

**NINETY FOURTH DAY**

**MORNING SESSION**

Senate Chamber, Olympia, Wednesday, April 15, 2015

The Senate was called to order at 10:00 o'clock a.m. by President Owen. The Secretary called the roll and announced to the President that all senators were present with the exceptions of Senator Hasegawa, Liias, McAuliffe and Sheldon

The Sergeant at Arms Color Guard consisting of Pages Maia Whitehorn and Samuel Whitehorn, presented the Colors. Pastor Frank Jevicky, Daniels' Prayer House in Olympia offered the prayer.

**MOTION**

On motion of Senator Fain, the reading of the Journal of the previous day was dispensed with and it was approved.

**MOTION**

On motion of Senator Fain, the Senate advanced to the fourth order of business.

**MESSAGE FROM THE HOUSE**

April 14, 2015

MR. PRESIDENT:

The House has passed:

- SENATE BILL NO. 5075,
- SENATE BILL NO. 5101,
- SENATE BILL NO. 5104,
- SENATE BILL NO. 5120,
- SENATE BILL NO. 5122,
- SENATE BILL NO. 5210,
- SUBSTITUTE SENATE BILL NO. 5275,
- SENATE BILL NO. 5302,
- SENATE BILL NO. 5466,
- SENATE BILL NO. 5468,
- ENGROSSED SENATE BILL NO. 5577,
- SENATE BILL NO. 5717,
- ENGROSSED SUBSTITUTE SENATE BILL NO. 5743,
- SUBSTITUTE SENATE BILL NO. 5795,
- SENATE BILL NO. 5805,
- ENGROSSED SUBSTITUTE SENATE BILL NO. 5810,
- SUBSTITUTE SENATE BILL NO. 5933

and the same are herewith transmitted.

BERNARD DEAN, Deputy Chief Clerk

**MOTION**

On motion of Senator Fain, the Senate advanced to the fifth order of business.

**INTRODUCTION AND FIRST READING**

SB 6100 by Senators Chase, Brown, Angel, Hatfield, Ericksen and McCoy

AN ACT Relating to establishing an economic gardening pilot program; adding a new section to chapter 43.31 RCW; creating a new section; and providing an expiration date.

Referred to Committee on Trade & Economic Development.

SB 6101 by Senators Habib, Miloscia and Frockt

AN ACT Relating to health care; amending RCW 43.350.005, 43.350.010, 43.350.020, and 43.350.040; reenacting and amending RCW 43.79A.040; adding new sections to chapter 43.350 RCW; adding a new section to chapter 43.79 RCW; adding a new section to chapter 82.24 RCW; adding new sections to chapter 82.26 RCW; adding a new section to chapter 28B.20 RCW; adding a new section to chapter 28B.30 RCW; creating new sections; providing an effective date; and declaring an emergency.

Referred to Committee on Health Care.

**MOTION**

On motion of Senator Fain, all measures listed on the Introduction and First Reading report were referred to the committees as designated.

**MOTION**

On motion of Senator Fain, the Senate advanced to the seventh order of business.

**THIRD READING**

**CONFIRMATION OF GUBERNATORIAL APPOINTMENTS**

**MOTION**

Senator Dammeier moved that Michelle Farrell, Gubernatorial Appointment No. 9048, be confirmed as a member of the Board of Trustees, State School for the Blind.

Senator Dammeier spoke in favor of the motion.

**APPOINTMENT OF MICHELLE FARRELL**

The President declared the question before the Senate to be the confirmation of Michelle Farrell, Gubernatorial Appointment No. 9048, as a member of the Board of Trustees, State School for the Blind.

The Secretary called the roll on the confirmation of Michelle Farrell, Gubernatorial Appointment No. 9048, as a member of the Board of Trustees, State School for the Blind and the appointment was confirmed by the following vote: Yeas, 45; Nays, 0; Absent, 4; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dassel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Litzow, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler and Warnick

Absent: Senators Hasegawa, Liias, McAuliffe and Sheldon  
Michelle Farrell, Gubernatorial Appointment No. 9048, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, State School for the Blind.

**MOTION**

On motion of Senator Fain, Senator Sheldon was excused.

#### MOTION

On motion of Senator Fain, the Senate reverted to the sixth order of business.

#### MOTION

On motion of Senator Habib, Senators Hasegawa, Liias and McAuliffe were excused.

#### SECOND READING

HOUSE BILL NO. 1168, by Representatives Ormsby, Chandler, Sullivan and Tarleton

Correcting restrictions on collecting a pension in the public employees' retirement system for retirees returning to work in an ineligible position or a position covered by a different state retirement system.

The measure was read the second time.

#### MOTION

On motion of Senator Hill, the rules were suspended, House Bill No. 1168 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hill and Conway spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1168.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1168 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 0; Absent, 1; Excused, 3.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Litzow, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler and Warnick

Absent: Senator Benton

Excused: Senators Liias, McAuliffe and Sheldon

HOUSE BILL NO. 1168, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced members and representatives of the Puyallup Tribal Youth Council, led by Ms. Lisa Rideout-Earl, Coordinator, and The Honorable Tim Reynon, Puyallup Tribal Council member who were present in the gallery and recognized by the senate. The President was joined at the rostrum by Youth Council members: Miss Sieona Squally and Miss Maya Luke.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 1919, by House Committee on State Government (originally sponsored by Representative S. Hunt)

Clarifying the timing of special elections.

The measure was read the second time.

#### MOTION

On motion of Senator Roach, the rules were suspended, Substitute House Bill No. 1919 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Roach and Liias spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1919.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1919 and the bill passed the Senate by the following vote: Yeas, 44; Nays, 3; Absent, 0; Excused, 2.

Voting yea: Senators Angel, Bailey, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Liias, Litzow, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler and Warnick

Voting nay: Senators Baumgartner, Dansel and Ericksen

Excused: Senators McAuliffe and Sheldon

SUBSTITUTE HOUSE BILL NO. 1919, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 1550, by Representatives Carlyle, Nealey, Reykdal and Wylie

Simplifying the taxation of amusement, recreation, and physical fitness services.

The measure was read the second time.

#### MOTION

Senator Hill moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 82.04.050 and 2013 2nd sp.s. c 13 s 802 are each amended to read as follows:

(1)(a) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who:

(i) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use

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by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(ii) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(iii) Purchases for the purpose of consuming the property purchased in producing for sale as a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(iv) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(v) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065; or

(vi) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(b) The term includes every sale of tangible personal property that is used or consumed or to be used or consumed in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property is resold or used as provided in (a)(i) through (vi) of this subsection following such use.

(c) The term also means every sale of tangible personal property to persons engaged in any business that is taxable under RCW 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and also includes the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but does not include the charge made for janitorial services; and for purposes of this section the term

"janitorial services" means those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it is presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection may be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

~~(a)((i) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers.~~

~~(ii) Until July 1, 2017, amusement and recreation services do not include the opportunity to dance provided by an establishment in exchange for a cover charge.~~

~~(iii) For purposes of this subsection (3)(a):~~

~~(A) "Cover charge" means a charge, regardless of its label, to enter an establishment or added to the purchaser's bill by an establishment or otherwise collected after entrance to the establishment, and the purchaser is provided the opportunity to dance in exchange for payment of the charge.~~

~~(B) "Opportunity to dance" means that an establishment provides a designated physical space, on either a temporary or permanent basis, where customers are allowed to dance and the establishment either advertises or otherwise makes customers aware that it has an area for dancing;~~

~~(b)) Abstract, title insurance, and escrow services;~~

~~((c)) (b) Credit bureau services;~~

~~((d)) (c) Automobile parking and storage garage services;~~

~~((e)) (d) Landscape maintenance and horticultural services~~

but excluding (i) horticultural services provided to farmers and

(ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

~~((f))~~ (e) Service charges associated with tickets to professional sporting events; ~~(and~~

~~(g))~~ (f) The following personal services: ~~((Physical fitness services.))~~ Tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services; and

(g)(i) Operating an athletic or fitness facility, including all charges for the use of such a facility or for any associated services and amenities, except as provided in (g)(ii) of this subsection.

(ii) Notwithstanding anything to the contrary in (g)(i) of this subsection (3), the term "sale at retail" and "retail sale" under this subsection does not include:

(A) Separately stated charges for the use of an athletic or fitness facility where such use is primarily for a purpose other than engaging in or receiving instruction in a physical fitness activity;

(B) Separately stated charges for the use of a discrete portion of an athletic or fitness facility, other than a pool, where such discrete portion of the facility does not by itself meet the definition of "athletic or fitness facility" in this subsection;

(C) Separately stated charges for services, such as advertising, massage, nutritional consulting, and body composition testing, that do not require the customer to engage in physical fitness activities to receive the service. The exclusion in this subsection (3)(g)(ii)(C) does not apply to personal training services and instruction in a physical fitness activity;

(D) Separately stated charges for physical therapy provided by a physical therapist, as those terms are defined in RCW 18.74.010, or occupational therapy provided by an occupational therapy practitioner, as those terms are defined in RCW 18.59.020, when performed pursuant to a referral from an authorized health care practitioner or in consultation with an authorized health care practitioner. For the purposes of this subsection (3)(g)(ii)(D), an authorized health care practitioner means a health care practitioner licensed under chapter 18.83, 18.25, 18.36A, 18.57, 18.57A, 18.71, or 18.71A RCW;

(E) Rent or association fees charged by a landlord or residential association to a tenant or residential owner with access to an athletic or fitness facility maintained by the landlord or residential association, unless the rent or fee varies depending on whether the tenant or owner has access to the facility;

(F) Services provided in the regular course of employment by an employee with access to an athletic or fitness facility maintained by the employer for use without charge by its employees or their family members;

(G) The provision of access to an athletic or fitness facility by an educational institution to its students and staff. However, charges made by an educational institution to its alumni or other members of the public for the use of any of the educational institution's athletic or fitness facilities are a retail sale under this subsection (3)(g). For purposes of this subsection (3)(g)(ii)(G), "educational institution" has the same meaning as in RCW 82.04.170; and

(H) Yoga, tai chi, or chi gong classes held at a community center, park, gymnasium, college or university, hospital or other medical facility, private residence, or any facility that is not primarily used for physical fitness activities other than yoga, tai chi, or chi gong classes.

(iii) Nothing in (g)(ii) of this subsection (3) may be construed to affect the taxation of sales made by the operator of an athletic or fitness facility, where such sales are defined as a retail sale under any provision of this section other than this subsection (3).

(iv) For the purposes of this subsection (3)(g), the following definitions apply:

(A) "Athletic or fitness facility" means an indoor or outdoor facility or portion of a facility that is primarily used for: Exercise

classes; strength and conditioning programs; personal training services; tennis, racquetball, handball, squash, or pickleball; yoga; boxing, kickboxing, wrestling, martial arts, or mixed martial arts training; or other activities requiring the use of exercise or strength training equipment, such as treadmills, elliptical machines, stair climbers, stationary cycles, rowing machines, pilates equipment, balls, climbing ropes, jump ropes, and weightlifting equipment.

(B) "Physical fitness activities" means activities that involve physical exertion for the purpose of improving or maintaining the general fitness, strength, flexibility, conditioning, or health of the participant.

(4)(a) The term also includes the renting or leasing of tangible personal property to consumers.

(b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term also includes the sale of prewritten computer software to a consumer, regardless of the method of delivery to the end user. For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "retail sale" does not include the sale of or charge made for:

(i) Custom software; or

(ii) The customization of prewritten computer software.

(b)(i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(ii)(A) The service described in (b)(i) of this subsection (6) includes the right to access and use prewritten computer software to perform data processing.

(B) For purposes of this subsection (6)(b)(ii), "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

(7) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

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(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection (8) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(9) The term also includes the charge made for providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (9), an operator must do more than maintain, inspect, or set up the tangible personal property.

(10) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(11) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(12) The term does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing

authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development.

(13) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

(14) The term does not include the sale for resale of any service described in this section if the sale would otherwise constitute a "sale at retail" and "retail sale" under this section.

(15)(a) The term "sale at retail" or "retail sale" includes amounts charged, however labeled, to consumers to engage in any of the activities listed in this subsection (15)(a), including the furnishing of any associated equipment or, except as otherwise provided in this subsection, providing instruction in such activities, where such charges are not otherwise defined as a "sale at retail" or "retail sale" in this section:

(i)(A) Golf, including any variant in which either golf balls or golf clubs are used, such as miniature golf, hitting golf balls at a driving range, and golf simulators, and including fees charged by a golf course to a player for using his or her own cart. However, charges for golf instruction are not a retail sale, provided that if the instruction involves the use of a golfing facility that would otherwise require the payment of a fee, such as green fees or driving range fees, such fees, including the applicable retail sales tax, must be separately identified and charged by the golfing facility operator to the instructor or the person receiving the instruction.

(B) Notwithstanding (a)(i)(A) of this subsection (15) and except as otherwise provided in this subsection (15)(a)(i)(B), the term "sale at retail" or "retail sale" does not include amounts charged to participate in, or conduct, a golf tournament or other competitive event. However, amounts paid by event participants to the golf facility operator are retail sales under this subsection (15)(a)(i). Likewise, amounts paid by the event organizer to the golf facility are retail sales under this subsection (15)(a)(i), if such amounts vary based on the number of event participants;

(ii) Air hockey, billiards, pool, foosball, darts, shuffleboard, ping pong, and similar games;

(iii) Access to amusement park, theme park, and water park facilities, including but not limited to charges for admission and locker or cabana rentals. Discrete charges for rides or other attractions or entertainment that are in addition to the charge for admission are not a retail sale under this subsection (15)(a)(iii). For the purposes of this subsection, an amusement park or theme park is a location that provides permanently affixed amusement rides, games, and other entertainment, but does not include parks or zoos for which the primary purpose is the exhibition of wildlife, or fairs, carnivals, and festivals as defined in (b)(i) of this subsection;

(iv) Batting cage activities;

(v) Bowling, but not including competitive events, except that amounts paid by the event participants to the bowling alley operator are retail sales under this subsection (15)(a)(v). Likewise, amounts paid by the event organizer to the operator of the bowling alley are retail sales under this subsection (15)(a)(v), if such amounts vary based on the number of event participants;

(vi) Climbing on artificial climbing structures, whether indoors or outdoors;

(vii) Day trips for sightseeing purposes;

(viii) Bungee jumping, zip lining, and riding inside a ball, whether inflatable or otherwise;

(ix) Horseback riding offered to the public, where the seller furnishes the horse to the buyer and providing instruction is not the primary focus of the activity, including guided rides, but not including therapeutic horseback riding provided by an instructor certified by a nonprofit organization that offers national or international certification for therapeutic riding instructors;

(x) Fishing, including providing access to private fishing areas and charter or guided fishing, except that fishing contests and license fees imposed by a government entity are not a retail sale under this subsection;

(xi) Guided hunting and hunting at game farms and shooting preserves, except that hunting contests and license fees imposed by a government entity are not a retail sale under this subsection;

(xii) Swimming, but only in respect to (A) recreational or fitness swimming that is open to the public, such as open swim, lap swimming, and special events like kids night out and pool parties during open swim time, and (B) pool parties for private events, such as birthdays, family gatherings, and employee outings. Fees for swimming lessons, to participate in swim meets and other competitions, or to join a swim team, club, or aquatic facility are not retail sales under this subsection (15)(a)(xii);

(xiii) Go-karting, bumper cars, and other motorized activities where the seller provides the vehicle and the premises where the buyer will operate the vehicle;

(xiv) Indoor or outdoor playground activities, such as inflatable bounce structures and other inflatables; mazes; trampolines; slides; ball pits; games of tag, including laser tag and soft-dart tag; and human gyroscope rides, regardless of whether such activities occur at the seller's place of business, but not including playground activities provided for children by a licensed child day care center or licensed family day care provider as those terms are defined in RCW 43.215.010;

(xv) Shooting sports and activities, such as target shooting, skeet, trap, sporting clays, "5" stand, and archery, but only in respect to discrete charges to members of the public to engage in these activities, but not including fees to enter a competitive event, instruction that is entirely or predominately classroom based, or to join or renew a membership at a club, range, or other facility;

(xvi) Paintball and airsoft activities;

(xvii) Skating, including ice skating, roller skating, and inline skating, but only in respect to discrete charges to members of the public to engage in skating activities, but not including skating lessons, competitive events, team activities, or fees to join or renew a membership at a skating facility, club, or other organization;

(xviii) Nonmotorized snow sports and activities, such as downhill and cross-country skiing, snowboarding, ski jumping, sledding, snow tubing, snowshoeing, and similar snow sports and activities, whether engaged in outdoors or in an indoor facility with or without snow, but only in respect to discrete charges to the public for the use of land or facilities to engage in nonmotorized snow sports and activities, such as fees, however labeled, for the use of ski lifts and tows and daily or season passes for access to trails or other areas where nonmotorized snow sports and activities are conducted. However, fees for the following are not retail sales under this subsection (15)(a)(xviii): (A) Instructional lessons; (B) permits issued by a governmental entity to park a vehicle on or access public lands; and (C) permits or leases granted by an owner of private timberland for recreational access to areas used primarily for growing and harvesting timber; and

(xix) Scuba diving; snorkeling; river rafting; surfing; kiteboarding; flyboarding; water slides; inflatables, such as water

pillows, water trampolines, and water rollers; and similar water sports and activities.

(b) Notwithstanding anything to the contrary in this subsection (15), the term "sale at retail" or "retail sale" does not include charges:

(i) Made for ballooning, hang gliding, indoor or outdoor sky diving, paragliding, parasailing, and similar activities;

(ii) Made for admission to, and rides or attractions at, fairs, carnivals, and festivals. For the purposes of this subsection, fairs, carnivals, and festivals are events that do not exceed twenty-one days and a majority of the amusement rides, if any, are not affixed to real property;

(iii) Made by an educational institution to its students and staff for activities defined as retail sales by (a)(i) through (xix) of this subsection. However, charges made by an educational institution to its alumni or other members of the general public for these activities are a retail sale under this subsection (15). For purposes of this subsection (15)(b)(iii), "educational institution" has the same meaning as in RCW 82.04.170;

(iv) Made by a vocational school for commercial diver training that is licensed by the workforce training and education coordinating board under chapter 28C.10 RCW; or

(v) Made for day camps offered by a nonprofit organization or state or local governmental entity that provide youth not older than age eighteen, or that are focused on providing individuals with disabilities or mental illness, the opportunity to participate in a variety of supervised activities.

**Sec. 2.** RCW 82.04.060 and 2010 c 106 s 203 are each amended to read as follows:

"Sale at wholesale" or "wholesale sale" means:

(1) Any sale, which is not a sale at retail, of:

(a) Tangible personal property;

(b) Services defined as a retail sale in RCW 82.04.050(2) (a) or (g);

(c) ~~((Amusement or recreation services as defined))~~ Activities defined as a retail sale in RCW 82.04.050~~((3)(a))~~ (15);

(d) Prewritten computer software;

(e) Services described in RCW 82.04.050(6)(b);

(f) Extended warranties as defined in RCW 82.04.050(7);

(g) Competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065; or

(h) Digital goods, digital codes, or digital automated services;

(2) Any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers. For the purposes of this subsection (2), "real or personal property" does not include any natural products named in RCW 82.04.100; and

(3) The sale of any service for resale, if the sale is excluded from the definition of "sale at retail" and "retail sale" in RCW 82.04.050(14).

**Sec. 3.** RCW 82.04.190 and 2014 c 97 s 302 are each amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose of:

(a) Resale as tangible personal property in the regular course of business;

(b) Incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning,

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altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers;

(c) Consuming such property in producing for sale as a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale;

(d) Consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7), if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2) (a) or (g), other than for resale in the regular course of business or for the purpose of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7); (d) any person who ~~((purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a)))~~ makes a purchase meeting the definition of "sale at retail" and "retail sale" under RCW 82.04.050(15), other than for resale in the regular course of business; (e) any person who purchases or acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business; and (f) any person who is an end user of software. For purposes of this subsection (2)(f) and RCW 82.04.050(6), a person who purchases or otherwise acquires prewritten computer software, who provides services described in RCW 82.04.050(6)(b) and who will charge consumers for the right to access and use the prewritten computer software, is not an end user of the prewritten computer software;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States,

instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition ~~((shall))~~ may be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person is a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section may be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development;

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property;

(10) Any person who purchases, acquires, or uses services described in RCW 82.04.050(6)(b) other than:

(a) For resale in the regular course of business; or

(b) For purposes of consuming the service described in RCW 82.04.050(6)(b) in producing for sale a new product, but only if such service becomes a component of the new product. For purposes of this subsection (10), "product" means a digital product, an article of tangible personal property, or the service described in RCW 82.04.050(6)(b);

(11)(a) Any end user of a digital product or digital code. "Consumer" does not include any person who is not an end user of a digital product or a digital code and purchases, acquires, owns, holds, or uses any digital product or digital code for purposes of consuming the digital product or digital code in producing for sale a new product, but only if the digital product or digital code becomes a component of the new product. A digital code becomes a component of a new product if the digital good or

digital automated service acquired through the use of the digital code becomes incorporated into a new product. For purposes of this subsection, "product" has the same meaning as in subsection (10) of this section.

(b)(i) For purposes of this subsection, "end user" means any taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives by contract a digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to others. A person that purchases digital products or digital codes for the purpose of giving away such products or codes will not be considered to have engaged in the distribution or redistribution of such products or codes and will be treated as an end user;

(ii) If a purchaser of a digital code does not receive the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is an end user. If the purchaser of the digital code receives the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is not an end user. A purchaser of a digital code who has the contractual right to further redistribute the digital code is an end user if that purchaser does not have the right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates;

(12) Any person who provides services described in RCW 82.04.050(9). Any such person is a consumer with respect to the purchase, acquisition, or use of the tangible personal property that the person provides along with an operator in rendering services defined as a retail sale in RCW 82.04.050(9). Any such person may also be a consumer under other provisions of this section;

(13) Any person who purchases, acquires, owns, holds, or uses chemical sprays or washes for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, or who purchases feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials, is not a consumer of such items, but only to the extent that the items:

(a) Are used in relation to the person's participation in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, the wildlife habitat incentives program, or their successors administered by the United States department of agriculture;

(b) Are for use by a farmer for the purpose of producing for sale any agricultural product; or

(c) Are for use by a farmer to produce or improve wildlife habitat on land the farmer owns or leases while acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife; and

(14) A regional transit authority is not a consumer with respect to labor, services, or tangible personal property purchased pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a transit agency, as defined in RCW 81.104.015, performs the labor or services.

