
SUBSTITUTE HOUSE BILL 1789

State of Washington

62nd Legislature

2011 Regular Session

By House Judiciary (originally sponsored by Representatives Goodman, Pedersen, Roberts, and Miloscia)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to accountability for persons driving under the
2 influence of alcohol or drugs; amending RCW 46.20.385, 46.61.502,
3 46.61.504, 46.61.500, 46.61.5249, 46.20.720, 46.61.5055, 10.05.140,
4 10.05.010, and 9.94A.533; and prescribing penalties.

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

6 **Sec. 1.** RCW 46.20.385 and 2010 c 269 s 1 are each amended to read
7 as follows:

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

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

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

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

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

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

28 (iii) The time period during which the person is licensed under
29 this section shall apply on a day-for-day basis toward satisfying the
30 period of time the ignition interlock device restriction is required
31 under RCW 46.20.720 and 46.61.5055. Beginning with incidents occurring
32 on or after the effective date of this section, when calculating the
33 period of time for the restriction under RCW 46.20.720(3), the
34 department must also give the person a day-for-day credit for the time
35 period, beginning from the date of the incident, during which the
36 person kept an ignition interlock device installed on all vehicles the
37 person operates. For the purposes of this subsection (1)(c)(iii), the

1 term "all vehicles" does not include vehicles that would be subject to
2 the employer exception under RCW 46.20.720(3).

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

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

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

23 (5) The director shall cancel an ignition interlock driver's
24 license after receiving notice that the holder thereof has been
25 convicted of operating a motor vehicle in violation of its
26 restrictions, no longer meets the eligibility requirements, or has been
27 convicted of or found to have committed a separate offense or any other
28 act or omission that under this chapter would warrant suspension or
29 revocation of a regular driver's license. The department must give
30 notice of the cancellation as provided under RCW 46.20.245. A person
31 whose ignition interlock driver's license has been canceled under this
32 section may reapply for a new ignition interlock driver's license if he
33 or she is otherwise qualified under this section and pays the fee
34 required under RCW 46.20.380.

35 (6)(a) Unless costs are waived by the ignition interlock company or
36 the person is indigent under RCW 10.101.010, the applicant shall pay
37 the cost of installing, removing, and leasing the ignition interlock

1 device and shall pay an additional fee of twenty dollars per month.
2 Payments shall be made directly to the ignition interlock company. The
3 company shall remit the additional twenty-dollar fee to the department.

4 (b) The department shall deposit the proceeds of the twenty-dollar
5 fee into the ignition interlock device revolving account. Expenditures
6 from the account may be used only to administer and operate the
7 ignition interlock device revolving account program. The department
8 shall adopt rules to provide monetary assistance according to greatest
9 need and when funds are available.

10 (7) The department shall adopt rules to implement ignition
11 interlock licensing. The department shall consult with the
12 administrative office of the courts, the state patrol, the Washington
13 association of sheriffs and police chiefs, ignition interlock
14 companies, and any other organization or entity the department deems
15 appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (ii) Vehicular assault while under the influence of intoxicating
23 liquor or any drug, RCW 46.61.522(1)(b)((~~7-08~~));

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

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

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

29 (1) A person is guilty of being in actual physical control of a
30 motor vehicle while under the influence of intoxicating liquor or any
31 drug if the person has actual physical control of a vehicle within this
32 state:

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

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

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

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

11 (3) 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 sufficient
14 quantity of alcohol after the time of being in actual physical control
15 of the vehicle and before the administration of an analysis of the
16 person's breath or blood to cause the defendant's alcohol concentration
17 to be 0.08 or more within two hours after being in such control. The
18 court shall not admit evidence of this defense unless the defendant
19 notifies the prosecution prior to the omnibus or pretrial hearing in
20 the case of the defendant's intent to assert the affirmative defense.

