and severally upon all kin of the  
16 decedent in the same degree of kindred, in the order listed in  
17 subsection (3) of this section, and upon the estate of the decedent.

18 --- END ---  
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