**Sec. 4.** RCW 82.08.0291 and 2000 c 103 s 8 are each amended to read as follows:

The tax imposed by RCW 82.08.020 (~~shall~~) does not apply to ((the sale of amusement and recreation services, or personal services specified in RCW 82.04.050(3)(g)) sales defined as a sale at retail and retail sale under RCW 82.04.050 (3)(g) or (15), by a nonprofit youth organization, as defined in RCW 82.04.4271, to members of the organization; ((nor shall) and the

tax does not apply to physical fitness classes provided by a local government.

**Sec. 5.** RCW 82.12.010 and 2010 c 127 s 4 are each reenacted and amended to read as follows:

For the purposes of this chapter:

(1) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, has full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, also means any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection (1), the use of the property is deemed to be by such consumer.

(2) "Extended warranty" has the same meaning as in RCW 82.04.050(7).

(3) "Purchase price" means the same as sales price as defined in RCW 82.08.010.

(4)(a)(i) Except as provided in (a)(ii) of this subsection (4), "retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter.

(ii) "Retailer" does not include a professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale of tangible personal property, extended warranty, digital good, digital code, or a sale of any digital automated service or service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)(~~(3)(a))~~) or (6)(b) that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the retailer and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540.

(5) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW.

(6) "Use," "used," "using," or "put to use" have their ordinary meaning, and mean:

(a) With respect to tangible personal property, except for natural gas and manufactured gas, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(c) With respect to an extended warranty, the first act within this state after the extended warranty has been acquired by which the taxpayer takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies, and includes installation, storage, withdrawal from



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storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(d) With respect to a digital good or digital code, the first act within this state by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good or digital code;

(e) With respect to a digital automated service, the first act within this state by which the taxpayer, as a consumer, uses, enjoys, or otherwise receives the benefit of the service;

(f) With respect to a service defined as a retail sale in RCW 82.04.050(6)(b), the first act within this state by which the taxpayer, as a consumer, accesses the prewritten computer software;

(g) With respect to a service defined as a retail sale in RCW 82.04.050(2)(g), the first act within this state after the service has been performed by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good upon which the service was performed; and

(h) With respect to natural gas or manufactured gas, the use of which is taxable under RCW 82.12.022, including gas that is also taxable under the authority of RCW 82.14.230, the first act within this state by which the taxpayer consumes the gas by burning the gas or storing the gas in the taxpayer's own facilities for later consumption by the taxpayer.

(7)(a) "Value of the article used" is the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used is determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used must be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used is determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used

must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used is determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used is determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used is determined by the purchase price of such article if, but for the use of the direct pay permit, the transaction would have been subject to sales tax.

(8) "Value of the digital good or digital code used" means the purchase price for the digital good or digital code, the use of which is taxable under this chapter. If the digital good or digital code is acquired other than by purchase, the value of the digital good or digital code must be determined as nearly as possible according to the retail selling price at place of use of similar digital goods or digital codes of like quality and character under rules the department may prescribe.

(9) "Value of the extended warranty used" means the purchase price for the extended warranty, the use of which is taxable under this chapter. If the extended warranty is received by gift or under conditions wherein the purchase price does not represent the true value of the extended warranty, the value of the extended warranty used is determined as nearly as possible according to the retail selling price at place of use of similar extended warranties of like quality and character under rules the department may prescribe.

(10) "Value of the service used" means the purchase price for the digital automated service or other service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used is determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department may prescribe.

**Sec. 6.** RCW 82.12.020 and 2010 1st sp.s. c 23 s 206 are each amended to read as follows:

(1) There is levied and collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any:

(a) Article of tangible personal property acquired by the user in any manner, including tangible personal property acquired at a casual or isolated sale, and including by-products used by the manufacturer thereof, except as otherwise provided in this chapter, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state;

(b) Prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both;

(c) Services defined as a retail sale in RCW 82.04.050 (2) (a) or (g)(~~(-3)(a))~~) or (6)(b), excluding services defined as a retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

(d) Extended warranty; or

(e)(i) Digital good, digital code, or digital automated service, including the use of any services provided by a seller exclusively in connection with digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(ii) With respect to the use of digital goods, digital automated services, and digital codes acquired by purchase, the tax imposed in this subsection (1)(e) applies in respect to:

(A) Sales in which the seller has granted the purchaser the right of permanent use;

(B) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(C) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(D) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(iii) With respect to digital goods, digital automated services, and digital codes acquired other than by purchase, the tax imposed in this subsection (1)(e) applies regardless of whether or not the consumer has a right of permanent use or is obligated to make continued payment as a condition of use.

(2) The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, digital good, digital code, digital automated service, or service taxable under RCW 82.04.050 (2) (a) or (g)(~~(-)(3)(a-)~~) or (6)(b), if the sale to, or the use by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(3)(a) Except as provided in this section, payment of the tax imposed by this chapter or chapter 82.08 RCW by one purchaser or user of tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service does not have the effect of exempting any other purchaser or user of the same property, extended warranty, digital good, digital code, digital automated service, or other service from the taxes imposed by such chapters.

(b) The tax imposed by this chapter does not apply:

(i) If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor;

(ii) In respect to the use of any article of tangible personal property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use;

(iii) In respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961; or

(iv) To the use of digital goods or digital automated services, which were obtained through the use of a digital code, if the sale of the digital code to, or the use of the digital code by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(4)(a) Except as provided in (b) of this subsection (4), the tax is levied and must be collected in an amount equal to the value of the article used, value of the digital good or digital code used, value of the extended warranty used, or value of the service used by the taxpayer, multiplied by the applicable rates in effect for the retail sales tax under RCW 82.08.020.

(b) In the case of a seller required to collect use tax from the purchaser, the tax must be collected in an amount equal to the purchase price multiplied by the applicable rate in effect for the retail sales tax under RCW 82.08.020.

(5) For purposes of the tax imposed in this section, "person" includes anyone within the definition of "buyer," "purchaser," and "consumer" in RCW 82.08.010.

**Sec. 7.** RCW 82.12.02595 and 2009 c 535 s 615 are each amended to read as follows:

(1) This chapter does not apply to the use by a nonprofit charitable organization or state or local governmental entity of personal property that has been donated to the nonprofit charitable organization or state or local governmental entity, or to the subsequent use of the property by a person to whom the property is donated or bailed in furtherance of the purpose for which the property was originally donated.

(2) This chapter does not apply to the donation of personal property without intervening use to a nonprofit charitable organization, or to the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge.

(3) This chapter does not apply to the use by a nonprofit charitable organization of labor and services rendered in respect to installing, repairing, cleaning, altering, imprinting, or improving personal property provided to the charitable organization at no charge, or to the donation of such services.

~~((4) This chapter does not apply to the donation of amusement and recreation services without intervening use to a nonprofit organization or state or local governmental entity, to the use by a nonprofit organization or state or local governmental entity of amusement and recreation services, or to the subsequent use of the services by a person to whom the services are donated or bailed in furtherance of the purpose for which the services were originally donated. As used in this subsection, "amusement and recreation services" has the meaning in RCW 82.04.050(3)(a-).))~~

**Sec. 8.** RCW 82.12.035 and 2009 c 535 s 1107 are each amended to read as follows:

A credit is allowed against the taxes imposed by this chapter upon the use in this state of tangible personal property, extended warranty, digital good, digital code, digital automated service, or services defined as a retail sale in RCW 82.04.050 (2) (a) or (g)(~~(-)(3)(a-)~~) or (6)(b), in the amount that the present user thereof or his or her bailor or donor has paid a legally imposed retail sales or use tax with respect to such property, extended warranty, digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)(~~(-)(3)(a-)~~) or (6)(b) to any other state, possession, territory, or commonwealth of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof.

**Sec. 9.** RCW 82.12.040 and 2015 c 1 s 11 (Initiative Measure No. 594) are each amended to read as follows:

(1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, ~~((shall))~~ must obtain from the department a certificate of registration, and ~~((shall))~~ must, at the time of making sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)(~~(-)(3)(a-)~~) or (6)(b), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section must be in an amount equal to the purchase price multiplied by the rate in

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effect for the retail sales tax under RCW 82.08.020. For the purposes of this chapter, the phrase "maintains in this state a place of business" (~~shall~~) includes the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department must in rules specify activities which constitute engaging in business activity within this state, and must keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, digital goods, digital codes, digital automated services, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)(~~(-3)(a-))~~) or (6)(b), of his or her principals for use in this state, must, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose is deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter is deemed to be held in trust by the retailer until paid to the department, and any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed is guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is nevertheless personally liable to the state for the amount of such tax, unless the seller has taken from the buyer a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter is guilty of a misdemeanor.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

- (i) The storage, dissemination, or display of advertising;
- (ii) The taking of orders; or
- (iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(7) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the person would have been obligated to collect retail sales tax on the sale absent a specific exemption provided in chapter 82.08 RCW, and there is no corresponding use tax exemption in this chapter. Nothing in this subsection (7)

may be construed as relieving purchasers from liability for reporting and remitting the tax due under this chapter directly to the department.

(8) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if the state is prohibited under the Constitution or laws of the United States from requiring the person to collect the tax imposed by this chapter.

(9) Notwithstanding subsections (1) through (4) of this section, any licensed dealer facilitating a firearm sale or transfer between two unlicensed persons by conducting background checks under chapter 9.41 RCW is not obligated to collect the tax imposed by this chapter.

**Sec. 10.** RCW 82.12.860 and 2009 c 535 s 621 are each amended to read as follows:

(1) This chapter does not apply to state credit unions with respect to the use of any article of tangible personal property, digital good, digital code, digital automated service, service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)(~~(-3)(a-))~~) or (6)(b), or extended warranty, acquired from a federal credit union, foreign credit union, or out-of-state credit union as a result of a merger or conversion.

(2) For purposes of this section, the following definitions apply:

(a) "Federal credit union" means a credit union organized and operating under the laws of the United States.

(b) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.

(c) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

(d) "State credit union" means a credit union organized and operating under the laws of this state.

**Sec. 11.** RCW 82.32.087 and 2010 c 112 s 10 are each amended to read as follows:

(1) The director may grant a direct pay permit to a taxpayer who demonstrates, to the satisfaction of the director, that the taxpayer meets the requirements of this section. The direct pay permit allows the taxpayer to accrue and remit directly to the department use tax on the acquisition of tangible personal property or sales tax on the sale of or charges made for labor and/or services, in accordance with all of the applicable provisions of this title. Any taxpayer that uses a direct pay permit (~~shall~~) must remit state and local sales or use tax directly to the department. The agreement by the purchaser to remit tax directly to the department, rather than pay sales or use tax to the seller, relieves the seller of the obligation to collect sales or use tax and requires the buyer to pay use tax on the tangible personal property and sales tax on the sale of or charges made for labor and/or services.

(2)(a) A taxpayer may apply for a permit under this section if: (i) The taxpayer's cumulative tax liability is reasonably expected to be two hundred forty thousand dollars or more in the current calendar year; or (ii) the taxpayer makes purchases subject to the taxes imposed under chapter 82.08 or 82.12 RCW in excess of ten million dollars per calendar year. For the purposes of this section, "tax liability" means the amount required to be remitted to the department for taxes administered under this chapter, except for the taxes imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW.

(b) Application for a permit must be made in writing to the director in a form and manner prescribed by the department. A taxpayer who transacts business in two or more locations may submit one application to cover the multiple locations.

(c) The director must review a direct pay permit application in a timely manner and (~~shall~~) must notify the applicant, in writing, of the approval or denial of the application. The department must approve or deny an application based on the applicant's ability to comply with local government use tax coding capabilities and responsibilities; requirements for vendor notification; recordkeeping obligations; electronic data capabilities; and tax reporting procedures. Additionally, an application may be denied if the director determines that denial would be in the best interest of collecting taxes due under this title. The department must provide a direct pay permit to an approved applicant with the notice of approval. The direct pay permit (~~shall~~) must clearly state that the holder is solely responsible for the accrual and payment of the tax imposed under chapters 82.08 and 82.12 RCW and that the seller is relieved of liability to collect tax imposed under chapters 82.08 and 82.12 RCW on all sales to the direct pay permit holder. The taxpayer may petition the director for reconsideration of a denial.

(d) A taxpayer who uses a direct pay permit must continue to maintain records that are necessary to a determination of the tax liability in accordance with this title. A direct pay permit is not transferable and the use of a direct pay permit may not be assigned to a third party.

(3) Taxes for which the direct pay permit is used are due and payable on the tax return for the reporting period in which the taxpayer (a) receives the tangible personal property purchased or in which the labor and/or services are performed or (b) receives an invoice for such property or such labor and/or services, whichever period is earlier.

(4) The holder of a direct pay permit must furnish a copy of the direct pay permit to each vendor with whom the taxpayer has opted to use a direct pay permit. Sellers who make sales upon which the sales or use tax is not collected by reason of the provisions of this section, in addition to existing requirements under this title, must maintain a copy of the direct pay permit and any such records or information as the department may specify.

(5) A direct pay permit is subject to revocation by the director at any time the department determines that the taxpayer has violated any provision of this section or that revocation would be in the best interests of collecting the taxes due under this title. The notice of revocation must be in writing and is effective either as of the end of the taxpayer's next normal reporting period or a date deemed appropriate by the director and identified in the revocation notice. The taxpayer may petition the director for reconsideration of a revocation and reinstatement of the permit.

(6) Any taxpayer who chooses to no longer use a direct pay permit or whose permit is revoked by the department, must return the permit to the department and immediately make a good faith effort to notify all vendors to whom the permit was given, advising them that the permit is no longer valid.

(7) Except as provided in this subsection, the direct pay permit may be used for any purchase of tangible personal property and any retail sale under RCW 82.04.050. The direct pay permit may not be used for:

- (a) Purchases of meals or beverages;
- (b) Purchases of motor vehicles, trailers, boats, airplanes, and other property subject to requirements for title transactions by the department of licensing;
- (c) Purchases for which a reseller permit or other documentation authorized under RCW 82.04.470 may be used;
- (d) Purchases that meet the definitions of RCW 82.04.050 (2) (e) and (f), (3) (a) through (~~(4)~~) (c), (e), (f), and (g), (~~and~~) (5), and (15); or
- (e) Other activities subject to tax under chapter 82.08 or 82.12 RCW that the department by rule designates, consistent with the

purposes of this section, as activities for which a direct pay permit is not appropriate and may not be used.

NEW SECTION. **Sec. 12.** RCW 82.12.02917 (Exemptions--Use of amusement and recreation services by nonprofit youth organization) and 1999 c 358 s 7 are each repealed.

NEW SECTION. **Sec. 13.** The repeal in section 12 of this act does not affect any existing right acquired or liability or obligation incurred under the statute repealed or under any rule or order adopted under that statute nor does it affect any proceedings instituted under the statute repealed.

NEW SECTION. **Sec. 14.** This act takes effect January 1, 2016."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to House Bill No. 1550.

The motion by Senator Hill carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "services;" strike the remainder of the title and insert "amending RCW 82.04.050, 82.04.060, 82.04.190, 82.08.0291, 82.12.020, 82.12.02595, 82.12.035, 82.12.040, 82.12.860, and 82.32.087; reenacting and amending RCW 82.12.010; creating a new section; repealing RCW 82.12.02917; and providing an effective date."

#### MOTION

On motion of Senator Hill, the rules were suspended, House Bill No. 1550 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hill spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1550 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1550 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 43; Nays, 4; Absent, 0; Excused, 2.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Fain, Fraser, Frockt, Habib, Hargrove, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Lias, Litzow, McCoy, Miloscia, Mullet, Nelson, O'Ban, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler and Warnick

Voting nay: Senators Dansel, Ericksen, Hasegawa and Padden

Excused: Senators McAuliffe and Sheldon

HOUSE BILL NO. 1550 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

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SUBSTITUTE HOUSE BILL NO. 1564, by House Committee on Commerce & Gaming (originally sponsored by Representatives Kilduff and Muri)

Concerning the local option prohibition on the sale of liquor.

The measure was read the second time.

MOTION

On motion of Senator Baumgartner, the rules were suspended, Substitute House Bill No. 1564 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Baumgartner spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1564.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1564 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 2; Absent, 0; Excused, 2.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Liias, Litzow, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler and Warnick

Voting nay: Senators Dandel and Pearson

Excused: Senators McAuliffe and Sheldon

SUBSTITUTE HOUSE BILL NO. 1564, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1779, by Representatives Van De Wege, Johnson, Harris, Jinkins and Tharinger

Requiring specialized training for persons conducting victim interviews as part of the disciplinary process for a health professional alleged to have committed sexual misconduct.

The measure was read the second time.

MOTION

On motion of Senator Becker, the rules were suspended, House Bill No. 1779 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Becker spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1779.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1779 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 2; Absent, 0; Excused, 1.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Liias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler and Warnick

Voting nay: Senators Dandel and Ericksen

Excused: Senator Sheldon

HOUSE BILL NO. 1779, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

The Senate resumed consideration of Engrossed Second Substitute House Bill No. 1272 which had been deferred on second reading on a previous day, April 13, 2015.

WITHDRAWAL OF AMENDMENT

On motion of Senator Hargrove, the amendment by Senator Hargrove on page 1, line 6 to Engrossed Second Substitute House Bill No. 1272 was withdrawn.

MOTION

Senator Hargrove moved that the following amendment by Senators Hargrove and Padden be adopted:

On page 1, line 8, after "private;" strike "and"

On page 1, line 10, after "disclosure" insert "; and

(c) Knows or reasonably should know that the other person is afraid, intimidated, or harassed even if the person did not intend to place the other person in fear or intimidate or harass the other person"

On page 1, line 16, after "private;" strike "and"

On page 1, line 18 after "disclosure" insert "; and

(d) Knows or reasonably should know that the other person is afraid, intimidated, or harassed even if the person did not intend to place the other person in fear or intimidate or harass the other person"

Senators Hargrove, Padden and Kohl-Welles spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Hargrove and Padden on page 1, line 8 to Engrossed Second Substitute House Bill No. 1272.

The motion by Senator Hargrove carried and the amendment was adopted by voice vote.

MOTION

On motion of Senator Padden, the rules were suspended, Engrossed Second Substitute House Bill No. 1272 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Padden spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 1272 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1272 as amended by

the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yeas: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Liias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler and Warnick

Excused: Senator Sheldon

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1272 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## SECOND READING

SUBSTITUTE HOUSE BILL NO. 2160, by House Committee on Judiciary (originally sponsored by Representatives Wylie, Orwall, Klippert and Buys)

Concerning the distribution of intimate images.

The measure was read the second time.

## MOTION

Senator Padden moved that the following committee striking amendment by the Committee on Law & Justice be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 4.24 RCW to read as follows:

(1) A person distributes an intimate image of another person when that person intentionally and without consent distributes, transmits, or otherwise makes available an intimate image or images of that other person that was:

(a) Entrusted to that person by the other person, and that person's distribution, transmission, or otherwise making available of the intimate image intentionally or recklessly causes emotional distress to the other person; or

(b) Knowingly obtained by that person without authorization or by exceeding authorized access from the other person's property, accounts, messages, files, or resources.

(2) Any person who distributes an intimate image of another person as described in subsection (1) of this section shall be liable to that other person for up to ten thousand dollars or actual damages including, but not limited to, pain and suffering, emotional distress, economic damages, and lost earnings, whichever is greater, reasonable attorneys' fees, and costs. The court may also, in its discretion, award injunctive relief as it deems necessary.

(3) Factors that may be used to determine whether an intimate image was entrusted to a person include:

(a) The nature of the relationship between the parties;

(b) The circumstances under which the intimate image was taken;

(c) The circumstances under which the intimate image was distributed; and

(d) Any other relevant factors.

(4) As used in this section:

(a) "Entrusted" means the image was obtained under circumstances where both parties should reasonably understand that the image was to remain private.

(b) "Intimate image" means any photograph, motion picture film, videotape, digital image, or any other recording or transmission of another person who is identifiable from the image itself or from information displayed with or otherwise connected to the image, and that was taken in a private setting, is not a matter of public concern, and depicts:

(i) Sexual activity, including sexual intercourse as defined in RCW 9A.44.010 and masturbation; or

(ii) A person's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or postpubescent female nipple.

(5) In an action brought under this section, the court shall:

(a) Make it known to the plaintiff as early as possible in the proceedings of the action that the plaintiff may use a confidential identity in relation to the action;

(b) Allow a plaintiff to use a confidential identity in all petitions, filings, and other documents presented to the court;

(c) Use the confidential identity in all of the court's proceedings and records relating to the action, including any appellate proceedings; and

(d) Maintain the records relating to the action in a manner that protects the confidentiality of the plaintiff.

(6) Nothing in this act shall be construed to impose liability on an interactive computer service, as defined in 47 U.S.C. 230(f)(2) as it exists on the effective date of this section, for content provided by another person."

## PARLIAMENTARY INQUIRY

Senator Padden: "Was there another amendment by Senator Hargrove on this legislation?"

## REPLY BY THE PRESIDENT

President Owen: "On the last one, not on this one."

## MOTION

On motion of Senator Fain, further consideration of Substitute House Bill No. 2160 was deferred and the bill held its place on the second reading calendar.

## SECOND READING

HOUSE BILL NO. 1858, by Representatives Shea, S. Hunt, Taylor, G. Hunt, Reykdal, Condotta, Tharinger and McCaslin

Prohibiting the names of county auditors and the secretary of state from being included on ballot envelopes and in voters' pamphlets when running for reelection.

The measure was read the second time.

## MOTION

Senator Pearson moved that the following amendment by Senators Pearson and Liias be adopted:

On page 4, after line 25, insert the following:

**"NEW SECTION. Sec. 4.** This act takes effect January 1, 2016

Senators Pearson and Liias spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Pearson and Liias on page 4, after line 25 to House Bill No. 1858.

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The motion by Senator Pearson carried and the amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 4 of the title, after "29A.40.091", insert "; and providing an effective date

MOTION

On motion of Senator Roach, the rules were suspended, House Bill No. 1858 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Roach and Liias spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1858 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1858 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Liias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler and Warnick

Excused: Senator Sheldon

HOUSE BILL NO. 1858 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1850, by House Committee on Transportation (originally sponsored by Representatives Hayes, Clibborn, Orcutt, Takko, Harmsworth, Riccelli, Rodne, Bergquist, Wilson, Robinson, Smith, Muri and Magendanz)

Exempting certain department of transportation actions from local review or permit processes under the shoreline management act.

The measure was read the second time.