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

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

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

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

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

37 (i) Vehicular homicide while under the influence of intoxicating
38 liquor or any drug, RCW 46.61.520(1)(a)((7))i

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

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

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

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

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

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

16 (3) A person convicted of reckless driving shall be required, under
17 RCW 46.20.720, to install an ignition interlock device on all vehicles
18 operated by the person if the conviction is the result of a charge that
19 was originally filed as a violation of RCW 46.61.502, 46.61.504, or
20 46.61.5249, or an equivalent local ordinance, or of RCW 46.61.520 or
21 46.61.522.

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

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

29 (b) It is an affirmative defense to negligent driving in the first
30 degree by means of exhibiting the effects of having consumed an illegal
31 drug that must be proved by the defendant by a preponderance of the
32 evidence, that the driver has a valid prescription for the drug
33 consumed, and has been consuming it according to the prescription
34 directions and warnings.

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

36 (2) For the purposes of this section:

1 (a) "Negligent" means the failure to exercise ordinary care, and is
2 the doing of some act that a reasonably careful person would not do
3 under the same or similar circumstances or the failure to do something
4 that a reasonably careful person would do under the same or similar
5 circumstances.

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

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

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

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

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

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

20 (d) "Illegal drug" means a controlled substance under chapter 69.50
21 RCW for which the driver does not have a valid prescription or that is
22 not being consumed in accordance with the prescription directions and
23 warnings, or a legend drug under chapter 69.41 RCW for which the driver
24 does not have a valid prescription or that is not being consumed in
25 accordance with the prescription directions and warnings.

26 (3) Any act prohibited by this section that also constitutes a
27 crime under any other law of this state may be the basis of prosecution
28 under such other law notwithstanding that it may also be the basis for
29 prosecution under this section.

30 (4) A person convicted of negligent driving in the first degree
31 shall be required, under RCW 46.20.720, to install an ignition
32 interlock device on all vehicles operated by the person.

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

35 (1) The court may order that after a period of suspension,
36 revocation, or denial of driving privileges, and for up to as long as
37 the court has jurisdiction, any person convicted of any offense

1 involving the use, consumption, or possession of alcohol while
2 operating a motor vehicle may drive only a motor vehicle equipped with
3 a functioning ignition interlock. The court shall establish a specific
4 calibration setting at which the interlock will prevent the vehicle
5 from being started. The court shall also establish the period of time
6 for which interlock use will be required.

7 (2) Under RCW 46.61.5055 and subject to the exceptions listed in
8 that statute, the court shall order any person convicted of a violation
9 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply
10 for an ignition interlock driver's license from the department under
11 RCW 46.20.385 and to have a functioning ignition interlock device
12 installed on all motor vehicles operated by the person. The court
13 shall order any person participating in a deferred prosecution program
14 under RCW 10.05.020 for a violation of RCW 46.61.502 or 46.61.504 or an
15 equivalent local ordinance to have a functioning ignition interlock
16 device installed on all motor vehicles operated by the person.

17 (3) The department shall require that, after any applicable period
18 of suspension, revocation, or denial of driving privileges, a person
19 may drive only a motor vehicle equipped with a functioning ignition
20 interlock device if the person is convicted of a violation of RCW
21 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute
22 or ordinance. The department shall require that a person may drive
23 only a motor vehicle equipped with a functioning ignition interlock
24 device if the person is convicted of a violation of RCW 46.61.5249 or
25 if the person is convicted of a violation of RCW 46.61.500 and the
26 conviction is the result of a charge that was originally filed as a
27 violation of RCW 46.61.502, 46.61.504, or 46.61.5249, or an equivalent
28 local ordinance, or of RCW 46.61.520 or 46.61.522.

29 The department may waive the requirement for the use of such a
30 device if it concludes that such devices are not reasonably available
31 in the local area. The installation of an ignition interlock device is
32 not necessary on vehicles owned, leased, or rented by a person's
33 employer and on those vehicles whose care and/or maintenance is the
34 temporary responsibility of the employer, and driven at the direction
35 of a person's employer as a requirement of employment during working
36 hours. The person must provide the department with a declaration
37 pursuant to RCW 9A.72.085 from his or her employer stating that the

1 person's employment requires the person to operate a vehicle owned by
2 the employer or other persons during working hours.