MOTION

Senator King moved that the following striking amendment by Senator King be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** To ensure that vital maintenance and minor safety upgrades to state transportation facilities are efficiently achieved, the legislature finds that

regulatory reviews under chapter 90.58 RCW should be reformed. The activities of the department of transportation are guided by manuals and standards of practice designed to effectively avoid and minimize impacts to the environment. These activities are also subject to periodically renewed programmatic permits from federal agencies, the department of fish and wildlife, and the department of ecology water quality program. Adding local permits or letters of exemption under the shoreline management act does not substantively improve the environmental outcomes of this work. Adding these local reviews creates time delays, the imposition of inconsistent standards and manuals, and uncertainty in the permitting process. Therefore, the legislature finds that it is in the public interest to exclude state highway maintenance and minor safety upgrade activities from local review and approval processes under the shoreline management act.

**Sec. 2.** RCW 90.58.355 and 2012 c 169 s 1 are each amended to read as follows:

Requirements to obtain a substantial development permit, conditional use permit, ~~((or))~~ variance ~~((shall))~~, letter of exemption, or other review conducted by a local government to implement this chapter do not apply to ~~((any person))~~:

(1) Any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department must ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090; ~~((or))~~

(2) Any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit. The department must ensure compliance with the substantive requirements of this chapter through the review of engineering reports, site plans, and other documents related to the installation of boatyard storm water treatment facilities; or

(3)(a) The following department of transportation projects and activities if they meet the conditions of (b) of this subsection:

(i) Maintenance, repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility such as a ferry dock or bus transfer station, including ancillary transportation facilities such as pedestrian/bicycle paths and bike lanes;

(ii) Construction or installation of safety structures and equipment, including pavement marking, freeway surveillance and control systems, railroad protective devices not including grade-separated crossings, grooving, glare screen, safety barriers, energy attenuators, and hazard/danger tree removal.

(b) Activities exempted under this subsection must occur within the right-of-way of state highway facilities or the lease or ownership area for ferry terminals. For purposes of this section, the replacement of structures and construction or installation of safety structures and equipment does not include new travel lanes or the expansion of transportation facilities. The replacement of structures must be comparable to the original structure, including size, shape, configuration, and location, except to meet current engineering standards or environmental permit requirements."

Senator King spoke in favor of adoption of the striking amendment.

Senators Hobbs, McCoy and Liias spoke against adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator King to Engrossed Second Substitute House Bill No. 1850.

The motion by Senator King carried and the striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 4 of the title, after "act;" strike the remainder of the title and insert "amending RCW 90.58.355; and creating a new section."

#### MOTION

On motion of Senator King, the rules were suspended, Engrossed Second Substitute House Bill No. 1850 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators King and Ericksen spoke in favor of passage of the bill.

Senators Hobbs, Lias, Fraser, McCoy and Ranker spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 1850 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1850 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 25; Nays, 23; Absent, 0; Excused, 1.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Braun, Brown, Dammeier, Dansel, Ericksen, Fain, Hewitt, Hill, Honeyford, King, Litzow, Miloscia, O'Ban, Padden, Parlette, Pearson, Rivers, Roach, Schoesler and Warnick

Voting nay: Senators Billig, Chase, Cleveland, Conway, Darneille, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hobbs, Jayapal, Keiser, Kohl-Welles, Lias, McAuliffe, McCoy, Mullet, Nelson, Pedersen, Ranker and Rolfes

Excused: Senator Sheldon

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1850 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 1620, by Representatives Tharinger, Fey, Lytton, Van De Wege, Stanford, Fitzgibbon, Walkinshaw, Cody, Pollet and Jinkins

Increasing the surcharge to fund biotoxin testing and monitoring.

The measure was read the second time.

#### MOTION

Senator Pearson moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 77.32.555 and 2009 c 577 s 1 are each amended to read as follows:

(1) In addition to the fees authorized in this chapter, the department shall include a surcharge to fund biotoxin testing and monitoring by the department of health of beaches used for recreational shellfishing, and to fund monitoring by the Olympic region harmful algal bloom program of the Olympic natural resources center at the University of Washington. The surcharge on recreational shellfish licenses cannot be increased more than one dollar and can only be increased when the surcharge for commercial shellfish licenses is increased. A surcharge of ~~((three))~~ four dollars applies to resident and nonresident shellfish and seaweed licenses as authorized by RCW 77.32.520(3) (a) and (b); a surcharge of ~~((two))~~ three dollars applies to resident and nonresident adult combination licenses as authorized by RCW 77.32.470(2)(a); a surcharge of ~~((two))~~ three dollars applies to annual resident and nonresident razor clam licenses as authorized by RCW 77.32.520(4); and a surcharge of ~~((one))~~ two dollars applies to the three-day razor clam license authorized by RCW 77.32.520(5). Amounts collected from these surcharges must be deposited in the biotoxin account created in subsection (3) of this section. The department may not use any amounts collected from these surcharges to pay for its administrative costs.

(2) Any moneys from surcharges remaining in the general fund—local account after the 2007-2009 biennium must be transferred to the biotoxin account created in subsection (3) of this section and be credited to the appropriate institution. The department of health and the University of Washington shall, by December 1st of each year, provide a letter to the relevant legislative policy and fiscal committees on the status of expenditures. This letter shall include, but is not limited to, the annual appropriation amount, the amount not expended, account fund balance, and reasons for not spending the full annual appropriation.

(3) The biotoxin account is created in the state treasury to be administered by the department of health. All moneys received under subsection (1) of this section must be deposited in the account and used by the department of health and the University of Washington as required by subsection (1) of this section. Of the moneys deposited into the account, one hundred fifty thousand dollars per year must be made available to the University of Washington to implement subsection (1) of this section. Moneys in the account may be spent only after appropriation."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to House Bill No. 1620.

The motion by Senator Pearson carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "monitoring;" strike the remainder of the title and insert "and amending RCW 77.32.555."

#### MOTION

On motion of Senator Pearson, the rules were suspended, House Bill No. 1620 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Pearson and Hargrove spoke in favor of passage of the bill.



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The President declared the question before the Senate to be the final passage of House Bill No. 1620 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1620 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 38; Nays, 10; Absent, 0; Excused, 1.

Voting yea: Senators Angel, Bailey, Benton, Billig, Chase, Cleveland, Conway, Dammeier, Darneille, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Liias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes and Schoesler

Voting nay: Senators Baumgartner, Becker, Braun, Brown, Dansel, Ericksen, Hewitt, O'Ban, Padden and Warnick

Excused: Senator Sheldon

HOUSE BILL NO. 1620 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 1851, by House Committee on Environment (originally sponsored by Representatives Hayes, Bergquist, Zeiger, Takko, Harmsworth, Wilson, Griffey, Hargrove, Smith and Magendanz)

Creating an expedited permitting and contracting process for bridges owned by local governments that are deemed structurally deficient.

The measure was read the second time.

#### MOTION

Senator King moved that the following striking amendment by Senator King be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 43.21C RCW to read as follows:

(1) The repair or replacement of a city, town, or county bridge deemed structurally deficient is exempt from compliance with this chapter as long as the action occurs within the existing right-of-way, except that the repair or replacement may occur outside the existing right-of-way as needed to meet current engineering standards or state or local environmental permit requirements for highway construction as long as the repair or replacement does not result in additional lanes for automobiles. The issuance of applicable state and local agency permits or approvals associated with the repair or replacement of such bridges is also included in this exemption from compliance with this chapter.

(2) For purposes of this section, "structurally deficient" means a bridge that is classified as in poor condition under the state bridge condition rating system and is reported by the state to the national bridge inventory as having a deck, superstructure, or substructure rating of four or below. Structurally deficient bridges are characterized by deteriorated conditions of significant bridge elements and potentially reduced load-carrying capacity. Bridges deemed structurally deficient typically require

significant maintenance and repair to remain in service, and require major rehabilitation or replacement to address the underlying deficiency.

**Sec. 2.** RCW 47.28.170 and 2006 c 334 s 23 are each amended to read as follows:

(1) Whenever the department finds that as a consequence of accident, natural disaster, or other emergency, an existing state highway is in jeopardy or is rendered impassible in one or both directions and the department further finds that prompt reconstruction, repair, or other work is needed to preserve or restore the highway for public travel, the department may obtain at least three written bids for the work without publishing a call for bids, and the secretary of transportation may award a contract forthwith to the lowest responsible bidder.

The department shall notify any association or organization of contractors filing a request to regularly receive notification. Notification to an association or organization of contractors shall include: (a) The location of the work to be done; (b) the general anticipated nature of the work to be done; and (c) the date determined by the department as reasonable in view of the nature of the work and emergent nature of the problem after which the department will not receive bids.

(2) Whenever the department finds it necessary to protect a highway facility from imminent damage or to perform emergency work to reopen a highway facility, the department may contract for such work on a negotiated basis not to exceed force account rates for a period not to exceed thirty working days.

(3) The secretary shall review any contract exceeding seven hundred thousand dollars awarded under subsection (1) or (2) of this section with the office of financial management within thirty days of the contract award.

(4) Any person, firm, or corporation awarded a contract for work must be prequalified pursuant to RCW 47.28.070 and may be required to furnish a bid deposit or performance bond.

(5) A city, town, or county may use the contracting process available to the department under subsection (1) of this section for the repair or replacement of a bridge deemed structurally deficient, as defined in section 1 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 39.04 RCW to read as follows:

The repair or replacement of a city, town, or county bridge deemed structurally deficient, as defined in section 1 of this act, may use the contracting process available under RCW 47.28.170."

On page 1, line 3 of the title, after "deficient;" strike the remainder of the title and insert "amending RCW 47.28.170; adding a new section to chapter 43.21C RCW; and adding a new section to chapter 39.04 RCW."

Senator King spoke in favor of adoption of the striking amendment.

#### WITHDRAWAL OF AMENDMENT

On motion of Senator King, the striking amendment by Senator King to Substitute House Bill No. 1851 was withdrawn.

#### MOTION

On motion of Senator King, the rules were suspended, Substitute House Bill No. 1851 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators King and Hobbs spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1851.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1851 and the bill passed the Senate by the following vote: Yeas, 43; Nays, 5; Absent, 0; Excused, 1.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Keiser, King, Lias, Litzow, McAuliffe, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Rivers, Roach, Rolfes, Schoesler and Warnick

Voting nay: Senators Fraser, Jayapal, Kohl-Welles, McCoy and Ranker

Excused: Senator Sheldon

SUBSTITUTE HOUSE BILL NO. 1851, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced fifth grade students from Crescent Heights Elementary School, Tacoma, led by Ms. Caroline Bleckert, guests of Senator Darneille, who were present in the gallery and recognized by the senate.

The Senate resumed consideration of Substitute House Bill No. 2160 which had been deferred earlier in the day.

#### MOTION

Senator Hargrove moved that the following amendment by Senators Hargrove and Padden to the committee striking amendment be adopted:

On page 1, line 17 of the amendment, after "section" insert "and knowingly or reasonably should have known that the other person is afraid, intimidated, or harassed even if the person did not intend to place the other person in fear or intimidate or harass the other person"

Senator Hargrove spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Hargrove and Padden on page 1, line 17 to the committee striking amendment to Substitute House Bill No. 2160.

The motion by Senator Hargrove carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Law & Justice as amended to Substitute House Bill No. 2160.

The motion by Senator Padden carried and the committee striking amendment as amended was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "images;" strike the remainder of the title and insert "adding a new section to chapter 4.24 RCW; and prescribing penalties."

#### MOTION

On motion of Senator Padden, the rules were suspended, Substitute House Bill No. 2160 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Padden spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2160 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2160 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Lias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler and Warnick

Excused: Senator Sheldon

SUBSTITUTE HOUSE BILL NO. 2160 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced fifth grade students from Crescent Heights Elementary School, Tacoma, led by Mrs. Megan Qualls, guests of Senator Darneille, who were present in the gallery and recognized by the senate.

#### INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced students from Odyssey Elementary School, Everett, led by Ms. Sandy Bajczuk, guests of Senator Lias, who were present in the gallery and recognized by the senate.

#### SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1276, by House Committee on General Government & Information Technology (originally sponsored by Representatives Klippert, Goodman, Hayes, Orwall, Moscoso, Pettigrew, Zeiger, Kilduff and Fey)

Concerning impaired driving.

The measure was read the second time.

#### MOTION

Senator Padden moved that the following committee striking amendment by the Committee on Ways & Means be not adopted:

Strike everything after the enacting clause and insert the following:

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**"NEW SECTION. Sec. 1.** The legislature finds that impaired driving continues to be a significant cause of motor vehicle crashes and that additional measures need to be taken to identify people who are driving under the influence, provide appropriate sanctions, and ensure compliance with court-ordered restrictions. The legislature intends to increase the availability of forensic phlebotomists so that offenders can be appropriately and efficiently identified. The legislature further intends to keep impaired drivers off the public roads by making the fourth, rather than the fifth, offense a felony and require consecutive sentencing in certain cases to increase punishment and supervision of offenders. The legislature intends to clarify ignition interlock processes and requirements to ensure that those offenders ordered to have ignition interlock devices do not drive vehicles without the required devices.

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

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

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

(i) Have a functioning ignition interlock device installed on all motor vehicles operated by the person, with proof of installation filed with the court by the person or the certified interlock provider within five business days of the date of release from custody or as soon thereafter as determined by the court based on availability within the jurisdiction; ~~((or (b)))~~

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

(iii) Have an ignition interlock device pursuant to (a)(i) of this subsection and comply with 24/7 sobriety program monitoring pursuant to (a)(ii) of this subsection; or

(iv) Have an ignition interlock pursuant to (a)(i) of this subsection, file a sworn statement with the court upon release at arraignment that states the person agrees not to operate any motor vehicle while the ignition interlock restriction is imposed by the court, and submit to alcohol monitoring as outlined in RCW 46.61.5055(5)(b).

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

(c) Pursuant to (a)(iv) of this subsection, the person ordered to install the ignition interlock pursuant to (a) of this subsection satisfies the requirement to install an ignition interlock by filing a sworn statement with the court at arraignment, that states that the person agrees not to operate any motor vehicle while the ignition interlock restriction is imposed by the court; provided, that the ignition interlock requirement will still be reported to the department pursuant to subsection (1)(b) of this section and it will remain unlawful for the person to operate any motor vehicle unless it is equipped with a fully functioning ignition interlock device.

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

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

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

**Ignition interlock driver's license—Application—Eligibility—Cancellation—Costs—Rules**

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

(1)(a) ~~((Beginning January 1, 2009,))~~ Any person licensed under this chapter or who has a valid driver's license from another state, who is convicted of: (i) A violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance, or (ii) a violation of RCW 46.61.520(1)(a) or an equivalent local or out-of-state statute or ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1) (b) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW 46.61.522(1)(b) or an equivalent local or out-of-state statute or ordinance, or (v) RCW 46.61.522(1) (a) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522(1)(b) committed while under the influence of intoxicating liquor or any drug, or (vi) who has had or will have his or her license suspended, revoked, or denied under RCW 46.20.3101, or who is otherwise permitted under subsection (8) of this section, may submit to the department an application for an ignition interlock driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue an ignition interlock driver's license.

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

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

(i) The department shall require the person to maintain the device on all vehicles operated by the person and shall restrict the person to operating only vehicles equipped with the device, for the remainder of the period of suspension, revocation, or denial. Subject to the provisions of RCW 46.20.720(3)(b)(ii), the installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Implied consent—Test refusal—Procedures**

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

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

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol or THC in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. Prior to administering a breath test pursuant to this section, the officer shall inform the person of his or her right under this section to refuse the breath test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

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

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

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

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

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

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

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

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

~~(4))~~ If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested

~~((refuses))~~ exercises the right, granted herein, by refusing upon the request of a law enforcement officer to submit to a test or tests of his or her breath, no test shall be given except as otherwise authorized by ~~((a search warrant))~~ law.

(4) Nothing in subsection (1), (2), or (3) of this section precludes a law enforcement officer from obtaining a person's blood to test for alcohol, marijuana, or any drug, pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law. Any blood drawn for the purpose of determining the person's alcohol or marijuana levels, or any drug, is drawn pursuant to this section when the officer has reasonable grounds to believe that the person is in physical control or driving a vehicle under the influence or in violation of RCW 46.61.503.

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

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

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

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

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

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

(ii) That after receipt of ~~((the))~~ any applicable warnings required by subsection (2) of this section the person refused to submit to a test of his or her breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more, or the THC concentration of the person's blood was 5.00 or more, if the person is age twenty-one or over, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC

concentration of the person's blood was above 0.00, if the person is under the age of twenty-one; and

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

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

(7) A person receiving notification under subsection (5)(b) of this section may, within twenty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of three hundred seventy-five dollars as part of the request. If the request is mailed, it must be postmarked within twenty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required three hundred seventy-five dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required three hundred seventy-five dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license (~~marked~~) under subsection (5) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered (~~without express consent~~) pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more, or the THC concentration of the person's blood was 5.00 or more, if the person was age twenty-one or over at the time of the arrest, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC concentration of the person's blood was above 0.00, if the person was under the age of twenty-one at the time of the arrest. Where a person is found to be in actual physical

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

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

(8) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant

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such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

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

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

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

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

**Circumventing ignition interlock—Penalty**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((5))~~ (6) Upon receipt of the sworn report of a law enforcement officer under subsection (~~((4))~~) (5) of this section,

the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090, subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest. For the purposes of this section, the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle within this state while having alcohol in the person's system or while under the influence of any drug, whether the person refused to submit to the test or tests upon request of the officer after having been informed that the refusal would result in the disqualification of the person from driving a commercial motor vehicle, if applicable, and, if the test was administered, whether the results indicated an alcohol concentration of 0.04 percent or more or any measurable amount of THC concentration. The department shall order that the disqualification of the person either be rescinded or sustained. Any decision by the department disqualifying a person from driving a commercial motor vehicle is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during the pendency of the hearing and appeal. If the disqualification of the person is sustained after the hearing, the person who is disqualified may file a petition in the superior court of the county of arrest to review the final order of disqualification by the department in the manner provided in RCW 46.20.334.

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

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

#### **Open container law for marijuana**

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

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

(i) For the registered owner of a motor vehicle, or the driver if the registered owner is not then present, or passengers in the vehicle, to keep marijuana in a motor vehicle when the vehicle is upon a highway, unless it is (A) in the trunk of the vehicle, (B) in some other area of the vehicle not normally occupied or directly accessible by the driver or passengers if the vehicle does not have a trunk, or (C) in a package, container, or receptacle that has not been opened or the seal broken or contents partially removed. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers;

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

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

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

(2) As used in this section, "marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every

compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

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

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

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

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

(i) By imprisonment for not less than one day nor more than three hundred sixty-four days. Twenty-four consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device or other separate alcohol monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

(i) By imprisonment for not less than two days nor more than three hundred sixty-four days. Forty-eight consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer or other separate alcohol monitoring device, and the court may restrict the amount of alcohol the



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) By imprisonment for not less than one hundred twenty days nor more than three hundred sixty-four days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty days of electronic home monitoring. In lieu of the mandatory minimum term of one hundred fifty days of electronic home monitoring, the court may order at least an additional ten days in jail. The offender shall pay for the cost of the electronic monitoring. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include

an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

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

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

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

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

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

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

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

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

(5) **Monitoring.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Except as provided in subsection (2) of this section, the director may destroy applications for vehicle registrations, copies of vehicle registrations issued, applications for drivers' licenses, copies of issued drivers' licenses, certificates of title and

registration or other documents, and records or supporting papers on file in the department that have been microfilmed or photographed or are more than five years old. The director may destroy applications for vehicle registrations that are renewal applications when the computer record of the applications has been updated.

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

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

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

#### **Ignition interlock devices—Standards—Compliance**

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

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

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

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

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

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

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

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

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

~~((=))~~ (b) To be certified, an ignition interlock device must:

(i) Meet or exceed the minimum test standards according to rules adopted by the state patrol. Only a notarized statement from a laboratory that is accredited and certified ~~((by))~~ under the current edition of ISO (the international organization of standardization) 17025 standard for testing and calibration laboratories and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards. The notarized statement must include the name and signature of the person in charge of the tests under the certification statement. The state patrol must adopt by rule the required language of the certification statement that must, at a minimum, outline that the testing meets or exceeds all specifications listed in the federal register adopted in rule by the state patrol; and

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

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

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

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

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

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

- (i) The total number of vehicles involved;
- (ii) Whether the vehicles were legally parked or moving;
- (iii) Whether the vehicles were occupied at the time of the accident; and
- (iv) Whether the accident resulted in a fatality;

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

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

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

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

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

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

(b) **Employers or prospective employers.** (i)(A) An abstract of the full driving record maintained by the department may be furnished to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual for purposes related to driving by the individual

as a condition of employment or otherwise at the direction of the employer.

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

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

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

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

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

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

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

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

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

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

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

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

(B) Include convictions under RCW 46.61.5249 and 46.61.525, except that the abstract must report the convictions

only as negligent driving without reference to whether they are for first or second degree negligent driving; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Is under the age of twenty-one; and
- (b) Has, within two hours after operating or being in physical control of the motor vehicle, either:

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

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

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

(3) No person may be convicted under this section for being in physical control of a motor vehicle and it is an affirmative

defense to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny the privilege to drive, if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

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

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

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

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

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

There is hereby established in the state treasury the 24/7 sobriety account. The account shall be maintained and administered by the criminal justice training commission to reimburse the state for costs associated with establishing and operating the 24/7 sobriety program and the Washington association of sheriffs and police chiefs for ongoing 24/7 sobriety program administration costs. ~~((M:\Documents\SenateJournal\2015-Journal\Journal2015\LegDay094\The.doc M:\Documents\SenateJournal\2015-Journal\Journal2015\LegDay094\The.doc was not found))~~ An appropriation is not required for expenditures and the account is not subject to allotment procedures under chapter 43.88 RCW. Funds in the account may not lapse and must carry forward from biennium to biennium. Interest earned by the account must be retained in the account. The criminal justice training commission may accept for deposit in the account money from donations, gifts, grants, participation fees, and user fees or payments. ~~((Expenditures from the account shall be budgeted through the normal budget process.))~~

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

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

(1) "24/7 ~~((electronic alcohol/drug monitoring))~~ sobriety program" means ~~((the monitoring by the use of any electronic instrument that is capable of determining and monitoring the presence of alcohol or drugs in a person's body and includes any associated equipment a participant needs in order for the device to properly perform. Monitoring may also include mandatory urine analysis tests as ordered by the court))~~ a program in which a participant submits to testing of the participant's blood, breath,

urine, or other bodily substance to determine the presence of alcohol or any drug as defined in RCW 46.61.540. Testing must take place at a location or locations designated by the participating agency, or, with the concurrence of the Washington association of sheriffs and police chiefs, by an alternate method.

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

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

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

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

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

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

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

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

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

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

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

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

(1) A general authority Washington peace officer, as defined in RCW 10.93.020, who has probable cause to believe that a participant has violated the terms of participation in the 24/7 sobriety program may immediately take the participant into custody and cause him or her to be held until an appearance before a judge on the next judicial day.

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

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

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

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

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

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

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

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

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

(2) A pretrial release program may not agree to supervise, or accept into its custody, an offender who is currently awaiting trial for a violent offense or sex offense, as defined in RCW 9.94A.030, who has been convicted of one or more violent offenses or sex offenses in the ten years before the date of the current offense, unless the offender's release before trial was secured with a payment of bail.

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

It is not professional misconduct for a physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood, to collect a blood sample without a person's consent when the physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood was directed by a law



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enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant or exigent circumstances: PROVIDED, That nothing in this section shall relieve a physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, a forensic phlebotomist under section 23 of this act, or any technician trained in withdrawing blood from professional discipline arising from the use of improper procedures or from failing to exercise the required standard of care.

**NEW SECTION. Sec. 22.** A new section is added to chapter 43.70 RCW to read as follows:

(1) The secretary, in consultation with health profession boards and commissions, the Washington state criminal justice training commission, and the Washington state patrol, shall establish by rule the administrative procedures and administrative requirements for initial issue, renewal, and reissue of a credential for forensic phlebotomists as defined in section 23 of this act. Failure to renew invalidates the credential and all privileges granted by the credential. Administrative procedures and administrative requirements do not include establishing, monitoring, and enforcing qualifications for licensure, scope or standards of practice, continuing competency mechanisms, and discipline when such authority is authorized in statute to a health profession board or commission or to the criminal justice training commission. For the purposes of this section, "in consultation with" means providing an opportunity for meaningful participation in development of rules consistent with processes set forth in RCW 34.05.310.

(2) Notwithstanding any provision of law to the contrary that provides for a licensing period for any type of license subject to this chapter including those under RCW 18.130.040, the secretary may, from time to time, extend or otherwise modify the duration of any licensing, certification, or registration period, whether an initial or renewal period, if the secretary determines that it would result in a more economical or efficient operation of state government and that the public health, safety, or welfare would not be substantially adversely affected thereby. However, no license, certification, or registration may be issued or approved for a period in excess of four years, without renewal. Such extension, reduction, or other modification of a licensing, certification, or registration period shall be by rule or regulation of the department adopted in accordance with the provisions of chapter 34.05 RCW. Such rules and regulations may provide a method for imposing and collecting such additional proportional fee as may be required for the extended or modified period.

**NEW SECTION. Sec. 23.** A new section is added to chapter 46.04 RCW to read as follows:

"Forensic phlebotomist" means a police officer, law enforcement officer, or employee of a correctional facility or detention facility, who completed a venipuncture training program required under section 22 of this act and who is collecting a blood sample for forensic testing pursuant to a search warrant, a waiver of the warrant requirement, or exigent circumstances.

**Sec. 24.** RCW 46.61.506 and 2013 c 3 s 37 are each amended to read as follows:

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08 or the person's THC concentration is less than 5.00, it is evidence that may be

considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

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

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

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

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

(4)(a) A breath test performed by any instrument approved by the state toxicologist shall be admissible at trial or in an administrative proceeding if the prosecution or department produces prima facie evidence of the following:

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

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

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

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

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

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

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

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

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

(c) Nothing in this section shall be deemed to prevent the subject of the test from challenging the reliability or accuracy of the test, the reliability or functioning of the instrument, or any maintenance procedures. Such challenges, however, shall not preclude the admissibility of the test once the prosecution or department has made a prima facie showing of the requirements contained in (a) of this subsection. Instead, such challenges may

be considered by the trier of fact in determining what weight to give to the test result.

(5) When a blood test is administered under the provisions of RCW 46.20.308, or pursuant to a search warrant, exigent circumstances, or a waiver of the warrant requirement, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician, a registered nurse, a licensed practical nurse, a nursing assistant as defined in chapter 18.88A RCW, a physician assistant as defined in chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW, an emergency medical technician as defined in chapter 18.73 RCW, a health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood. This limitation shall not apply to the taking of breath specimens.

(6) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The test will be admissible if the person establishes the general acceptability of the testing technique or method. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

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

**Sec. 25.** RCW 46.61.508 and 1977 ex.s. c 143 s 1 are each amended to read as follows:

No physician, registered nurse, ~~((qualified technician))~~ licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, forensic phlebotomist under section 23 of this act, or any technician trained in withdrawing blood, or hospital, or duly licensed clinical laboratory employing or utilizing services of such physician, registered nurse, licensed practical nurse, nursing assistant, physician assistant, first responder, emergency medical technician, health care assistant, or qualified technician, shall incur any civil or criminal liability as a result of the act of withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant, a waiver of the search warrant requirement, exigent circumstances, or RCW 46.20.308, as now or hereafter amended. Refusal by a physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood, or hospital, or duly licensed clinical laboratory employing or utilizing services of such physician, registered nurse, licensed practical nurse, nursing assistant, physician assistant, first responder, emergency medical technician, health care assistant, or qualified technician, to withdraw blood shall not constitute a refusal to obey a law enforcement officer, obstruction of a law enforcement investigation, or otherwise subject said person to criminal or civil liability; PROVIDED, That nothing in this section shall relieve any physician, registered nurse, licensed practical nurse, nursing assistant, physician assistant, first responder, emergency medical technician, health care assistant, forensic phlebotomist, qualified technician, or hospital or duly licensed clinical laboratory from

civil liability arising from the use of improper procedures or failing to exercise the required standard of care."

On page 1, line 1 of the title, after "driving;" strike the remainder of the title and insert "amending RCW 10.21.055, 46.20.385, 46.20.740, 46.20.308, 46.20.750, 46.25.120, 46.61.5055, 46.01.260, 43.43.395, 9.94A.589, 46.61.503, 46.20.755, 36.28A.320, 36.28A.330, 36.28A.370, 36.28A.390, 10.21.015, 46.61.506, and 46.61.508; reenacting and amending RCW 46.52.130; adding a new section to chapter 46.61 RCW; adding a new section to chapter 18.130 RCW; adding a new section to chapter 43.70 RCW; adding a new section to chapter 46.04 RCW; creating a new section; and prescribing penalties."

The President declared the question before the Senate to be the motion by Senator Padden that the committee striking amendment by the Committee on Ways & Means to Engrossed Second Substitute House Bill No. 1276 be not adopted.

The motion by Senator Padden carried and the committee striking amendment was not adopted by voice vote.

#### MOTION

Senator Padden moved that the following committee striking amendment by the Committee on Law & Justice be not adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that impaired driving continues to be a significant cause of motor vehicle crashes and that additional measures need to be taken to identify people who are driving under the influence, provide appropriate sanctions, and ensure compliance with court-ordered restrictions. The legislature intends to increase the availability of forensic phlebotomists so that offenders can be appropriately and efficiently identified. The legislature further intends to keep impaired drivers off the public roads by making the fourth, rather than the fifth, offense a felony and require consecutive sentencing in certain cases to increase punishment and supervision of offenders. The legislature intends to clarify ignition interlock processes and requirements to ensure that those offenders ordered to have ignition interlock devices do not drive vehicles without the required devices.

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

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

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

(i) Have a functioning ignition interlock device installed on all motor vehicles operated by the person, with proof of installation filed with the court by the person or the certified interlock provider within five business days of the date of release from custody or as soon thereafter as determined by the court based on availability within the jurisdiction; ~~((or (b)))~~

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

(iii) Have an ignition interlock device pursuant to (a)(i) of this subsection and comply with 24/7 sobriety program monitoring pursuant to (a)(ii) of this subsection; or

(iv) Have an ignition interlock pursuant to (a)(i) of this subsection, file a sworn statement with the court upon release at arraignment that states the person agrees not to operate any motor

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vehicle while the ignition interlock restriction is imposed by the court, and submit to alcohol monitoring as outlined in RCW 46.61.5055(5)(b).

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

(c) Pursuant to (a)(iv) of this subsection, the person ordered to install the ignition interlock pursuant to (a) of this subsection satisfies the requirement to install an ignition interlock by filing a sworn statement with the court at arraignment, that states that the person agrees not to operate any motor vehicle while the ignition interlock restriction is imposed by the court; provided, that the ignition interlock requirement will still be reported to the department pursuant to subsection (1)(b) of this section and it will remain unlawful for the person to operate any motor vehicle unless it is equipped with a fully functioning ignition interlock device.

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

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

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

#### **Ignition interlock driver's**

#### **license—Application—Eligibility—Cancellation—Costs—Rules**

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

(1)(a) ~~((Beginning January 1, 2009,))~~ Any person licensed under this chapter or who has a valid driver's license from another state, who is convicted of: (i) A violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance, or (ii) a violation of RCW 46.61.520(1)(a) or an equivalent local or out-of-state statute or ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1) (b) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW 46.61.522(1)(b) or an equivalent local or out-of-state statute or ordinance, or (v) RCW 46.61.522(1) (a) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522(1)(b) committed while under the influence of intoxicating liquor or any drug, or (vi) who has had or will have

his or her license suspended, revoked, or denied under RCW 46.20.3101, or who is otherwise permitted under subsection (8) of this section, may submit to the department an application for an ignition interlock driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue an ignition interlock driver's license.

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

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

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

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

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

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

(3) Upon receipt of evidence that a holder of an ignition interlock driver's license granted under this subsection no longer has a functioning ignition interlock device installed on all vehicles operated by the driver, the director shall give written notice by first-class mail to the driver that the ignition interlock driver's license shall be canceled. If at any time before the

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

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

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

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

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

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

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

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

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

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

(1) The department shall attach or imprint a notation on the driving record of any person restricted under RCW 46.20.720, 46.61.5055, or 10.05.140 stating that the person may operate only a motor vehicle equipped with a functioning ignition interlock device. The department shall determine the person's eligibility for

licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person seeking reinstatement. If, based upon notification from the interlock provider or otherwise, the department determines that an ignition interlock required under this section is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of noncompliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

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

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

**Implied consent—Test refusal—Procedures**

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

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

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol or THC in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. Prior to administering a breath test pursuant to this section, the officer shall inform the person of his or her right under this section to refuse the breath test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

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

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

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

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

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

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

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

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

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

(4) Nothing in subsection (1), (2), or (3) of this section precludes a law enforcement officer from obtaining a person's blood to test for alcohol, marijuana, or any drug, pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law. Any blood drawn for the purpose of determining the person's alcohol or marijuana levels, or any drug, is drawn pursuant to this section when the officer has reasonable grounds to believe that the person is in physical control or driving a vehicle under the influence or in violation of RCW 46.61.503.

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

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

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

(c) Serve notice in writing that the license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is

given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (7) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

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

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

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

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

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

(7) A person receiving notification under subsection (5)(b) of this section may, within twenty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of three hundred seventy-five dollars as part of the request. If the request is mailed, it must be postmarked within twenty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required three hundred seventy-five dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required three hundred seventy-five dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license ~~((marked))~~ under subsection (5) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to

believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered (~~without express consent~~) pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more, or the THC concentration of the person's blood was 5.00 or more, if the person was age twenty-one or over at the time of the arrest, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC concentration of the person's blood was above 0.00, if the person was under the age of twenty-one at the time of the arrest. Where a person is found to be in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was under the age of twenty-one at the time of the arrest and was in physical control of a motor vehicle while having alcohol in his or her system in a concentration of 0.02 or THC concentration above 0.00, the person may petition the hearing officer to apply the affirmative defense found in RCW 46.61.504(3) and 46.61.503(2). The driver has the burden to prove the affirmative defense by a preponderance of the evidence. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, and was under the age of twenty-one and that the officer complied with the requirements of this section.

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

(8) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of

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

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

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

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

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

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

**Circumventing ignition interlock—Penalty**

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

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

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

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

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

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

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

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

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

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

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

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

(3) The law enforcement officer requesting the test under subsection (1) of this section shall warn the person requested to

submit to the test that a refusal to submit will result in that person being disqualified from operating a commercial motor vehicle under RCW 46.25.090.

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

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

~~((5))~~ (6) Upon receipt of the sworn report of a law enforcement officer under subsection ~~((4))~~ (5) of this section, the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090, subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest. For the purposes of this section, the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle within this state while having alcohol in the person's system or while under the influence of any drug, whether the person refused to submit to the test or tests upon request of the officer after having been informed that the refusal would result in the disqualification of the person from driving a commercial motor vehicle, if applicable, and, if the test was administered, whether the results indicated an alcohol concentration of 0.04 percent or more or any measurable amount of THC concentration. The department shall order that the disqualification of the person either be rescinded or sustained. Any decision by the department disqualifying a person from driving a commercial motor vehicle is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during the pendency of the hearing and appeal. If the disqualification of the person is sustained after the hearing, the person who is disqualified may file a petition in the superior court of the county of arrest to review the final order of disqualification by the department in the manner provided in RCW 46.20.334.

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

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

**Open container law for marijuana**

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

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

(i) For the registered owner of a motor vehicle, or the driver if the registered owner is not then present, or passengers in the vehicle, to keep marijuana in a motor vehicle when the vehicle is upon a highway, unless it is (A) in the trunk of the vehicle, (B) in some other area of the vehicle not normally occupied or directly accessible by the driver or passengers if the vehicle does not have a trunk, or (C) in a package, container, or receptacle that has not been opened or the seal broken or contents partially removed. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers;

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

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

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

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

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

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

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

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

(i) By imprisonment for not less than one day nor more than three hundred sixty-four days. Twenty-four consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device or other separate alcohol monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of

the fine may not be suspended unless the court finds the offender to be indigent; or

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

(i) By imprisonment for not less than two days nor more than three hundred sixty-four days. Forty-eight consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer or other separate alcohol monitoring device, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

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

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

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



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

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

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

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

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

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

in writing the reason for granting the suspension and the facts upon which the suspension is based; and

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

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

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

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

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

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

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

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

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

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

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

(5) **Monitoring.**

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

(b) **Monitoring devices.** If the court orders that a person refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. The person shall pay for the cost of the monitoring, unless the court

specifies that the cost of monitoring will be paid with funds that are available from an alternative source identified by the court. The county or municipality where the penalty is being imposed shall determine the cost.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) **Conditions of probation.** (a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes up to three hundred sixty-four days in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive ~~((and))~~; (ii) not driving a motor vehicle within this state without proof of liability insurance or other financial responsibility for the future pursuant to RCW 46.30.020; ~~((and))~~ (iii) not driving or being in physical control of a motor vehicle within this state while having an alcohol

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concentration of 0.08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within two hours after driving; ~~((and (iii)))~~ (iv) not refusing to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drug; and (v) not driving a motor vehicle in this state without a functioning ignition interlock device as required by the department under RCW 46.20.720(3). The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Ignition interlock devices—Standards—Compliance**

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

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

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

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

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

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

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

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

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

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

(i) Meet or exceed the minimum test standards according to rules adopted by the state patrol. Only a notarized statement from a laboratory that is accredited and certified ((by)) under the current edition of ISO (the international organization of standardization) 17025 standard for testing and calibration laboratories and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards. The notarized statement must include the name and signature of the person in charge of the tests under the certification statement. The state patrol must adopt by rule the required language of the certification statement that must, at a minimum, outline that the testing meets or exceeds all specifications listed in the federal register adopted in rule by the state patrol; and

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

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

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

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

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

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

(i) The total number of vehicles involved;

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

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

(iv) Whether the accident resulted in a fatality;

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

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

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

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

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

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

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

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

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

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

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

(ii) Release of an abstract of the driving record of a prospective volunteer requires a statement signed by: (A) The prospective volunteer that authorizes the release of the record; and (B) the volunteer organization attesting that the information is necessary for purposes related to driving by the individual at the direction of the volunteer organization. If the volunteer

organization authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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in physical control of a motor vehicle within this state and the person:

(a) Is under the age of twenty-one; and  
 (b) Has, within two hours after operating or being in physical control of the motor vehicle, either:

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

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

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

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

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

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

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

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

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

There is hereby established in the state treasury the 24/7 sobriety account. The account shall be maintained and administered by the criminal justice training commission to reimburse the state for costs associated with establishing and operating the 24/7 sobriety program and the Washington association of sheriffs and police chiefs for ongoing 24/7 sobriety

program administration costs.

~~((M:\Documents\SenateJournal2015-Journal\Journal2015\LegDay094\The.docM:\Documents\SenateJournal\Journal2015-Journal\Journal2015\LegDay094\The.doc was not found))~~ An appropriation is not required for expenditures and the account is not subject to allotment procedures under chapter 43.88 RCW. Funds in the account may not lapse and must carry forward from biennium to biennium. Interest earned by the account must be retained in the account. The criminal justice training commission may accept for deposit in the account money from donations, gifts, participation fees, and user fees or payments. (Expenditures from the account shall be budgeted through the normal budget process.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A general authority Washington peace officer, as defined in RCW 10.93.020, who has probable cause to believe that a participant has violated the terms of participation in the 24/7 sobriety program may immediately take the participant into custody and cause him or her to be held until an appearance before a judge on the next judicial day.

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

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

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

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

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

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

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

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

(1) Under this chapter, "pretrial release program" is any program, either run directly by a county or city, or by a private or public entity through contract with a county or city, into whose custody an offender is released prior to trial and which agrees to supervise the offender. As used in this section, "supervision"

includes, but is not limited to, work release, day monitoring, ~~((or))~~ electronic monitoring, or participation in a 24/7 sobriety program.

(2) A pretrial release program may not agree to supervise, or accept into its custody, an offender who is currently awaiting trial for a violent offense or sex offense, as defined in RCW 9.94A.030, who has been convicted of one or more violent offenses or sex offenses in the ten years before the date of the current offense, unless the offender's release before trial was secured with a payment of bail.

**Sec. 21.** RCW 46.61.502 and 2013 c 3 s 33 (Initiative Measure No. 502) are each amended to read as follows:

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

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

(b) The person has, within two hours after driving, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

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

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

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

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

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of driving and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

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

(b) Analyses of blood samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.



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

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

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

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

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

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

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

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

**Sec. 22.** RCW 46.61.504 and 2013 c 3 s 35 (Initiative Measure No. 502) are each amended to read as follows:

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

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

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

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

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

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section and it is an affirmative defense to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny the privilege to drive, if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

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

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

(4)(a) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the

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

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

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

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

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

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

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

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

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

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

**Sec. 23.** RCW 9.94A.515 and 2013 c 322 s 26, 2013 c 290 s 8, 2013 c 267 s 2, and 2013 c 153 s 2 are each reenacted and amended to read as follows:

TABLE 2  
CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))
	Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011)
	Assault of a Child 1 (RCW 9A.36.120)
	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
	Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
	Rape 1 (RCW 9A.44.040)
	Rape of a Child 1 (RCW 9A.44.073)
	Trafficking 2 (RCW 9A.40.100( <del>((2))</del> ) <u>(3)</u> )
XI	Manslaughter 1 (RCW 9A.32.060)
	Rape 2 (RCW 9A.44.050)
	Rape of a Child 2 (RCW 9A.44.076)
	Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
X	Child Molestation 1 (RCW 9A.44.083)
	Criminal Mistreatment 1 (RCW 9A.42.020)
	Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
	Kidnaping 1 (RCW 9A.40.020)

- Leading Organized Crime (RCW 9A.82.060(1)(a))  
 Malicious explosion 3 (RCW 70.74.280(3))  
 Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Abandonment of Dependent Person 1 (RCW 9A.42.060)  
 Assault of a Child 2 (RCW 9A.36.130)  
 Explosive devices prohibited (RCW 70.74.180)  
 Hit and Run—Death (RCW 46.52.020(4)(a))  
 Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)  
 Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))  
 Malicious placement of an explosive 2 (RCW 70.74.270(2))  
 Robbery 1 (RCW 9A.56.200)  
 Sexual Exploitation (RCW 9.68A.040)
- VIII Arson 1 (RCW 9A.48.020)  
 Commercial Sexual Abuse of a Minor (RCW 9.68A.100)  
 Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)  
 Manslaughter 2 (RCW 9A.32.070)  
 Promoting Prostitution 1 (RCW 9A.88.070)  
 Theft of Ammonia (RCW 69.55.010)  
 Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)  
 Child Molestation 2 (RCW 9A.44.086)  
 Civil Disorder Training (RCW 9A.48.120)  
 Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))  
 Drive-by Shooting (RCW 9A.36.045)  
 Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)  
 Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))  
 Introducing Contraband 1 (RCW 9A.76.140)  
 Malicious placement of an explosive 3 (RCW 70.74.270(3))  
 Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)  
 Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1))  
 Unlawful Possession of a Firearm in the first degree (RCW 9A.41.040(1))  
 Use of a Machine Gun in Commission of a Felony (RCW 9A.41.225)  
 Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))  
 Bribery (RCW 9A.68.010)  
 Incest 1 (RCW 9A.64.020(1))  
 Intimidating a Judge (RCW 9A.72.160)  
 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)  
 Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))  
 Rape of a Child 3 (RCW 9A.44.079)  
 Theft of a Firearm (RCW 9A.56.300)  
 Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of Dependent Person 2 (RCW 9A.42.070)  
 Advancing money or property for extortionate extension of credit (RCW 9A.82.030)  
 Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))  
 Child Molestation 3 (RCW 9A.44.089)  
 Criminal Mistreatment 2 (RCW 9A.42.030)  
 Custodial Sexual Misconduct 1 (RCW 9A.44.160)  
 Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))  
 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)  
~~(Driving While Under the Influence (RCW 46.61.502(6)))~~  
 Extortion 1 (RCW 9A.56.120)  
 Extortionate Extension of Credit (RCW 9A.82.020)  
 Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)  
 Incest 2 (RCW 9A.64.020(2))  
 Kidnapping 2 (RCW 9A.40.030)  
 Perjury 1 (RCW 9A.72.020)  
 Persistent prison misbehavior (RCW 9.94.070)  
~~((Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))))~~  
 Possession of a Stolen Firearm (RCW 9A.56.310)  
 Rape 3 (RCW 9A.44.060)  
 Rendering Criminal Assistance 1 (RCW 9A.76.070)  
 Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))  
 Sexual Misconduct with a Minor 1 (RCW 9A.44.093)  
 Sexually Violating Human Remains (RCW 9A.44.105)  
 Stalking (RCW 9A.46.110)  
 Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)  
 Assault 2 (RCW 9A.36.021)  
 Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))  
 Assault by Watercraft (RCW 79A.60.060)  
 Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)  
 Cheating 1 (RCW 9.46.1961)  
 Commercial Bribery (RCW 9A.68.060)  
 Counterfeiting (RCW 9.16.035(4))  
Driving While Under the Influence (RCW 46.61.502(6))  
 Endangerment with a Controlled Substance