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

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

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

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

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

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

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

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

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

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

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

36 (a) In the case of a person whose alcohol concentration was less

1 than 0.15, or for whom for reasons other than the person's refusal to
2 take a test offered pursuant to RCW 46.20.308 there is no test result
3 indicating the person's alcohol concentration:

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

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

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

29 (i) By imprisonment for not less than two days nor more than one
30 year. Two consecutive days of the imprisonment may not be suspended or
31 deferred unless the court finds that the imposition of this mandatory
32 minimum sentence would impose a substantial risk to the offender's
33 physical or mental well-being. Whenever the mandatory minimum sentence
34 is suspended or deferred, the court shall state in writing the reason
35 for granting the suspension or deferral and the facts upon which the
36 suspension or deferral is based. In lieu of the mandatory minimum term
37 of imprisonment required under this subsection (1)(b)(i), the court may
38 order not less than thirty days of electronic home monitoring. The

1 offender shall pay the cost of electronic home monitoring. The county
2 or municipality in which the penalty is being imposed shall determine
3 the cost. The court may also require the offender's electronic home
4 monitoring device to include an alcohol detection breathalyzer, and the
5 court may restrict the amount of alcohol the offender may consume
6 during the time the offender is on electronic home monitoring; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (4) A person who is convicted of a violation of RCW 46.61.502 or
2 46.61.504 shall be punished under chapter 9.94A RCW if:

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

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

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

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

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

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

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

17 (b) The installation of an ignition interlock device is not
18 necessary on vehicles owned, leased, or rented by a person's employer
19 and on those vehicles whose care and/or maintenance is the temporary
20 responsibility of the employer, and driven at the direction of a
21 person's employer as a requirement of employment during working hours.
22 The person must provide the department with a declaration pursuant to
23 RCW 9A.72.085 from his or her employer stating that the person's
24 employment requires the person to operate a vehicle owned by the
25 employer or other persons during working hours.

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

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

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

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

35 (iii) The person is not eligible to receive an ignition interlock
36 driver's license under RCW 46.20.385 because the person is not a
37 resident of Washington, is a habitual traffic offender, has already
38 applied for or is already in possession of an ignition interlock

1 driver's license, has never had a driver's license, has been certified
2 under chapter 74.20A RCW as noncompliant with a child support order, or
3 is subject to any other condition or circumstance that makes the person
4 ineligible to obtain an ignition interlock driver's license.

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

9 (f) If the court orders that a person refrain from consuming any
10 alcohol and requires the person to apply for an ignition interlock
11 driver's license, and the person states that he or she does not operate
12 a motor vehicle or the person is ineligible to obtain an ignition
13 interlock driver's license, the court shall order the person to submit
14 to alcohol monitoring through an alcohol detection breathalyzer device,
15 transdermal sensor device, or other technology designed to detect
16 alcohol in a person's system. Alcohol monitoring ordered under this
17 subsection must be for the period of the mandatory license suspension
18 or revocation. The person shall pay for the cost of the monitoring.
19 The county or municipality where the penalty is being imposed shall
20 determine the cost.

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

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

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

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

29 (h) Beginning with incidents occurring on or after the effective
30 date of this section, when calculating the period of time for the
31 restriction under RCW 46.20.720(3), the department must also give the
32 person a day-for-day credit for the time period, beginning from the
33 date of the incident, during which the person kept an ignition
34 interlock device installed on all vehicles the person operates. For
35 the purposes of this subsection (5)(h), the term "all vehicles" does
36 not include vehicles that would be subject to the employer exception
37 under RCW 46.20.720(3).

1 (6) If a person who is convicted of a violation of RCW 46.61.502 or
2 46.61.504 committed the offense while a passenger under the age of
3 sixteen was in the vehicle, the court shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 treatment, supervised probation, or other conditions that may be
2 appropriate. The sentence may be imposed in whole or in part upon
3 violation of a condition of probation during the suspension period.