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- (RCW 9A.42.100)  
 Escape 1 (RCW 9A.76.110)  
 Hit and Run—Injury (RCW 46.52.020(4)(b))  
 Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))  
 Identity Theft 1 (RCW 9.35.020(2))  
 Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)  
 Influencing Outcome of Sporting Event (RCW 9A.82.070)  
 Malicious Harassment (RCW 9A.36.080)  
Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))  
 Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2))  
 Residential Burglary (RCW 9A.52.025)  
 Robbery 2 (RCW 9A.56.210)  
 Theft of Livestock 1 (RCW 9A.56.080)  
 Threats to Bomb (RCW 9.61.160)  
 Trafficking in Stolen Property 1 (RCW 9A.82.050)  
 Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))  
 Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))  
 Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))  
 Unlawful transaction of insurance business (RCW 48.15.023(3))  
 Unlicensed practice as an insurance professional (RCW 48.17.063(2))  
 Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))  
 Vehicle Prowling 2 (third or subsequent offense) (RCW 9A.52.100(3))  
 Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)  
 Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))  
 Willful Failure to Return from Furlough (RCW 72.66.060)
- III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))  
 Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))  
 Assault of a Child 3 (RCW 9A.36.140)  
 Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))  
 Burglary 2 (RCW 9A.52.030)  
 Communication with a Minor for Immoral Purposes (RCW 9.68A.090)  
 Criminal Gang Intimidation (RCW 9A.46.120)  
 Custodial Assault (RCW 9A.36.100)  
 Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
- Escape 2 (RCW 9A.76.120)  
 Extortion 2 (RCW 9A.56.130)  
 Harassment (RCW 9A.46.020)  
 Intimidating a Public Servant (RCW 9A.76.180)  
 Introducing Contraband 2 (RCW 9A.76.150)  
 Malicious Injury to Railroad Property (RCW 81.60.070)  
 Mortgage Fraud (RCW 19.144.080)  
 Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)  
 Organized Retail Theft 1 (RCW 9A.56.350(2))  
 Perjury 2 (RCW 9A.72.030)  
 Possession of Incendiary Device (RCW 9.40.120)  
 Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)  
 Promoting Prostitution 2 (RCW 9A.88.080)  
 Retail Theft with Special Circumstances 1 (RCW 9A.56.360(2))  
 Securities Act violation (RCW 21.20.400)  
 Tampering with a Witness (RCW 9A.72.120)  
 Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))  
 Theft of Livestock 2 (RCW 9A.56.083)  
 Theft with the Intent to Resell 1 (RCW 9A.56.340(2))  
 Trafficking in Stolen Property 2 (RCW 9A.82.055)  
 Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b))  
 Unlawful Imprisonment (RCW 9A.40.040)  
 Unlawful Misbranding of Food Fish or Shellfish 1 (RCW 69.04.938(3))  
 Unlawful possession of firearm in the second degree (RCW 9.41.040(2))  
 Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b))  
 Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b))  
 Unlawful Use of a Nondesignated Vessel (RCW 77.15.530(4))  
 Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)  
 Willful Failure to Return from Work Release (RCW 72.65.070)
- II Commercial Fishing Without a License 1 (RCW 77.15.500(3)(b))  
 Computer Trespass 1 (RCW 9A.52.110)  
 Counterfeiting (RCW 9.16.035(3))  
 Engaging in Fish Dealing Activity Unlicensed 1 (RCW 77.15.620(3))  
 Escape from Community Custody (RCW 72.09.310)  
 Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.132)  
 Health Care False Claims (RCW 48.80.030)  
 Identity Theft 2 (RCW 9.35.020(3))  
 Improperly Obtaining Financial Information (RCW 9.35.010)  
 Malicious Mischief 1 (RCW 9A.48.070)  
 Organized Retail Theft 2 (RCW 9A.56.350(3))  
 Possession of Stolen Property 1 (RCW

9A.56.150)  
 Possession of a Stolen Vehicle (RCW 9A.56.068)  
 Retail Theft with Special Circumstances 2 (RCW 9A.56.360(3))  
 Scrap Processing, Recycling, or Supplying Without a License (second or subsequent offense) (RCW 19.290.100)  
 Theft 1 (RCW 9A.56.030)  
 Theft of a Motor Vehicle (RCW 9A.56.065)  
 Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))  
 Theft with the Intent to Resell 2 (RCW 9A.56.340(3))  
 Trafficking in Insurance Claims (RCW 48.30A.015)  
 Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))  
 Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2))  
 Unlawful Practice of Law (RCW 2.48.180)  
 Unlawful Purchase or Use of a License (RCW 77.15.650(3)(b))  
 Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a))  
 Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))  
 Voyeurism (RCW 9A.44.115)  
 I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)  
 False Verification for Welfare (RCW 74.08.055)  
 Forgery (RCW 9A.60.020)  
 Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)  
 Malicious Mischief 2 (RCW 9A.48.080)  
 Mineral Trespass (RCW 78.44.330)  
 Possession of Stolen Property 2 (RCW 9A.56.160)  
 Reckless Burning 1 (RCW 9A.48.040)  
 Spotlighting Big Game 1 (RCW 77.15.450(3)(b))  
 Suspension of Department Privileges 1 (RCW 77.15.670(3)(b))  
 Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)  
 Theft 2 (RCW 9A.56.040)  
 Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))  
 Transaction of insurance business beyond the scope of licensure (RCW 48.17.063)  
 Unlawful Fish and Shellfish Catch Accounting (RCW 77.15.630(3)(b))  
 Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)  
 Unlawful Possession of Fictitious Identification (RCW 9A.56.320)  
 Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)  
 Unlawful Possession of Payment Instruments (RCW 9A.56.320)

Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)  
 Unlawful Production of Payment Instruments (RCW 9A.56.320)  
 (~~Unlawful Release of Deleterious Exotic Wildlife (RCW 77.15.250(2)(b))~~)  
 Unlawful Trafficking in Food Stamps (RCW 9.91.142)  
 Unlawful Use of Food Stamps (RCW 9.91.144)  
 Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b))  
 Unlawful Use of Prohibited Aquatic Animal Species (RCW 77.15.253(3))  
Unlawfully Releasing, Planting, Possessing, or Placing Deleterious Exotic Wildlife (RCW 77.15.250(2)(b))  
 Vehicle Prowl 1 (RCW 9A.52.095)  
 Violating Commercial Fishing Area or Time 1 (RCW 77.15.550(3)(b))

**Sec. 24.** RCW 46.61.5054 and 2011 c 293 s 12 are each amended to read as follows:

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

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

(c) When a minor has been adjudicated a juvenile offender for an offense which, if committed by an adult, would constitute a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall assess the two hundred fifty dollar fee under (a) of this subsection. Upon a verified petition by a minor assessed the fee, the court may suspend payment of all or part of the fee if it finds that the minor does not have the ability to pay the fee.

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

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

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

(3) Twenty-five dollars of the fee assessed under subsection (1) of this section must be distributed to the highway safety

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~~((account fund to be used solely for funding Washington traffic safety commission grants to reduce statewide collisions caused by persons driving under the influence of alcohol or drugs. Grants awarded under this subsection may be for projects that encourage collaboration with other community, governmental, and private organizations, and that utilize innovative approaches based on best practices or proven strategies supported by research or rigorous evaluation. Grants recipients may include, for example:~~

~~(a) DUI courts; and~~

~~(b) Jurisdictions implementing the victim impact panel registries under RCW 46.61.5152 and 10.01.230.~~

~~(4) Fifty dollars of the fee assessed under subsection (1) of this section must be distributed to the highway safety fund to be used solely for funding Washington traffic safety commission grants to organizations within counties targeted for programs to reduce driving under the influence of alcohol or drugs.~~

~~(5) If the court has suspended payment of part of the fee pursuant to subsection (1)(b) or (c) of this section, amounts collected shall be distributed proportionately.~~

~~((5)) (6) This section applies to any offense committed on or after July 1, 1993.~~

NEW SECTION. Sec. 25. A new section is added to chapter 18.130 RCW to read as follows:

It is not professional misconduct for a physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood, to collect a blood sample without a person's consent when the physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood was directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant or exigent circumstances: PROVIDED, That nothing in this section shall relieve a physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, a forensic phlebotomist under section 27 of this act, or any technician trained in withdrawing blood from professional discipline arising from the use of improper procedures or from failing to exercise the required standard of care.

NEW SECTION. Sec. 26. A new section is added to chapter 43.70 RCW to read as follows:

(1) The secretary, in consultation with health profession boards and commissions, the Washington state criminal justice training commission, and the Washington state patrol, shall establish by rule the administrative procedures and administrative requirements for initial issue, renewal, and reissue of a credential for forensic phlebotomists as defined in section 27 of this act. Failure to renew invalidates the credential and all privileges granted by the credential. Administrative procedures and administrative requirements do not include establishing, monitoring, and enforcing qualifications for licensure, scope or standards of practice, continuing competency mechanisms, and

discipline when such authority is authorized in statute to a health profession board or commission or to the criminal justice training commission. For the purposes of this section, "in consultation with" means providing an opportunity for meaningful participation in development of rules consistent with processes set forth in RCW 34.05.310.

(2) Notwithstanding any provision of law to the contrary that provides for a licensing period for any type of license subject to this chapter including those under RCW 18.130.040, the secretary may, from time to time, extend or otherwise modify the duration of any licensing, certification, or registration period, whether an initial or renewal period, if the secretary determines that it would result in a more economical or efficient operation of state government and that the public health, safety, or welfare would not be substantially adversely affected thereby. However, no license, certification, or registration may be issued or approved for a period in excess of four years, without renewal. Such extension, reduction, or other modification of a licensing, certification, or registration period shall be by rule or regulation of the department adopted in accordance with the provisions of chapter 34.05 RCW. Such rules and regulations may provide a method for imposing and collecting such additional proportional fee as may be required for the extended or modified period.

NEW SECTION. Sec. 27. A new section is added to chapter 46.04 RCW to read as follows:

"Forensic phlebotomist" means a police officer, law enforcement officer, or employee of a correctional facility or detention facility, who completed a venipuncture training program required under section 26 of this act and who is collecting a blood sample for forensic testing pursuant to a search warrant, a waiver of the warrant requirement, or exigent circumstances.

Sec. 28. RCW 46.61.506 and 2013 c 3 s 37 are each amended to read as follows:

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

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

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

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

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

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

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

- (i) The person who performed the test was authorized to perform such test by the state toxicologist;
- (ii) The person being tested did not vomit or have anything to eat, drink, or smoke for at least fifteen minutes prior to administration of the test;
- (iii) The person being tested did not have any foreign substances, not to include dental work, fixed or removable, in his or her mouth at the beginning of the fifteen-minute observation period;
- (iv) Prior to the start of the test, the temperature of any liquid simulator solution utilized as an external standard, as measured by a thermometer approved of by the state toxicologist was thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;
- (v) The internal standard test resulted in the message "verified";
- (vi) The two breath samples agree to within plus or minus ten percent of their mean to be determined by the method approved by the state toxicologist;
- (vii) The result of the test of the liquid simulator solution external standard or dry gas external standard result did lie between .072 to .088 inclusive; and
- (viii) All blank tests gave results of .000.

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

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

(5) When a blood test is administered under the provisions of RCW 46.20.308, or pursuant to a search warrant, exigent circumstances, or a waiver of the warrant requirement, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician, a registered nurse, a licensed practical nurse, a nursing assistant as defined in chapter 18.88A RCW, a physician assistant as defined in chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW, an emergency medical technician as defined in chapter 18.73 RCW, a health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood. This limitation shall not apply to the taking of breath specimens.

(6) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The test will be admissible if the person establishes the general acceptability of the testing technique or method. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(7) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full

information concerning the test or tests shall be made available to him or her or his or her attorney.

**Sec. 29.** RCW 46.61.508 and 1977 ex.s. c 143 s 1 are each amended to read as follows:

No physician, registered nurse, ~~((qualified technician))~~ licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, forensic phlebotomist under section 27 of this act, or any technician trained in withdrawing blood, or hospital, or duly licensed clinical laboratory employing or utilizing services of such physician, registered nurse, licensed practical nurse, nursing assistant, physician assistant, first responder, emergency medical technician, health care assistant, or qualified technician, shall incur any civil or criminal liability as a result of the act of withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant, a waiver of the search warrant requirement, exigent circumstances, or RCW 46.20.308, as now or hereafter amended. Refusal by a physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood, or hospital, or duly licensed clinical laboratory employing or utilizing services of such physician, registered nurse, licensed practical nurse, nursing assistant, physician assistant, first responder, emergency medical technician, health care assistant, or qualified technician, to withdraw blood shall not constitute a refusal to obey a law enforcement officer, obstruction of a law enforcement investigation, or otherwise subject said person to criminal or civil liability: PROVIDED, That nothing in this section shall relieve any physician, registered nurse, licensed practical nurse, nursing assistant, physician assistant, first responder, emergency medical technician, health care assistant, forensic phlebotomist, qualified technician, or hospital or duly licensed clinical laboratory from civil liability arising from the use of improper procedures or failing to exercise the required standard of care."

On page 1, line 1 of the title, after "driving;" strike the remainder of the title and insert "amending RCW 10.21.055, 46.20.385, 46.20.740, 46.20.308, 46.20.750, 46.25.120, 46.61.5055, 46.01.260, 43.43.395, 9.94A.589, 46.61.503, 46.20.755, 36.28A.320, 36.28A.330, 36.28A.370, 36.28A.390, 10.21.015, 46.61.502, 46.61.504, 46.61.5054, 46.61.506, and 46.61.508; reenacting and amending RCW 46.52.130 and 9.94A.515; adding a new section to chapter 46.61 RCW; adding a new section to chapter 18.130 RCW; adding a new section to chapter 43.70 RCW; adding a new section to chapter 46.04 RCW; creating a new section; and prescribing penalties."

The President declared the question before the Senate to be the motion by Senator Padden that the committee striking amendment by the Committee on Law & Justice to Engrossed Second Substitute House Bill No. 1276 be not adopted.

The motion by Senator Padden carried and the committee striking amendment was not adopted by voice vote.

Senator Padden moved that the following striking amendment by Senators Padden and Keiser be adopted.

Strike everything after the enacting clause and insert the following:

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

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

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

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

(i) Have a functioning ignition interlock device installed on all motor vehicles operated by the person, with proof of installation filed with the court by the person or the certified interlock provider within five business days of the date of release from custody or as soon thereafter as determined by the court based on availability within the jurisdiction; ~~((or (b)))~~

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

(iii) Have an ignition interlock device pursuant to (a)(i) of this subsection and comply with 24/7 sobriety program monitoring pursuant to (a)(ii) of this subsection; or

(iv) Have an ignition interlock pursuant to (a)(i) of this subsection, file a sworn statement with the court upon release at arraignment that states the person agrees not to operate any motor vehicle while the ignition interlock restriction is imposed by the court, and submit to alcohol monitoring as outlined in RCW 46.61.5055(5)(b).

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

(c) Pursuant to (a)(iv) of this subsection, the person ordered to install the ignition interlock pursuant to (a) of this subsection satisfies the requirement to install an ignition interlock by filing a sworn statement with the court at arraignment, that states that the person agrees not to operate any motor vehicle while the ignition interlock restriction is imposed by the court; provided, that the ignition interlock requirement will still be reported to the department pursuant to subsection (1)(b) of this section and it will remain unlawful for the person to operate any motor vehicle unless it is equipped with a fully functioning ignition interlock device.

(2)(a) Upon acquittal or dismissal of all pending or current charges relating to a violation of RCW 46.61.502, 46.61.504,

46.61.520, or 46.61.522, or equivalent local ordinance, the court shall authorize removal of the ignition interlock device and lift any requirement to comply with electronic alcohol/drug monitoring imposed under subsection (1) of this section. Nothing in this section limits the authority of the court or department under RCW 46.20.720.

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

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

**Ignition interlock driver's license—Application—Eligibility—Cancellation—Costs—Rules**

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

(1)(a) ~~((Beginning January 1, 2009,))~~ Any person licensed under this chapter or who has a valid driver's license from another state, who is convicted of: (i) A violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance, or (ii) a violation of RCW 46.61.520(1)(a) or an equivalent local or out-of-state statute or ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1) (b) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW 46.61.522(1)(b) or an equivalent local or out-of-state statute or ordinance, or (v) RCW 46.61.522(1) (a) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522(1)(b) committed while under the influence of intoxicating liquor or any drug, or (vi) who has had or will have his or her license suspended, revoked, or denied under RCW 46.20.3101, or who is otherwise permitted under subsection (8) of this section, may submit to the department an application for an ignition interlock driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue an ignition interlock driver's license.

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

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

(i) The department shall require the person to maintain the device on all vehicles operated by the person and shall restrict the person to operating only vehicles equipped with the device, for the remainder of the period of suspension, revocation, or denial. Subject to the provisions of RCW 46.20.720(3)(b)(ii), the installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during

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

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

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

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

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

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

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

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

ignition interlock company. The company shall remit the additional twenty dollar fee to the department.

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

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

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

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

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

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

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

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

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

#### **Implied consent—Test refusal—Procedures**

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

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of



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RCW 46.61.506, to a test or tests of his or her breath for the purpose of determining the alcohol concentration (~~(, THC concentration, or presence of any drug)~~) in his or her breath if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. ~~((Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.))~~

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol or THC in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. Prior to administering a breath test pursuant to this section, the officer shall inform the person of his or her right under this section to refuse the breath test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

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

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

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

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

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

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

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

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

~~(4))~~ If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested ~~((refuses))~~ exercises the right, granted herein, by refusing upon the request of a law enforcement officer to submit to a test or tests

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of his or her breath, no test shall be given except as otherwise authorized by ~~((a search warrant))~~ law.

(4) Nothing in subsection (1), (2), or (3) of this section precludes a law enforcement officer from obtaining a person's blood to test for alcohol, marijuana, or any drug, pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law. Any blood drawn for the purpose of determining the person's alcohol or marijuana levels, or any drug, is drawn pursuant to this section when the officer has reasonable grounds to believe that the person is in physical control or driving a vehicle under the influence or in violation of RCW 46.61.503.

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

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

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

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

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

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

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

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

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

(7) A person receiving notification under subsection (5)(b) of this section may, within twenty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of three hundred seventy-five dollars as part of the request. If the request is mailed, it must be postmarked within twenty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required three hundred seventy-five dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required three hundred seventy-five dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license (~~marked~~) under subsection (5) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered (~~without express consent~~) pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more, or the THC concentration of the person's blood was 5.00 or more, if the person was age twenty-one or over at the time of the arrest, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC concentration of the person's blood was above 0.00, if the person was under the age of twenty-one at the time of the arrest. Where a person is found to be in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was under the age of

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

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

(8) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will

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suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

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

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

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

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

**Circumventing ignition interlock—Penalty**

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

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

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

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

(c) Has, directs, authorizes, or requests another person to tamper with the device by modifying, detaching, disconnecting,

or otherwise disabling it to allow the restricted driver to operate the vehicle; or

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

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

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

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

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

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

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

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

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

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

~~((5))~~ (6) Upon receipt of the sworn report of a law enforcement officer under subsection (~~((4))~~) (5) of this section, the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090, subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest. For the purposes of this section, the hearing shall cover the issues of

whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle within this state while having alcohol in the person's system or while under the influence of any drug, whether the person refused to submit to the test or tests upon request of the officer after having been informed that the refusal would result in the disqualification of the person from driving a commercial motor vehicle, if applicable, and, if the test was administered, whether the results indicated an alcohol concentration of 0.04 percent or more or any measurable amount of THC concentration. The department shall order that the disqualification of the person either be rescinded or sustained. Any decision by the department disqualifying a person from driving a commercial motor vehicle is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during the pendency of the hearing and appeal. If the disqualification of the person is sustained after the hearing, the person who is disqualified may file a petition in the superior court of the county of arrest to review the final order of disqualification by the department in the manner provided in RCW 46.20.334.

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

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

#### **Open container law for marijuana**

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

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

(i) For the registered owner of a motor vehicle, or the driver if the registered owner is not then present, or passengers in the vehicle, to keep marijuana in a motor vehicle when the vehicle is upon a highway, unless it is (A) in the trunk of the vehicle, (B) in some other area of the vehicle not normally occupied or directly accessible by the driver or passengers if the vehicle does not have a trunk, or (C) in a package, container, or receptacle that has not been opened or the seal broken or contents partially removed. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers;

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

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

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

(2) As used in this section, "marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the

mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

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

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

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

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

(i) By imprisonment for not less than one day nor more than three hundred sixty-four days. Twenty-four consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device or other separate alcohol monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

(i) By imprisonment for not less than two days nor more than three hundred sixty-four days. Forty-eight consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer or other separate alcohol monitoring device, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) By imprisonment for not less than one hundred twenty days nor more than three hundred sixty-four days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty days of electronic home monitoring. In lieu of the mandatory minimum term of one hundred fifty days of electronic home monitoring, the court may order at least an additional ten days in jail. The offender shall pay for the cost of the electronic monitoring. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home

monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

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

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

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

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

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

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

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

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

(5) **Monitoring.**

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

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

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

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

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

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

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

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

(b) In any case in which the person has no prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional twenty-four hours of imprisonment and a fine of not less than one thousand dollars and not more than five thousand dollars. One thousand dollars of the

fine may not be suspended unless the court finds the offender to be indigent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

applications when the computer record of the applications has been updated.

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

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

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

#### **Ignition interlock devices—Standards—Compliance**

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

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

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

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

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

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

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

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

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



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

(i) Meet or exceed the minimum test standards according to rules adopted by the state patrol. Only a notarized statement from a laboratory that is accredited and certified (~~(b)y~~) under the current edition of ISO (the international organization of standardization) 17025 standard for testing and calibration laboratories and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards. The notarized statement must include the name and signature of the person in charge of the tests under the certification statement. The state patrol must adopt by rule the required language of the certification statement that must, at a minimum, outline that the testing meets or exceeds all specifications listed in the federal register adopted in rule by the state patrol; and

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

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

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

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

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

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

(i) The total number of vehicles involved;

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

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

(iv) Whether the accident resulted in a fatality;

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

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

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

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

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

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

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

(B) Release of an abstract of the driving record of an employee or prospective employee requires a statement signed by: (I) The employer or prospective employer that authorizes the release of the record; and (II) the employer attesting that the information is necessary for employment purposes related to driving by the

individual as a condition of employment or otherwise at the direction of the employer. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

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

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

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

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

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

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

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

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

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

(ii) The abstract provided to the insurance company must:

(A) Not contain any information related to actions committed by law enforcement officers or firefighters, as both terms are defined in RCW 41.26.030, or by Washington state patrol officers, while driving official vehicles in the performance of their occupational duty. This does not apply to any situation where the vehicle was used in the commission of a misdemeanor or felony;

(B) Include convictions under RCW 46.61.5249 and 46.61.525, except that the abstract must report the convictions only as negligent driving without reference to whether they are for first or second degree negligent driving; and

(C) Exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract must show the deferred prosecution as well as the removal.

(iii) Any policy of insurance may not be canceled, nonrenewed, denied, or have the rate increased on the basis of information regarding an accident included in the abstract of a driving record, unless the policyholder was determined to be at fault.

(iv) Any insurance company or its agent, for underwriting purposes relating to the operation of commercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment. Any insurance company or its agent, for underwriting purposes relating to the operation of noncommercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

(v) The director may enter into a contractual agreement with an insurance company or its agent for the limited purpose of reviewing the driving records of existing policyholders for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and is subject to the same restrictions as driving record abstracts.

(f) **Alcohol/drug assessment or treatment agencies.** An abstract of the driving record maintained by the department covering the period of not more than the last five years may be furnished to an alcohol/drug assessment or treatment agency approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment, for purposes of assisting employees in making a determination as to what level of treatment, if any, is appropriate, except that the abstract must:

(i) Also include records of alcohol-related offenses, as defined in RCW 46.01.260(2), covering a period of not more than the last ten years; and

(ii) Indicate whether an alcohol-related offense was originally charged as a violation of either RCW 46.61.502 or 46.61.504.

(g) **Attorneys—City attorneys ((and)), county prosecuting attorneys, and named individual's attorney of record.** An abstract of the full driving record maintained by the department, including whether a recorded violation is an alcohol-related offense, as defined in RCW 46.01.260(2), that was originally charged as a violation of either RCW 46.61.502 or 46.61.504, may be furnished to city attorneys ((and)), county prosecuting attorneys, or the named individual's attorney of record. City attorneys ((and)), county prosecuting attorneys, or the named individual's attorney of record may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(h) **State colleges, universities, or agencies, or units of local government.** An abstract of the full driving record maintained by the department may be furnished to (i) state colleges, universities, or agencies for employment and risk management purposes or (ii) units of local government authorized to self-insure under RCW 48.62.031 for employment and risk management purposes.

(i) **Superintendent of public instruction.** An abstract of the full driving record maintained by the department may be furnished to the superintendent of public instruction for review of public school bus driver records. The superintendent or superintendent's designee may discuss information on the driving record with an authorized representative of the employing school district for employment and risk management purposes.

(3) **Release to third parties prohibited.** Any person or entity receiving an abstract of a person's driving record under subsection (2)(b) through (i) of this section shall use the abstract exclusively for his, her, or its own purposes or as otherwise expressly permitted under this section, and shall not divulge any information contained in the abstract to a third party.

(4) **Fee.** The director shall collect a thirteen dollar fee for each abstract of a person's driving record furnished by the department. Fifty percent of the fee must be deposited in the highway safety fund, and fifty percent of the fee must be deposited according to RCW 46.68.038.

(5) **Violation.** (a) Any negligent violation of this section is a gross misdemeanor.

(b) Any intentional violation of this section is a class C felony.

**Sec. 13.** RCW 9.94A.589 and 2002 c 175 s 7 are each amended to read as follows:

(1)(a) Except as provided in (b) ((and)), (c), or (d) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under ((b)–(f)) this subsection (1)(b) shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(c) If an offender is convicted under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, the standard sentence range for each of these current offenses shall be determined by using all other current and prior convictions, except other current convictions for the felony crimes listed in this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed.

(d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6), or 46.61.5055(4) shall be served consecutively to any sentences imposed under RCW 46.20.740 and 46.20.750.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community

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supervision contained in the second or later sentence begin during the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) In the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community restitution, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.535, if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months.

**Sec. 14.** RCW 46.61.503 and 2013 c 3 s 34 are each amended to read as follows:

(1) Notwithstanding any other provision of this title, a person is guilty of driving or being in physical control of a motor vehicle after consuming alcohol or marijuana if the person operates or is in physical control of a motor vehicle within this state and the person:

- (a) Is under the age of twenty-one; and
- (b) Has, within two hours after operating or being in physical control of the motor vehicle, either:
  - (i) An alcohol concentration of at least 0.02 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's breath or blood made under RCW 46.61.506; or
  - (ii) A THC concentration above 0.00 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's blood made under RCW 46.61.506.

(2) It is an affirmative defense to a violation of subsection (1) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol or marijuana after the time of driving or being in physical control and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol or THC concentration to be in violation of subsection (1) of this section within two hours after driving or being in physical control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the earlier of: (a) Seven days prior to trial; or (b) the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(3) No person may be convicted under this section for being in physical control of a motor vehicle and it is an affirmative defense to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny the privilege to drive, if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving or being in physical control may be used as evidence that within two hours of the alleged

driving or being in physical control, a person had an alcohol or THC concentration in violation of subsection (1) of this section.

~~((4))~~ (5) A violation of this section is a misdemeanor.

**Sec. 15.** RCW 46.20.755 and 2010 c 269 s 5 are each amended to read as follows:

If a person is required, as part of the person's judgment and sentence or as a condition of release, to install an ignition interlock device on all motor vehicles operated by the person and the person is under the jurisdiction of the municipality or county probation or supervision department, the probation or supervision department must verify the installation of the ignition interlock device or devices. The municipality or county probation or supervision department satisfies the requirement to verify the installation or installations if the municipality or county probation or supervision department receives written verification by one or more companies doing business in the state that it has installed the required device on a vehicle owned or operated by the person. The municipality or county shall have no further obligation to supervise the use of the ignition interlock device or devices by the person and shall not be civilly liable for any injuries or damages caused by the person for failing to use an ignition interlock device or for driving under the influence of intoxicating liquor or any drug or being in actual physical control of a motor vehicle under the influence of intoxicating liquor or any drug.

**Sec. 16.** RCW 36.28A.320 and 2014 c 221 s 913 are each amended to read as follows:

There is hereby established in the state treasury the 24/7 sobriety account. The account shall be maintained and administered by the criminal justice training commission to reimburse the state for costs associated with establishing and operating the 24/7 sobriety program and the Washington association of sheriffs and police chiefs for ongoing 24/7 sobriety program administration costs. ~~((The))~~ An appropriation is not required for expenditures and the account is not subject to allotment procedures under chapter 43.88 RCW. Funds in the account may not lapse and must carry forward from biennium to biennium. Interest earned by the account must be retained in the account. The criminal justice training commission may accept for deposit in the account money from donations, gifts, grants, participation fees, and user fees or payments. ((Expenditures from the account shall be budgeted through the normal budget process.))

**Sec. 17.** RCW 36.28A.330 and 2013 2nd sp.s. c 35 s 26 are each amended to read as follows:

The definitions in this section apply throughout RCW 36.28A.300 through 36.28A.390 unless the context clearly requires otherwise.

(1) "24/7 ~~((electronic alcohol/drug monitoring))~~ sobriety program" means ~~((the monitoring by the use of any electronic instrument that is capable of determining and monitoring the presence of alcohol or drugs in a person's body and includes any associated equipment a participant needs in order for the device to properly perform. Monitoring may also include mandatory urine analysis tests as ordered by the court))~~ a program in which a participant submits to testing of the participant's blood, breath, urine, or other bodily substance to determine the presence of alcohol or any drug as defined in RCW 46.61.540. Testing must take place at a location or locations designated by the participating agency, or, with the concurrence of the Washington association of sheriffs and police chiefs, by an alternate method.

(2) "Participant" means a person who has one or more prior convictions for a violation of RCW 46.61.502 or 46.61.504 and who has been ordered by a court to participate in the 24/7 sobriety program.

(3) "Participating agency" means ~~((a sheriff's office or a designated entity named by a sheriff that has agreed to participate in the 24/7 sobriety program by enrolling participants, administering one or more of the tests, and submitting reports to the Washington association of sheriffs and police chiefs))~~ any entity located in the state of Washington that has a written agreement with the Washington association of sheriffs and police chiefs to participate in the 24/7 sobriety program, and includes, but is not limited to, a sheriff, a police chief, any other local, regional, or state corrections or probation entity, and any other entity designated by a sheriff, police chief, or any other local, regional, or state corrections or probation entity to perform testing in the 24/7 sobriety program.

(4) "Participation agreement" means a written document executed by a participant agreeing to participate in the 24/7 sobriety program in a form approved by the Washington association of sheriffs and police chiefs that contains the following information:

- (a) The type, frequency, and time period of testing;
- (b) The location of testing;
- (c) The fees and payment procedures required for testing; and
- (d) The responsibilities and obligations of the participant under the 24/7 sobriety program.

~~((5) "24/7 sobriety program" means a twenty four hour and seven day a week sobriety program in which a participant submits to the testing of the participant's blood, breath, urine, or other bodily substances in order to determine the presence of alcohol, marijuana, or any controlled substance in the participant's body.))~~

**Sec. 18.** RCW 36.28A.370 and 2013 2nd sp.s. c 35 s 30 are each amended to read as follows:

(1) ~~((Funds in the 24/7 sobriety account shall be distributed as follows:~~

~~((a)) Any daily user fee, installation fee, deactivation fee, enrollment fee, or monitoring fee ((collected under the 24/7 sobriety program shall)) must be collected by the ((sheriff or chief, or an entity designated by the sheriff or chief, and deposited with the county or city treasurer of the proper county or city, the proceeds of which shall be applied)) participating agency and used ((only)) to defray the ((recurring)) participating agency's costs of the 24/7 sobriety program ((including maintaining equipment, funding support services, and ensuring compliance; and)).~~

~~((b)) (2) Any participation fee must be collected ((in the administration of testing under)) by the participating agency and deposited in the state 24/7 sobriety ((program)) account to cover 24/7 sobriety program administration costs incurred by the Washington association of sheriffs and police chiefs ((shall be collected by the sheriff or chief, or an entity designated by the sheriff or chief, and deposited in the 24/7 sobriety account)).~~

~~((2)) (3) All applicable fees shall be paid by the participant contemporaneously or in advance of the time when the fee becomes due; however, cities and counties may subsidize or pay any applicable fees.~~

~~(4) A city or county may accept donations, gifts, grants, and other assistance to defray the participating agency's costs of the 24/7 sobriety program.~~

**Sec. 19.** RCW 36.28A.390 and 2013 2nd sp.s. c 35 s 32 are each amended to read as follows:

(1) A general authority Washington peace officer, as defined in RCW 10.93.020, who has probable cause to believe that a participant has violated the terms of participation in the 24/7 sobriety program may immediately take the participant into custody and cause him or her to be held until an appearance before a judge on the next judicial day.

(2) A participant who violates the terms of participation in the 24/7 sobriety program or does not pay the required fees or associated costs pretrial or posttrial shall, at a minimum:

(a) Receive a written warning notice for a first violation;

(b) Serve ~~((a term))~~ the lesser of two days imprisonment or if posttrial, the entire remaining sentence imposed by the court for a second violation;

(c) Serve ~~((a term of up to))~~ the lesser of five days imprisonment or if posttrial, the entire remaining sentence imposed by the court for a third violation;

(d) Serve ~~((a term of up to))~~ the lesser of ten days imprisonment or if posttrial, the entire remaining sentence imposed by the court for a fourth violation; and

(e) For a fifth or subsequent violation pretrial, the participant shall abide by the order of the court. For posttrial participants, the participant shall serve the entire remaining sentence imposed by the court.

~~((2) A sheriff or chief, or the designee of a sheriff or chief, who has probable cause to believe that a participant has violated the terms of participation in the 24/7 sobriety program or has not paid the required fees or associated costs shall immediately take the participant into custody and cause him or her to be held until an appearance before a judge on the next judicial day.)) (3) The court may remove a participant from the 24/7 sobriety program at any time for noncompliance with the terms of participation.~~

**Sec. 20.** RCW 10.21.015 and 2014 c 24 s 1 are each amended to read as follows:

(1) Under this chapter, "pretrial release program" is any program, either run directly by a county or city, or by a private or public entity through contract with a county or city, into whose custody an offender is released prior to trial and which agrees to supervise the offender. As used in this section, "supervision" includes, but is not limited to, work release, day monitoring, ~~((or))~~ electronic monitoring, or participation in a 24/7 sobriety program.

(2) A pretrial release program may not agree to supervise, or accept into its custody, an offender who is currently awaiting trial for a violent offense or sex offense, as defined in RCW 9.94A.030, who has been convicted of one or more violent offenses or sex offenses in the ten years before the date of the current offense, unless the offender's release before trial was secured with a payment of bail.

**NEW SECTION. Sec. 21.** A new section is added to chapter 18.130 RCW to read as follows:

It is not professional misconduct for a physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood, to collect a blood sample without a person's consent when the physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood was directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant or exigent circumstances: PROVIDED, That nothing in this section shall relieve a physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter

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18.135 RCW, a forensic phlebotomist under section 23 of this act, or any technician trained in withdrawing blood from professional discipline arising from the use of improper procedures or from failing to exercise the required standard of care.

**NEW SECTION. Sec. 22.** A new section is added to chapter 43.70 RCW to read as follows:

(1) The secretary, in consultation with health profession boards and commissions, the Washington state criminal justice training commission, and the Washington state patrol, shall establish by rule the administrative procedures and administrative requirements for initial issue, renewal, and reissue of a credential for forensic phlebotomists as defined in section 23 of this act. Failure to renew invalidates the credential and all privileges granted by the credential. Administrative procedures and administrative requirements do not include establishing, monitoring, and enforcing qualifications for licensure, scope or standards of practice, continuing competency mechanisms, and discipline when such authority is authorized in statute to a health profession board or commission or to the criminal justice training commission. For the purposes of this section, "in consultation with" means providing an opportunity for meaningful participation in development of rules consistent with processes set forth in RCW 34.05.310.

(2) Notwithstanding any provision of law to the contrary that provides for a licensing period for any type of license subject to this chapter including those under RCW 18.130.040, the secretary may, from time to time, extend or otherwise modify the duration of any licensing, certification, or registration period, whether an initial or renewal period, if the secretary determines that it would result in a more economical or efficient operation of state government and that the public health, safety, or welfare would not be substantially adversely affected thereby. However, no license, certification, or registration may be issued or approved for a period in excess of four years, without renewal. Such extension, reduction, or other modification of a licensing, certification, or registration period shall be by rule or regulation of the department adopted in accordance with the provisions of chapter 34.05 RCW. Such rules and regulations may provide a method for imposing and collecting such additional proportional fee as may be required for the extended or modified period.

**NEW SECTION. Sec. 23.** A new section is added to chapter 46.04 RCW to read as follows:

"Forensic phlebotomist" means a police officer, law enforcement officer, or employee of a correctional facility or detention facility, who completed a venipuncture training program required under section 22 of this act and who is collecting a blood sample for forensic testing pursuant to a search warrant, a waiver of the warrant requirement, or exigent circumstances.

**Sec. 24.** RCW 46.61.506 and 2013 c 3 s 37 are each amended to read as follows:

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08 or the person's THC concentration is less than 5.00, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2)(a) The breath analysis of the person's alcohol concentration shall be based upon grams of alcohol per two hundred ten liters of breath.

(b) The blood analysis of the person's THC concentration shall be based upon nanograms per milliliter of whole blood.

(c) The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under the provisions of this section or RCW 46.61.502 or 46.61.504 shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

(4)(a) A breath test performed by any instrument approved by the state toxicologist shall be admissible at trial or in an administrative proceeding if the prosecution or department produces prima facie evidence of the following:

(i) The person who performed the test was authorized to perform such test by the state toxicologist;

(ii) The person being tested did not vomit or have anything to eat, drink, or smoke for at least fifteen minutes prior to administration of the test;

(iii) The person being tested did not have any foreign substances, not to include dental work, fixed or removable, in his or her mouth at the beginning of the fifteen-minute observation period;

(iv) Prior to the start of the test, the temperature of any liquid simulator solution utilized as an external standard, as measured by a thermometer approved of by the state toxicologist was thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

(v) The internal standard test resulted in the message "verified";

(vi) The two breath samples agree to within plus or minus ten percent of their mean to be determined by the method approved by the state toxicologist;

(vii) The result of the test of the liquid simulator solution external standard or dry gas external standard result did lie between .072 to .088 inclusive; and

(viii) All blank tests gave results of .000.

(b) For purposes of this section, "prima facie evidence" is evidence of sufficient circumstances that would support a logical and reasonable inference of the facts sought to be proved. In assessing whether there is sufficient evidence of the foundational facts, the court or administrative tribunal is to assume the truth of the prosecution's or department's evidence and all reasonable inferences from it in a light most favorable to the prosecution or department.

(c) Nothing in this section shall be deemed to prevent the subject of the test from challenging the reliability or accuracy of the test, the reliability or functioning of the instrument, or any maintenance procedures. Such challenges, however, shall not preclude the admissibility of the test once the prosecution or department has made a prima facie showing of the requirements contained in (a) of this subsection. Instead, such challenges may be considered by the trier of fact in determining what weight to give to the test result.

(5) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician(, a registered nurse, a licensed practical nurse, a nursing assistant as defined in chapter 18.88A RCW, a physician assistant as defined in chapter 18.71A RCW, a first responder as

~~defined in chapter 18.73 RCW, an emergency medical technician as defined in chapter 18.73 RCW, a health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood)) licensed under chapter 18.71 RCW; an osteopathic physician licensed under chapter 18.57 RCW; a registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW; a physician assistant licensed under chapter 18.71A RCW; an osteopathic physician assistant licensed under chapter 18.57A RCW; an advanced emergency medical technician or paramedic licensed under chapter 18.73 RCW; until July 1, 2016, a health care assistant certified under chapter 18.135 RCW; or a medical assistant-certified or medical assistant-phlebotomist certified under chapter 18.360 RCW. This limitation shall not apply to the taking of breath specimens.~~

(6) The person tested may have a ~~((physician)) licensed or certified health care provider listed in subsection (5) of this section, or a qualified technician, chemist, ((registered nurse,))~~ or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The test will be admissible if the person establishes the general acceptability of the testing technique or method. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(7) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney.

**Sec. 25.** RCW 46.61.508 and 1977 ex.s. c 143 s 1 are each amended to read as follows:

No ~~physician((, registered nurse, qualified technician)) licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW; physician assistant licensed under chapter 18.71A RCW; osteopathic physician assistant licensed under chapter 18.57A RCW; advanced emergency medical technician or paramedic licensed under chapter 18.73 RCW; until July 1, 2016, health care assistant certified under chapter 18.135 RCW; or medical assistant-certified or medical assistant-phlebotomist certified under chapter 18.360 RCW, or hospital, or duly licensed clinical laboratory employing or utilizing services of such ((physician, registered nurse, or qualified technician)) licensed or certified health care provider, shall incur any civil or criminal liability as a result of the act of withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant, a waiver of the search warrant requirement, exigent circumstances, any other authority of law, or RCW 46.20.308, as now or hereafter amended: PROVIDED, That nothing in this section shall relieve ((any physician, registered nurse, qualified technician)) such licensed or certified health care provider, or hospital or duly licensed clinical laboratory from civil liability arising from the use of improper procedures or failing to exercise the required standard of care.~~

**Sec. 26.** RCW 46.61.504 and 2013 c 3 s 35 are each amended to read as follows:

(1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has, within two hours after being in actual physical control of a vehicle, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section and it is an affirmative defense to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny the privilege to drive if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after being in control of the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4)(a) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(c) or (d) of this section.

(b) Analyses of blood samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in control of the vehicle, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a);

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(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.502(6).

**Sec. 27.** RCW 18.360.030 and 2012 c 153 s 4 are each amended to read as follows:

(1) The secretary shall adopt rules specifying the minimum qualifications for a medical assistant-certified, medical assistant-hemodialysis technician, and medical assistant-phlebotomist. The qualifications for a medical assistant-hemodialysis technician must be equivalent to the qualifications for hemodialysis technicians regulated pursuant to chapter 18.135 RCW as of January 1, 2012.

(2) The secretary shall adopt rules that establish the minimum requirements necessary for a health care practitioner, clinic, or group practice to endorse a medical assistant as qualified to perform the duties authorized by this chapter and be able to file an attestation of that endorsement with the department.

(3) The medical quality assurance commission, the board of osteopathic medicine and surgery, the podiatric medical board, the nursing care quality assurance commission, the board of naturopathy, and the optometry board shall each review and identify other specialty assistive personnel not included in this chapter and the tasks they perform. The department of health shall compile the information from each disciplining authority listed in this subsection and submit the compiled information to the legislature no later than December 15, 2012.

(4) The secretary shall adopt rules specifying requirements for delegation, training, and supervision for a medical assistant-phlebotomist who is also a local, state, federal, or tribal law enforcement employee or correctional employee, and whose practice is limited to collecting blood samples for forensic testing under the provisions of RCW 46.20.308 or pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law."

On page 1, line 1 of the title, after "driving," strike the remainder of the title and insert "amending RCW 10.21.055, 46.20.385, 46.20.740, 46.20.308, 46.20.750, 46.25.120, 46.61.5055, 46.01.260, 43.43.395, 9.94A.589, 46.61.503, 46.20.755, 36.28A.320, 36.28A.330, 36.28A.370, 36.28A.390, 10.21.015, 46.61.506, 46.61.508, 46.61.504, and 18.360.030; reenacting and amending RCW 46.52.130; adding a new section to chapter 46.61 RCW; adding a new section to chapter 18.130 RCW; adding a new section to chapter 43.70 RCW; adding a new section to chapter 46.04 RCW; creating a new section; and prescribing penalties."

WITHDRAWAL OF AMENDMENT

On motion of Senator Padden, the striking amendment by Senators Padden and Keiser to Engrossed Second Substitute House Bill No. 1276 was withdrawn.