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

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

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

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

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

23 (c) The court determines that there is reason to believe that the
24 offender would violate the conditions of the electronic home monitoring
25 penalty.

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

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

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

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

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

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

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

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

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

23 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
24 9A.36.050 or an equivalent local ordinance, if the conviction is the
25 result of a charge that 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 (vi) An out-of-state conviction for a violation that would have
29 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this
30 subsection if committed in this state;

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

34 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
35 prosecution for a violation of RCW 46.61.5249, or an equivalent local
36 ordinance, if the charge under which the deferred prosecution was
37 granted was originally filed as a violation of RCW 46.61.502 or

1 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
2 46.61.522;

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

7 (b) "Within seven years" means that the arrest for a prior offense
8 occurred within seven years before or after the arrest for the current
9 offense; and

10 (c) "Within ten years" means that the arrest for a prior offense
11 occurred within ten years before or after the arrest for the current
12 offense.

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

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

1 **Sec. 9.** RCW 10.05.010 and 2008 c 282 s 15 are each amended to read
2 as follows:

3 (1) In a court of limited jurisdiction a person charged with a
4 misdemeanor or gross misdemeanor may petition the court to be
5 considered for a deferred prosecution program. The petition shall be
6 filed with the court at least seven days before the date set for trial
7 but, upon a written motion and affidavit establishing good cause for
8 the delay and failure to comply with this section, the court may waive
9 this requirement subject to the defendant's reimbursement to the court
10 of the witness fees and expenses due for subpoenaed witnesses who have
11 appeared on the date set for trial.

12 (2)(a) A person charged with a traffic infraction, misdemeanor, or
13 gross misdemeanor under Title 46 RCW shall not be eligible for a
14 deferred prosecution program unless the court makes specific findings
15 pursuant to RCW 10.05.020 or section 18 of this act. Except as
16 provided in (b) of this subsection, such person shall not be eligible
17 for a deferred prosecution program more than once; and cannot receive
18 a deferred prosecution under both RCW 10.05.020 and section 18 of this
19 act. Separate offenses committed more than seven days apart may not be
20 consolidated in a single program.

21 (b) A person charged with a violation of RCW 46.61.502, 46.61.504,
22 46.61.5249, or an equivalent local ordinance, or a violation of RCW
23 46.61.500 or an equivalent local ordinance if the offense involved the
24 use of alcohol or drugs, shall not be eligible for a deferred
25 prosecution program more than once within a ten-year period, and no
26 more than a total of two times.

27 (3) A person charged with a misdemeanor or a gross misdemeanor
28 under chapter 9A.42 RCW shall not be eligible for a deferred
29 prosecution program unless the court makes specific findings pursuant
30 to RCW 10.05.020. Such person shall not be eligible for a deferred
31 prosecution program more than once.

32 **Sec. 10.** RCW 9.94A.533 and 2009 c 141 s 2 are each amended to read
33 as follows:

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

36 (2) For persons convicted of the anticipatory offenses of criminal
37 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the

1 standard sentence range is determined by locating the sentencing grid
2 sentence range defined by the appropriate offender score and the
3 seriousness level of the completed crime, and multiplying the range by
4 seventy-five percent.

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

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

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

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

31 (d) If the offender is being sentenced for any firearm enhancements
32 under (a), (b), and/or (c) of this subsection and the offender has
33 previously been sentenced for any deadly weapon enhancements after July
34 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
35 (4)(a), (b), and/or (c) of this section, or both, all firearm
36 enhancements under this subsection shall be twice the amount of the
37 enhancement listed;

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

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

14 (g) If the standard sentence range under this section exceeds the
15 statutory maximum sentence for the offense, the statutory maximum
16 sentence shall be the presumptive sentence unless the offender is a
17 persistent offender. If the addition of a firearm enhancement
18 increases the sentence so that it would exceed the statutory maximum
19 for the offense, the portion of the sentence representing the
20 enhancement may not be reduced.

21 (4) The following additional times shall be added to the standard
22 sentence range for felony crimes committed after July 23, 1995, if the
23 offender or an accomplice was armed with a deadly weapon other than a
24 firearm as defined in RCW 9.41.010 and the offender is being sentenced
25 for one of the crimes listed in this subsection as eligible for any
26 deadly weapon enhancements based on the classification of the completed
27 felony crime. If the offender is being sentenced for more than one
28 offense, the deadly weapon enhancement or enhancements must be added to
29 the total period of confinement for all offenses, regardless of which
30 underlying offense is subject to a deadly weapon enhancement. If the
31 offender or an accomplice was armed with a deadly weapon other than a
32 firearm as defined in RCW 9.41.010 and the offender is being sentenced
33 for an anticipatory offense under chapter 9A.28 RCW to commit one of
34 the crimes listed in this subsection as eligible for any deadly weapon
35 enhancements, the following additional times shall be added to the
36 standard sentence range determined under subsection (2) of this section
37 based on the felony crime of conviction as classified under RCW
38 9A.28.020:

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

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

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

10 (d) If the offender is being sentenced under (a), (b), and/or (c)
11 of this subsection for any deadly weapon enhancements and the offender
12 has previously been sentenced for any deadly weapon enhancements after
13 July 23, 1995, under (a), (b), and/or (c) of this subsection or
14 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
15 weapon enhancements under this subsection shall be twice the amount of
16 the enhancement listed;

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

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

30 (g) If the standard sentence range under this section exceeds the
31 statutory maximum sentence for the offense, the statutory maximum
32 sentence shall be the presumptive sentence unless the offender is a
33 persistent offender. If the addition of a deadly weapon enhancement
34 increases the sentence so that it would exceed the statutory maximum
35 for the offense, the portion of the sentence representing the
36 enhancement may not be reduced.

37 (5) The following additional times shall be added to the standard
38 sentence range if the offender or an accomplice committed the offense

1 while in a county jail or state correctional facility and the offender
2 is being sentenced for one of the crimes listed in this subsection. If
3 the offender or an accomplice committed one of the crimes listed in
4 this subsection while in a county jail or state correctional facility,
5 and the offender is being sentenced for an anticipatory offense under
6 chapter 9A.28 RCW to commit one of the crimes listed in this
7 subsection, the following additional times shall be added to the
8 standard sentence range determined under subsection (2) of this
9 section:

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

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

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

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

18 (6) An additional twenty-four months shall be added to the standard
19 sentence range for any ranked offense involving a violation of chapter
20 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
21 (~~9.94A.605~~) 9.94A.827. All enhancements under this subsection shall
22 run consecutively to all other sentencing provisions, for all offenses
23 sentenced under this chapter.

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

31 (8)(a) The following additional times shall be added to the
32 standard sentence range for felony crimes committed on or after July 1,
33 2006, if the offense was committed with sexual motivation, as that term
34 is defined in RCW 9.94A.030. If the offender is being sentenced for
35 more than one offense, the sexual motivation enhancement must be added
36 to the total period of total confinement for all offenses, regardless
37 of which underlying offense is subject to a sexual motivation
38 enhancement. If the offender committed the offense with sexual

1 motivation and the offender is being sentenced for an anticipatory
2 offense under chapter 9A.28 RCW, the following additional times shall
3 be added to the standard sentence range determined under subsection (2)
4 of this section based on the felony crime of conviction as classified
5 under RCW 9A.28.020:

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

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

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

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

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

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

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

37 (e) The portion of the total confinement sentence which the

1 offender must serve under this subsection shall be calculated before
2 any earned early release time is credited to the offender;

3 (f) Nothing in this subsection prevents a sentencing court from
4 imposing a sentence outside the standard sentence range pursuant to RCW
5 9.94A.535.

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

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

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

37 (c) The increased penalty specified in (a) of this subsection is

1 unavailable in the event that the prosecution gives notice that it will
2 seek an exceptional sentence based on an aggravating factor under RCW
3 9.94A.535.

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

9 (12) An additional twelve months shall be added to the standard
10 sentence range for an offense that is also a violation of RCW
11 9.94A.831.

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