MOTION

Senator Padden moved that the following striking amendment by Senators Padden and Keiser be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that impaired driving continues to be a significant cause of motor vehicle crashes and that additional measures need to be taken to identify people who are driving under the influence, provide appropriate sanctions, and ensure compliance with court-ordered

restrictions. The legislature intends to increase the availability of forensic phlebotomists so that offenders can be appropriately and efficiently identified. The legislature further intends to require consecutive sentencing in certain cases to increase punishment and supervision of offenders. The legislature intends to clarify ignition interlock processes and requirements to ensure that those offenders ordered to have ignition interlock devices do not drive vehicles without the required devices.

**Conditions of release—Requirements—Ignition interlock device—24/7 sobriety program monitoring**

**Sec. 2.** RCW 10.21.055 and 2013 2nd sp.s. c 35 s 1 are each amended to read as follows:

(1)(a) When any person charged with ~~((or arrested for))~~ a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in which the person has a prior offense as defined in RCW 46.61.5055 and the current offense involves alcohol, is released from custody ~~((before))~~ at arraignment or trial on bail or personal recognizance, the court authorizing the release shall require, as a condition of release ~~((;))~~ that person ~~((to (a)))~~:

(i) Have a functioning ignition interlock device installed on all motor vehicles operated by the person, with proof of installation filed with the court by the person or the certified interlock provider within five business days of the date of release from custody or as soon thereafter as determined by the court based on availability within the jurisdiction; ~~((or (b)))~~

(ii) Comply with 24/7 sobriety program monitoring, as defined in RCW 36.28A.330; ~~((or both))~~

(iii) Have an ignition interlock device pursuant to (a)(i) of this subsection and comply with 24/7 sobriety program monitoring pursuant to (a)(ii) of this subsection; or

(iv) Have an ignition interlock pursuant to (a)(i) of this subsection, file a sworn statement with the court upon release at arraignment that states the person agrees not to operate any motor vehicle while the ignition interlock restriction is imposed by the court, and submit to alcohol monitoring as outlined in RCW 46.61.5055(5)(b).

(b) The court shall immediately notify the department of licensing when an ignition interlock restriction is imposed: (i) As a condition of release pursuant to (a) of this subsection; or (ii) in instances where a person is charged with or convicted of a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, and the offense involves alcohol. If the court imposes an ignition interlock restriction, the department of licensing shall attach or imprint a notation on the driving record of any person restricted under this section stating that the person may operate only a motor vehicle equipped with a functioning ignition interlock device.

(c) Pursuant to (a)(iv) of this subsection, the person ordered to install the ignition interlock pursuant to (a) of this subsection satisfies the requirement to install an ignition interlock by filing a sworn statement with the court at arraignment, that states that the person agrees not to operate any motor vehicle while the ignition interlock restriction is imposed by the court; provided, that the ignition interlock requirement will still be reported to the department pursuant to subsection (1)(b) of this section and it will remain unlawful for the person to operate any motor vehicle unless it is equipped with a fully functioning ignition interlock device.

(2)(a) Upon acquittal or dismissal of all pending or current charges relating to a violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, or equivalent local ordinance, the court shall authorize removal of the ignition interlock device and lift any requirement to comply with electronic alcohol/drug monitoring imposed under subsection (1) of this section. Nothing

in this section limits the authority of the court or department under RCW 46.20.720.

(b) If the court authorizes removal of an ignition interlock device imposed under (a) of this subsection the court shall immediately notify the department of licensing regarding the lifting of the ignition interlock restriction and the department of licensing shall release any attachment, imprint, or notation on such person's driving record relating to the ignition interlock requirement imposed under this section.

(3) When an ignition interlock restriction imposed as a condition of release is canceled, the court shall provide a defendant with a written order confirming release of the restriction. The written order shall serve as proof of release of the restriction until which time the department of licensing updates the driving record.

**Ignition interlock driver's  
license—Application—Eligibility—Cancellation—Costs—R  
ules**

**Sec. 3.** RCW 46.20.385 and 2013 2nd sp.s. c 35 s 20 are each amended to read as follows:

(1)(a) ~~((Beginning January 1, 2009,))~~ Any person licensed under this chapter or who has a valid driver's license from another state, who is convicted of: (i) A violation of RCW 46.61.502 or 46.61.504 or an equivalent local or out-of-state statute or ordinance, or (ii) a violation of RCW 46.61.520(1)(a) or an equivalent local or out-of-state statute or ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1) (b) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW 46.61.522(1)(b) or an equivalent local or out-of-state statute or ordinance, or (v) RCW 46.61.522(1) (a) or (c) if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522(1)(b) committed while under the influence of intoxicating liquor or any drug, or (vi) who has had or will have his or her license suspended, revoked, or denied under RCW 46.20.3101, or who is otherwise permitted under subsection (8) of this section, may submit to the department an application for an ignition interlock driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue an ignition interlock driver's license.

(b) A person may apply for an ignition interlock driver's license anytime, including immediately after receiving the notices under RCW 46.20.308 or after his or her license is suspended, revoked, or denied. ~~((A person receiving an ignition interlock driver's license waives his or her right to a hearing or appeal under RCW 46.20.308.))~~

(c) An applicant under this subsection shall provide proof to the satisfaction of the department that a functioning ignition interlock device has been installed on all vehicles operated by the person.

(i) The department shall require the person to maintain the device on all vehicles operated by the person and shall restrict the person to operating only vehicles equipped with the device, for the remainder of the period of suspension, revocation, or denial. Subject to the provisions of RCW 46.20.720(3)(b)(ii), the installation of an ignition interlock device is not necessary on vehicles owned, leased, or rented by a person's employer and on those vehicles whose care and/or maintenance is the temporary responsibility of the employer, and driven at the direction of a person's employer as a requirement of employment during working hours. The person must provide the department with a declaration pursuant to RCW 9A.72.085 from his or her employer stating that the person's employment requires the person to operate a vehicle owned by the employer or other persons during working hours.

(ii) Subject to any periodic renewal requirements established by the department under this section and subject to any applicable compliance requirements under this chapter or other law, an ignition interlock driver's license granted upon a suspension or revocation under RCW 46.61.5055 or 46.20.3101 extends through the remaining portion of any concurrent or consecutive suspension or revocation that may be imposed as the result of administrative action and criminal conviction arising out of the same incident.

(iii) The time period during which the person is licensed under this section shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is required under RCW 46.20.720 ~~((and))~~, 46.61.5055, 10.05.140, 46.61.500(3), and 46.61.5249(4). Beginning with incidents occurring on or after September 1, 2011, when calculating the period of time for the restriction under RCW 46.20.720 (2) or (3), the department must also give the person a day-for-day credit for the time period, beginning from the date of the incident, during which the person kept an ignition interlock device installed on all vehicles the person operates. For the purposes of this subsection (1)(c)(iii), the term "all vehicles" does not include vehicles that would be subject to the employer exception under RCW 46.20.720(3).

(2) An applicant for an ignition interlock driver's license who qualifies under subsection (1) of this section is eligible to receive a license only if the applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW.

(3) Upon receipt of evidence that a holder of an ignition interlock driver's license granted under this subsection no longer has a functioning ignition interlock device installed on all vehicles operated by the driver, the director shall give written notice by first-class mail to the driver that the ignition interlock driver's license shall be canceled. If at any time before the cancellation goes into effect the driver submits evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new ignition interlock driver's license upon submittal of evidence that a functioning ignition interlock device has been installed on all vehicles operated by the driver.

(4) A person aggrieved by the decision of the department on the application for an ignition interlock driver's license may request a hearing as provided by rule of the department.

(5) The director shall cancel an ignition interlock driver's license after receiving notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, no longer meets the eligibility requirements, or has been convicted of or found to have committed a separate offense or any other act or omission that under this chapter would warrant suspension or revocation of a regular driver's license. The department must give notice of the cancellation as provided under RCW 46.20.245. A person whose ignition interlock driver's license has been canceled under this section may reapply for a new ignition interlock driver's license if he or she is otherwise qualified under this section and pays the fee required under RCW 46.20.380.

(6)(a) Unless costs are waived by the ignition interlock company or the person is indigent under RCW 10.101.010, the applicant shall pay the cost of installing, removing, and leasing the ignition interlock device and shall pay an additional fee of twenty dollars per month. Payments shall be made directly to the ignition interlock company. The company shall remit the additional twenty dollar fee to the department.

(b) The department shall deposit the proceeds of the twenty dollar fee into the ignition interlock device revolving account. Expenditures from the account may be used only to administer



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and operate the ignition interlock device revolving account program. The department shall adopt rules to provide monetary assistance according to greatest need and when funds are available.

(7) The department shall adopt rules to implement ignition interlock licensing. The department shall consult with the administrative office of the courts, the state patrol, the Washington association of sheriffs and police chiefs, ignition interlock companies, and any other organization or entity the department deems appropriate.

(8)(a) Any person licensed under this chapter who is convicted of a violation of RCW 46.61.500 when the charge was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, may submit to the department an application for an ignition interlock driver's license under this section.

(b) A person who does not have any driver's license under this chapter, but who would otherwise be eligible under this section to apply for an ignition interlock license, may submit to the department an application for an ignition interlock license. The department may require the person to take any driver's licensing examination under this chapter and may require the person to also apply and qualify for a temporary restricted driver's license under RCW 46.20.391.

**Notation on driving record—Verification of interlock—Penalty**

**Sec. 4.** RCW 46.20.740 and 2010 c 269 s 8 are each amended to read as follows:

(1) The department shall attach or imprint a notation on the driving record of any person restricted under RCW 46.20.720, 46.61.5055, or 10.05.140 stating that the person may operate only a motor vehicle equipped with a functioning ignition interlock device. The department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person seeking reinstatement. If, based upon notification from the interlock provider or otherwise, the department determines that an ignition interlock required under this section is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of noncompliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

(2) It is a gross misdemeanor for a person with such a notation on his or her driving record to operate a motor vehicle that is not so equipped, unless the notation resulted from a restriction imposed as a condition of release and the restriction has been released by the court prior to driving.

(3) Any sentence imposed for a violation of subsection (2) of this section shall be served consecutively with any sentence imposed under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055.

**Implied consent—Test refusal—Procedures**

**Sec. 5.** RCW 46.20.308 and 2013 2nd sp.s. c 35 s 36 are each amended to read as follows:

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath for the purpose of determining the alcohol concentration ~~(=THC concentration, or presence of any drug)~~ in his or her breath if arrested for any offense where, at the time of the arrest, the

arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. ~~((Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.))~~

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol or THC in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. Prior to administering a breath test pursuant to this section, the officer shall inform the person of his or her right under this section to refuse the breath test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

(a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and

(b) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and

(c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if:

(i) The driver is age twenty-one or over and the test indicates either that the alcohol concentration of the driver's breath is 0.08 or more or that the THC concentration of the driver's blood is 5.00 or more; or

(ii) The driver is under age twenty-one and the test indicates either that the alcohol concentration of the driver's breath is 0.02 or more ~~((or that the THC concentration of the driver's blood is above 0.00));~~ or

(iii) The driver is under age twenty-one and the driver is in violation of RCW 46.61.502 or 46.61.504; and

(d) If the driver's license, permit, or privilege to drive is suspended, revoked, or denied the driver may be eligible to immediately apply for an ignition interlock driver's license.

(3) ~~((Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of felony driving under the influence of intoxicating liquor or drugs under RCW 46.61.502(6), felony physical control of a motor vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6), vehicular homicide as provided in RCW 46.61.520, or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested pursuant to a search warrant, a valid waiver of the warrant requirement, or when exigent circumstances exist.~~

~~(4))~~ If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested ~~((refuses))~~ exercises the right, granted herein, by refusing upon the request of a law enforcement officer to submit to a test or tests of his or her breath, no test shall be given except as otherwise authorized by ~~((a search warrant))~~ law.

(4) Nothing in subsection (1), (2), or (3) of this section precludes a law enforcement officer from obtaining a person's

blood to test for alcohol, marijuana, or any drug, pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law. Any blood drawn for the purpose of determining the person's alcohol or marijuana levels, or any drug, is drawn pursuant to this section when the officer has reasonable grounds to believe that the person is in physical control or driving a vehicle under the influence or in violation of RCW 46.61.503.

(5) If, after arrest and after ~~((the))~~ any other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more, or the THC concentration of the person's blood is 5.00 or more, if the person is age twenty-one or over, or that the alcohol concentration of the person's breath or blood is 0.02 or more, or the THC concentration of the person's blood is above 0.00, if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (6) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (7) of this section ~~((and that the person waives the right to a hearing if he or she receives an ignition interlock driver's license))~~;

(c) Serve notice in writing that the license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (7) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(d) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol or THC concentration in violation of RCW 46.61.503;

(ii) That after receipt of ~~((the))~~ any applicable warnings required by subsection (2) of this section the person refused to submit to a test of his or her breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more, or the THC concentration of the person's blood was 5.00 or more, if the person is age twenty-one or over, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC concentration of the person's blood was above 0.00, if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(6) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (5)(d) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive

or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (7) of this section, whichever occurs first.

(7) A person receiving notification under subsection (5)(b) of this section may, within twenty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of three hundred seventy-five dollars as part of the request. If the request is mailed, it must be postmarked within twenty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required three hundred seventy-five dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required three hundred seventy-five dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license ~~((marked))~~ under subsection (5) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered ~~((without express consent))~~ pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more, or the THC concentration of the person's blood was 5.00 or more, if the person was age twenty-one or over at the time of the arrest, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC concentration of the person's blood was above 0.00, if the person was under the age of twenty-one at the time of the arrest. Where a person is found to be in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was under the age of twenty-one at the time of the arrest and was in physical control of a motor vehicle while having alcohol in his or her system in a concentration of 0.02 or THC concentration above 0.00, the person may petition the hearing officer to apply the affirmative defense found in RCW 46.61.504(3) and 46.61.503(2). The driver has the burden to prove the affirmative defense by a

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preponderance of the evidence. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(8) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(9)(a) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (6) of this section, other than as a result of a breath test

refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (6) of this section, or notifies the department of licensing of the intent to seek such a deferred prosecution, then the license suspension or revocation shall be stayed pending entry of the deferred prosecution. The stay shall not be longer than one hundred fifty days after the date charges are filed, or two years after the date of the arrest, whichever time period is shorter. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license under subsection (5) of this section, for the period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary (~~marked~~) license or extension of a temporary license issued under this subsection.

(b) A suspension, revocation, or denial imposed under this section, other than as a result of a breath test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(c) The provisions of (b) of this subsection relating to a stay of a suspension, revocation, or denial and the cancellation of any suspension, revocation, or denial do not apply to the suspension, revocation, denial, or disqualification of a person's commercial driver's license or privilege to operate a commercial motor vehicle.

(10) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

#### **Circumventing ignition interlock—Penalty**

**Sec. 6.** RCW 46.20.750 and 2005 c 200 s 2 are each amended to read as follows:

(1) A person who is restricted to the use of a vehicle equipped with an ignition interlock device (~~and who tampers with the device or directs, authorizes, or requests another to tamper with the device, in order to circumvent the device by modifying, detaching, disconnecting, or otherwise disabling it.~~) is guilty of a gross misdemeanor if the restricted driver:

(a) Tamper with the device by modifying, detaching, disconnecting, or otherwise disabling it to allow the restricted driver to operate the vehicle;

(b) Uses or requests another person to use a filter or other device to circumvent the ignition interlock or to start or operate the vehicle to allow the restricted driver to operate the vehicle;

(c) Has, directs, authorizes, or requests another person to tamper with the device by modifying, detaching, disconnecting, or otherwise disabling it to allow the restricted driver to operate the vehicle; or

(d) Has, allows, directs, authorizes, or requests another person to blow or otherwise exhale into the device in order to circumvent the device to allow the restricted driver to operate the vehicle.

(2) A person who knowingly assists another person who is restricted to the use of a vehicle equipped with an ignition interlock device to circumvent the device or to start and operate that vehicle (~~(in violation of a court order)~~) is guilty of a gross misdemeanor. The provisions of this subsection do not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle and the person subject to the court order does not operate the vehicle.

(3) Any sentence imposed for a violation of subsection (1) of this section shall be served consecutively with any sentence imposed under RCW 46.20.740, 46.61.502, 46.61.504, 46.61.5055, 46.61.520(1)(a), or 46.61.522(1)(b).

**Commercial vehicles—Test for alcohol or drugs—Disqualification for refusal of test or positive test—Procedures**

**Sec. 7.** RCW 46.25.120 and 2013 2nd sp.s. c 35 s 12 are each amended to read as follows:

(1) A person who drives a commercial motor vehicle within this state is deemed to have given consent, subject to RCW 46.61.506, to take a test or tests of that person's (~~(blood or)~~) breath for the purpose of determining that person's alcohol concentration or the presence of other drugs.

(2) A test or tests may be administered at the direction of a law enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has (~~(probable cause)~~) reasonable grounds to believe that driver was driving a commercial motor vehicle while having alcohol in his or her system or while under the influence of any drug.

(3) The law enforcement officer requesting the test under subsection (1) of this section shall warn the person requested to submit to the test that a refusal to submit will result in that person being disqualified from operating a commercial motor vehicle under RCW 46.25.090.

(4) A law enforcement officer who at the time of stopping or detaining a commercial motor vehicle driver has reasonable grounds to believe that driver was driving a commercial motor vehicle while having alcohol, marijuana, or any drug in his or her system or while under the influence of alcohol, marijuana, or any drug may obtain a blood test pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law.

(5) If the person refuses testing, or (~~(submits to)~~) a test is administered that discloses an alcohol concentration of 0.04 or more or any measurable amount of THC concentration, the law enforcement officer shall submit a sworn report to the department certifying that the test was requested pursuant to subsection (1) of this section or a blood test was administered pursuant to subsection (4) of this section and that the person refused to submit to testing, or (~~(submitted to)~~) a test was administered that disclosed an alcohol concentration of 0.04 or more or any measurable amount of THC concentration.

~~((5))~~ (6) Upon receipt of the sworn report of a law enforcement officer under subsection (~~((4))~~) (5) of this section, the department shall disqualify the driver from driving a commercial motor vehicle under RCW 46.25.090, subject to the hearing provisions of RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest. For the purposes of this section, the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle within this state while

having alcohol in the person's system or while under the influence of any drug, whether the person refused to submit to the test or tests upon request of the officer after having been informed that the refusal would result in the disqualification of the person from driving a commercial motor vehicle, if applicable, and, if the test was administered, whether the results indicated an alcohol concentration of 0.04 percent or more or any measurable amount of THC concentration. The department shall order that the disqualification of the person either be rescinded or sustained. Any decision by the department disqualifying a person from driving a commercial motor vehicle is stayed and does not take effect while a formal hearing is pending under this section or during the pendency of a subsequent appeal to superior court so long as there is no conviction for a moving violation or no finding that the person has committed a traffic infraction that is a moving violation during the pendency of the hearing and appeal. If the disqualification of the person is sustained after the hearing, the person who is disqualified may file a petition in the superior court of the county of arrest to review the final order of disqualification by the department in the manner provided in RCW 46.20.334.

~~((6))~~ (7) If a motor carrier or employer who is required to have a testing program under 49 C.F.R. 382 knows that a commercial driver in his or her employ has refused to submit to testing under this section and has not been disqualified from driving a commercial motor vehicle, the employer may notify law enforcement or his or her medical review officer or breath alcohol technician that the driver has refused to submit to the required testing.

~~((7))~~ (8) The hearing provisions of this section do not apply to those persons disqualified from driving a commercial motor vehicle under RCW 46.25.090(7).

**Open container law for marijuana**

**NEW SECTION. Sec. 8.** A new section is added to chapter 46.61 RCW to read as follows:

(1)(a) It is a traffic infraction:

(i) For the registered owner of a motor vehicle, or the driver if the registered owner is not then present, or passengers in the vehicle, to keep marijuana in a motor vehicle when the vehicle is upon a highway, unless it is (A) in the trunk of the vehicle, (B) in some other area of the vehicle not normally occupied or directly accessible by the driver or passengers if the vehicle does not have a trunk, or (C) in a package, container, or receptacle that has not been opened or the seal broken or contents partially removed. A utility compartment or glove compartment is deemed to be within the area occupied by the driver and passengers;

(ii) To consume marijuana in any manner including, but not limited to, smoking or ingesting in a motor vehicle when the vehicle is upon the public highway; or

(iii) To place marijuana in a container specifically labeled by the manufacturer of the container as containing a nonmarijuana substance and to then violate (a)(i) of this subsection.

(b) There is a rebuttable presumption that it is a traffic infraction if the original container of marijuana is incorrectly labeled and there is a subsequent violation of (a)(i) of this subsection.

(2) As used in this section, "marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

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**Alcohol and drug violators—Penalty schedule**

**Sec. 9.** RCW 46.61.5055 and 2014 c 100 s 1 are each amended to read as follows:

(1) **No prior offenses in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) **Penalty for alcohol concentration less than 0.15.** In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than three hundred sixty-four days. Twenty-four consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device or other separate alcohol monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended unless the court finds the offender to be indigent; or

(b) **Penalty for alcohol concentration at least 0.15.** In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than three hundred sixty-four days. Forty-eight consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer or other separate alcohol monitoring device, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(2) **One prior offense in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of

a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) **Penalty for alcohol concentration less than 0.15.** In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than three hundred sixty-four days and sixty days of electronic home monitoring. In lieu of the mandatory minimum term of sixty days electronic home monitoring, the court may order at least an additional four days in jail or, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and the court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended unless the court finds the offender to be indigent; or

(b) **Penalty for alcohol concentration at least 0.15.** In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than three hundred sixty-four days and ninety days of electronic home monitoring. In lieu of the mandatory minimum term of ninety days electronic home monitoring, the court may order at least an additional six days in jail or, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and the court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of

the fine may not be suspended unless the court finds the offender to be indigent.

(3) **Two or three prior offenses in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or three prior offenses within seven years shall be punished as follows:

(a) **Penalty for alcohol concentration less than 0.15.** In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than three hundred sixty-four days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred twenty days of electronic home monitoring. In lieu of the mandatory minimum term of one hundred twenty days of electronic home monitoring, the court may order at least an additional eight days in jail. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent; or

(b) **Penalty for alcohol concentration at least 0.15.** In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than three hundred sixty-four days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty days of electronic home monitoring. In lieu of the mandatory minimum term of one hundred fifty days of electronic home monitoring, the court may order at least an additional ten days in jail. The offender shall pay for the cost of the electronic monitoring. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being.

Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(4) **Four or more prior offenses in ten years.** A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished under chapter 9.94A RCW if:

(a) The person has four or more prior offenses within ten years; or

(b) The person has ever previously been convicted of:

(i) A violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(ii) A violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

(5) **Monitoring.**

(a) **Ignition interlock device.** The court shall require any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to comply with the rules and requirements of the department regarding the installation and use of a functioning ignition interlock device installed on all motor vehicles operated by the person.

(b) **Monitoring devices.** If the court orders that a person refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. The person shall pay for the cost of the monitoring, unless the court specifies that the cost of monitoring will be paid with funds that are available from an alternative source identified by the court. The county or municipality where the penalty is being imposed shall determine the cost.

(c) **Ignition interlock device substituted for 24/7 sobriety program monitoring.** In any county or city where a 24/7 sobriety program is available and verified by the Washington association of sheriffs and police chiefs, the court shall:

(i) Order the person to install and use a functioning ignition interlock or other device in lieu of such period of 24/7 sobriety program monitoring;

(ii) Order the person to a period of 24/7 sobriety program monitoring pursuant to subsections (1) through (3) of this section; or

(iii) Order the person to install and use a functioning ignition interlock or other device in addition to a period of 24/7 sobriety program monitoring pursuant to subsections (1) through (3) of this section.

(6) **Penalty for having a minor passenger in vehicle.** If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) Order the use of an ignition interlock or other device for an additional six months;

(b) In any case in which the person has no prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional twenty-four hours of imprisonment and a fine of not less than one thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent;

(c) In any case in which the person has one prior offense within seven years, and except as provided in RCW 46.61.502(6)

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or 46.61.504(6), order an additional five days of imprisonment and a fine of not less than two thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent;

(d) In any case in which the person has two or three prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional ten days of imprisonment and a fine of not less than three thousand dollars and not more than ten thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(7) **Other items courts must consider while setting penalties.** In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property;

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers;

(c) Whether the driver was driving in the opposite direction of the normal flow of traffic on a multiple lane highway, as defined by RCW 46.04.350, with a posted speed limit of forty-five miles per hour or greater; and

(d) Whether a child passenger under the age of sixteen was an occupant in the driver's vehicle.

(8) **Treatment and information school.** An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(9) **Driver's license privileges of the defendant.** The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) **Penalty for alcohol concentration less than 0.15.** If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) **Penalty for alcohol concentration at least 0.15.** If the person's alcohol concentration was at least 0.15:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) **Penalty for refusing to take test.** If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

Upon its own motion or upon motion by a person, a court may find, on the record, that notice to the department under RCW 46.20.270 has been delayed for three years or more as a result of a clerical or court error. If so, the court may order that the person's license, permit, or nonresident privilege shall not be revoked, suspended, or denied for that offense. The court shall send notice of the finding and order to the department and to the person. Upon receipt of the notice from the court, the department shall not revoke, suspend, or deny the license, permit, or nonresident privilege of the person for that offense.

For purposes of this subsection (9), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(10) **Probation of driving privilege.** After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(11) **Conditions of probation.** (a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes up to three hundred sixty-four days in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive (~~(and)~~); (ii) not driving a motor vehicle within this state without proof of liability insurance or other financial responsibility for the future pursuant to RCW 46.30.020; ((~~(iii)~~) (iii) not driving or being in physical control of a motor vehicle within this state while having an alcohol concentration of 0.08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within two hours after driving; ((~~(and)~~ (~~(iii)~~)) (iv) not refusing to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drug; and (v) not driving a motor vehicle in this state without a functioning ignition interlock device as required by the department under RCW 46.20.720(3). The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i), (ii), (~~(iii)~~) (iii), (iv), or (v) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(12) **Waiver of electronic home monitoring.** A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system. However, if a court determines that an alcohol monitoring device utilizing wireless reporting technology is reasonably available, the court may require the person to obtain such a device during the period of required electronic home monitoring;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, use of an ignition interlock device, the 24/7 sobriety program monitoring, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-four days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-four days.

(13) **Extraordinary medical placement.** An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(3).

(14) **Definitions.** For purposes of this section and RCW 46.61.502 and 46.61.504:

(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.25.110 or an equivalent local ordinance;

(iv) A conviction for a violation of RCW 79A.60.040(2) or an equivalent local ordinance;

(v) A conviction for a violation of RCW 79A.60.040(1) or an equivalent local ordinance committed in a reckless manner if the conviction is the result of a charge that was originally filed as a violation of RCW 79A.60.040(2) or an equivalent local ordinance;

(vi) A conviction for a violation of RCW 47.68.220 or an equivalent local ordinance committed while under the influence of intoxicating liquor or any drug;

~~((vii))~~ (vii) A conviction for a violation of RCW 47.68.220 or an equivalent local ordinance committed in a careless or reckless manner if the conviction is the result of a charge that was originally filed as a violation of RCW 47.68.220 or an equivalent local ordinance while under the influence of intoxicating liquor or any drug;

(viii) A conviction for a violation of RCW 46.09.470(2) or an equivalent local ordinance;

~~((ix))~~ (ix) A conviction for a violation of RCW 46.10.490(2) or an equivalent local ordinance;

~~((x))~~ (x) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.520 committed in a reckless manner or with the disregard for the

safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

~~((xi))~~ (xi) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.522 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

~~((xii))~~ (xii) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

~~((xiii))~~ (xiii) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), ~~((viii))~~ (x), ~~((ix))~~ (xi), or ~~((x))~~ (xii) of this subsection if committed in this state;

~~((xiv))~~ (xiv) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance;

~~((xv))~~ (xv) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

~~((xvi))~~ (xvi) A deferred prosecution granted in another state for a violation of driving or having physical control of a vehicle while under the influence of intoxicating liquor or any drug if the out-of-state deferred prosecution is equivalent to the deferred prosecution under chapter 10.05 RCW, including a requirement that the defendant participate in a chemical dependency treatment program; or

~~((xvii))~~ (xvii) A deferred sentence imposed in a prosecution for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local ordinance, if the charge under which the deferred sentence was imposed was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or a violation of RCW 46.61.520 or 46.61.522;

If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in this subsection (14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing;

(b) "Treatment" means alcohol or drug treatment approved by the department of social and health services;

(c) "Within seven years" means that the arrest for a prior offense occurred within seven years before or after the arrest for the current offense; and

(d) "Within ten years" means that the arrest for a prior offense occurred within ten years before or after the arrest for the current offense.

**Sec. 10.** RCW 46.01.260 and 2010 c 161 s 208 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the director may destroy applications for vehicle registrations, copies of vehicle registrations issued, applications for drivers' licenses, copies of issued drivers' licenses, certificates of title and registration or other documents, and records or supporting papers on file in the department that have been microfilmed or photographed or are more than five years old. The director may destroy applications for vehicle registrations that are renewal applications when the computer record of the applications has been updated.

(2)(a) The director shall not destroy records of convictions or adjudications of RCW 46.61.502, 46.61.503, 46.61.504,



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46.61.520, and 46.61.522, or records of deferred prosecutions granted under RCW 10.05.120 and shall maintain such records permanently on file.

(b) The director shall not, within fifteen years from the date of conviction or adjudication, destroy records if the offense was originally charged as one of the offenses designated in (a) of this subsection, convictions or adjudications of the following offenses: RCW 46.61.500 or 46.61.5249 or any other violation that was originally charged as one of the offenses designated in (a) of this subsection.

(c) For purposes of RCW 46.52.101 and 46.52.130, offenses subject to this subsection shall be considered "alcohol-related" offenses.

**Ignition interlock devices—Standards—Compliance**

**Sec. 11.** RCW 43.43.395 and 2013 2nd sp.s. c 35 s 9 are each amended to read as follows:

(1) The state patrol shall by rule provide standards for the certification, installation, repair, maintenance, monitoring, inspection, and removal of ignition interlock devices, as defined under RCW 46.04.215, and equipment as outlined under this section, and may inspect the records and equipment of manufacturers and vendors during regular business hours for compliance with statutes and rules and may suspend or revoke certification for any noncompliance.

(2)(a) When a certified service provider or individual installer of ignition interlock devices is found to be out of compliance, the installation privileges of that certified service provider or individual installer may be suspended or revoked until the certified service provider or individual installer comes into compliance. During any suspension or revocation period, the certified service provider or individual installer is responsible for notifying affected customers of any changes in their service agreement.

(b) A certified service provider or individual installer whose certification is suspended or revoked for noncompliance has a right to an administrative hearing under chapter 34.05 RCW to contest the suspension or revocation, or both. For the administrative hearing, the procedure and rules of evidence are as specified in chapter 34.05 RCW, except as otherwise provided in this chapter. Any request for an administrative hearing must be made in writing and must be received by the state patrol within twenty days after the receipt of the notice of suspension or revocation.

(3)(a) An ignition interlock device must employ:

(i) Fuel cell technology. For the purposes of this subsection, "fuel cell technology" consists of the following electrochemical method: An electrolyte designed to oxidize the alcohol and release electrons to be collected by an active electrode; a current flow is generated within the electrode proportional to the amount of alcohol oxidized on the fuel cell surface; and the electrical current is measured and reported as breath alcohol concentration. Fuel cell technology is highly specific for alcohols(-

~~(b) When reasonably available in the area, as determined by the state patrol, an ignition interlock device must employ);~~

(ii) Technology capable of taking a photo identification of the user giving the breath sample and recording on the photo the time the breath sample was given; and

(iii) Technology capable of providing the global positioning coordinates at the time of each test sequence. Such coordinates must be displayed within the data log that is downloaded by the manufacturer and must be made available to the state patrol to be used for circumvention and tampering investigations.

~~((=))~~ (b) To be certified, an ignition interlock device must:

(i) Meet or exceed the minimum test standards according to rules adopted by the state patrol. Only a notarized statement from

a laboratory that is accredited and certified ((by)) under the current edition of ISO (the international organization of standardization) 17025 standard for testing and calibration laboratories and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards. The notarized statement must include the name and signature of the person in charge of the tests under the certification statement. The state patrol must adopt by rule the required language of the certification statement that must, at a minimum, outline that the testing meets or exceeds all specifications listed in the federal register adopted in rule by the state patrol; and

(ii) Be maintained in accordance with the rules and standards adopted by the state patrol.

**Abstract of driving record—Access—Fee—Violations**

**Sec. 12.** RCW 46.52.130 and 2012 c 74 s 6 and 2012 c 73 s 1 are each reenacted and amended to read as follows:

Upon a proper request, the department may furnish an abstract of a person's driving record as permitted under this section.

(1) **Contents of abstract of driving record.** An abstract of a person's driving record, whenever possible, must include:

(a) An enumeration of motor vehicle accidents in which the person was driving, including:

(i) The total number of vehicles involved;

(ii) Whether the vehicles were legally parked or moving;

(iii) Whether the vehicles were occupied at the time of the accident; and

(iv) Whether the accident resulted in a fatality;

(b) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;

(c) The status of the person's driving privilege in this state; and

(d) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(2) **Release of abstract of driving record.** An abstract of a person's driving record may be furnished to the following persons or entities:

(a) **Named individuals.** (i) An abstract of the full driving record maintained by the department may be furnished to the individual named in the abstract.

(ii) Nothing in this section prevents a court from providing a copy of the driver's abstract to the individual named in the abstract or that named individual's attorney, provided that the named individual has a pending or open infraction or criminal case in that court. A pending case includes criminal cases that have not reached a disposition by plea, stipulation, trial, or amended charge. An open infraction or criminal case includes cases on probation, payment agreement or subject to, or in collections. Courts may charge a reasonable fee for the production and copying of the abstract for the individual.

(b) **Employers or prospective employers.** (i)(A) An abstract of the full driving record maintained by the department may be furnished to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual for purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer.

(B) Release of an abstract of the driving record of an employee or prospective employee requires a statement signed by: (I) The employee or prospective employee that authorizes the release of the record; and (II) the employer attesting that the information is necessary for employment purposes related to driving by the individual as a condition of employment or

otherwise at the direction of the employer. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(C) Upon request of the person named in the abstract provided under this subsection, and upon that same person furnishing copies of court records ruling that the person was not at fault in a motor vehicle accident, the department must indicate on any abstract provided under this subsection that the person was not at fault in the motor vehicle accident.

(ii) In addition to the methods described in (b)(i) of this subsection, the director may enter into a contractual agreement with an employer or its agent for the purpose of reviewing the driving records of existing employees for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and is subject to the same restrictions as driving record abstracts.

(c) **Volunteer organizations.** (i) An abstract of the full driving record maintained by the department may be furnished to a volunteer organization or an agent for a volunteer organization for which the named individual has submitted an application for a position that would require driving by the individual at the direction of the volunteer organization.

(ii) Release of an abstract of the driving record of a prospective volunteer requires a statement signed by: (A) The prospective volunteer that authorizes the release of the record; and (B) the volunteer organization attesting that the information is necessary for purposes related to driving by the individual at the direction of the volunteer organization. If the volunteer organization authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(d) **Transit authorities.** An abstract of the full driving record maintained by the department may be furnished to an employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs.

(e) **Insurance carriers.** (i) An abstract of the driving record maintained by the department covering the period of not more than the last three years may be furnished to an insurance company or its agent:

(A) That has motor vehicle or life insurance in effect covering the named individual;

(B) To which the named individual has applied; or

(C) That has insurance in effect covering the employer or a prospective employer of the named individual.

(ii) The abstract provided to the insurance company must:

(A) Not contain any information related to actions committed by law enforcement officers or firefighters, as both terms are defined in RCW 41.26.030, or by Washington state patrol officers, while driving official vehicles in the performance of their occupational duty. This does not apply to any situation where the vehicle was used in the commission of a misdemeanor or felony;

(B) Include convictions under RCW 46.61.5249 and 46.61.525, except that the abstract must report the convictions only as negligent driving without reference to whether they are for first or second degree negligent driving; and

(C) Exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract must show the deferred prosecution as well as the removal.

(iii) Any policy of insurance may not be canceled, nonrenewed, denied, or have the rate increased on the basis of information regarding an accident included in the abstract of a

driving record, unless the policyholder was determined to be at fault.

(iv) Any insurance company or its agent, for underwriting purposes relating to the operation of commercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment. Any insurance company or its agent, for underwriting purposes relating to the operation of noncommercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

(v) The director may enter into a contractual agreement with an insurance company or its agent for the limited purpose of reviewing the driving records of existing policyholders for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and is subject to the same restrictions as driving record abstracts.

(f) **Alcohol/drug assessment or treatment agencies.** An abstract of the driving record maintained by the department covering the period of not more than the last five years may be furnished to an alcohol/drug assessment or treatment agency approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment, for purposes of assisting employees in making a determination as to what level of treatment, if any, is appropriate, except that the abstract must:

(i) Also include records of alcohol-related offenses, as defined in RCW 46.01.260(2), covering a period of not more than the last ten years; and

(ii) Indicate whether an alcohol-related offense was originally charged as a violation of either RCW 46.61.502 or 46.61.504.

(g) **Attorneys—City attorneys ((and)), county prosecuting attorneys, and named individual's attorney of record.** An abstract of the full driving record maintained by the department, including whether a recorded violation is an alcohol-related offense, as defined in RCW 46.01.260(2), that was originally charged as a violation of either RCW 46.61.502 or 46.61.504, may be furnished to city attorneys ((or)), county prosecuting attorneys, or the named individual's attorney of record. City attorneys ((and)), county prosecuting attorneys, or the named individual's attorney of record may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(h) **State colleges, universities, or agencies, or units of local government.** An abstract of the full driving record maintained by the department may be furnished to (i) state colleges, universities, or agencies for employment and risk management purposes or (ii) units of local government authorized to self-insure under RCW 48.62.031 for employment and risk management purposes.

(i) **Superintendent of public instruction.** An abstract of the full driving record maintained by the department may be furnished to the superintendent of public instruction for review of public school bus driver records. The superintendent or superintendent's designee may discuss information on the driving record with an authorized representative of the employing school district for employment and risk management purposes.

(3) **Release to third parties prohibited.** Any person or entity receiving an abstract of a person's driving record under subsection (2)(b) through (i) of this section shall use the abstract

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exclusively for his, her, or its own purposes or as otherwise expressly permitted under this section, and shall not divulge any information contained in the abstract to a third party.

(4) **Fee.** The director shall collect a thirteen dollar fee for each abstract of a person's driving record furnished by the department. Fifty percent of the fee must be deposited in the highway safety fund, and fifty percent of the fee must be deposited according to RCW 46.68.038.

(5) **Violation.** (a) Any negligent violation of this section is a gross misdemeanor.

(b) Any intentional violation of this section is a class C felony.

**Sec. 13.** RCW 9.94A.589 and 2002 c 175 s 7 are each amended to read as follows:

(1)(a) Except as provided in (b) ~~((e)),~~ (c), or (d) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.535. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition applies in cases involving vehicular assault or vehicular homicide even if the victims occupied the same vehicle.

(b) Whenever a person is convicted of two or more serious violent offenses arising from separate and distinct criminal conduct, the standard sentence range for the offense with the highest seriousness level under RCW 9.94A.515 shall be determined using the offender's prior convictions and other current convictions that are not serious violent offenses in the offender score and the standard sentence range for other serious violent offenses shall be determined by using an offender score of zero. The standard sentence range for any offenses that are not serious violent offenses shall be determined according to (a) of this subsection. All sentences imposed under ~~((b)–(e))~~ this subsection (1)(b) shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(c) If an offender is convicted under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, the standard sentence range for each of these current offenses shall be determined by using all other current and prior convictions, except other current convictions for the felony crimes listed in this subsection (1)(c), as if they were prior convictions. The offender shall serve consecutive sentences for each conviction of the felony crimes listed in this subsection (1)(c), and for each firearm unlawfully possessed.

(d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6), or 46.61.505(4) shall be served consecutively to any sentences imposed under RCW 46.20.740 and 46.20.750.

(2)(a) Except as provided in (b) of this subsection, whenever a person while under sentence for conviction of a felony commits another felony and is sentenced to another term of confinement, the latter term shall not begin until expiration of all prior terms.

(b) Whenever a second or later felony conviction results in community supervision with conditions not currently in effect, under the prior sentence or sentences of community supervision the court may require that the conditions of community supervision contained in the second or later sentence begin during

the immediate term of community supervision and continue throughout the duration of the consecutive term of community supervision.

(3) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence for conviction of a felony, the sentence shall run concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, that sentence shall run consecutively to any sentence imposed pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) In the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community restitution, community supervision, or any other requirement or conditions of any of the sentences. Except for exceptional sentences as authorized under RCW 9.94A.535, if two or more sentences that run consecutively include periods of community supervision, the aggregate of the community supervision period shall not exceed twenty-four months.

**Sec. 14.** RCW 46.61.503 and 2013 c 3 s 34 are each amended to read as follows:

(1) Notwithstanding any other provision of this title, a person is guilty of driving or being in physical control of a motor vehicle after consuming alcohol or marijuana if the person operates or is in physical control of a motor vehicle within this state and the person:

(a) Is under the age of twenty-one; and

(b) Has, within two hours after operating or being in physical control of the motor vehicle, either:

(i) An alcohol concentration of at least 0.02 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(ii) A THC concentration above 0.00 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's blood made under RCW 46.61.506.

(2) It is an affirmative defense to a violation of subsection (1) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol or marijuana after the time of driving or being in physical control and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol or THC concentration to be in violation of subsection (1) of this section within two hours after driving or being in physical control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the earlier of: (a) Seven days prior to trial; or (b) the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(3) No person may be convicted under this section for being in physical control of a motor vehicle and it is an affirmative defense to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny the privilege to drive, if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving or being in physical control may be used as evidence that within two hours of the alleged driving or being in physical control, a person had an alcohol or THC concentration in violation of subsection (1) of this section.

~~((4))~~ (5) A violation of this section is a misdemeanor.

**Sec. 15.** RCW 46.20.755 and 2010 c 269 s 5 are each amended to read as follows:

If a person is required, as part of the person's judgment and sentence or as a condition of release, to install an ignition interlock device on all motor vehicles operated by the person and the person is under the jurisdiction of the municipality or county probation or supervision department, the probation or supervision department must verify the installation of the ignition interlock device or devices. The municipality or county probation or supervision department satisfies the requirement to verify the installation or installations if the municipality or county probation or supervision department receives written verification by one or more companies doing business in the state that it has installed the required device on a vehicle owned or operated by the person. The municipality or county shall have no further obligation to supervise the use of the ignition interlock device or devices by the person and shall not be civilly liable for any injuries or damages caused by the person for failing to use an ignition interlock device or for driving under the influence of intoxicating liquor or any drug or being in actual physical control of a motor vehicle under the influence of intoxicating liquor or any drug.

**Sec. 16.** RCW 36.28A.320 and 2014 c 221 s 913 are each amended to read as follows:

There is hereby established in the state treasury the 24/7 sobriety account. The account shall be maintained and administered by the criminal justice training commission to reimburse the state for costs associated with establishing and operating the 24/7 sobriety program and the Washington association of sheriffs and police chiefs for ongoing 24/7 sobriety program administration costs. ~~((The))~~ An appropriation is not required for expenditures and the account is not subject to allotment procedures under chapter 43.88 RCW. Funds in the account may not lapse and must carry forward from biennium to biennium. Interest earned by the account must be retained in the account. The criminal justice training commission may accept for deposit in the account money from donations, gifts, grants, participation fees, and user fees or payments. ((Expenditures from the account shall be budgeted through the normal budget process.))

**Sec. 17.** RCW 36.28A.330 and 2013 2nd sp.s. c 35 s 26 are each amended to read as follows:

The definitions in this section apply throughout RCW 36.28A.300 through 36.28A.390 unless the context clearly requires otherwise.

(1) ~~"24/7 ((electronic alcohol/drug monitoring)) sobriety program"~~ means ~~((the monitoring by the use of any electronic instrument that is capable of determining and monitoring the presence of alcohol or drugs in a person's body and includes any associated equipment a participant needs in order for the device to properly perform. Monitoring may also include mandatory urine analysis tests as ordered by the court))~~ a program in which a participant submits to testing of the participant's blood, breath, urine, or other bodily substance to determine the presence of alcohol or any drug as defined in RCW 46.61.540. Testing must take place at a location or locations designated by the participating agency, or, with the concurrence of the Washington association of sheriffs and police chiefs, by an alternate method.

(2) "Participant" means a person who has one or more prior convictions for a violation of RCW 46.61.502 or 46.61.504 and who has been ordered by a court to participate in the 24/7 sobriety program.

(3) "Participating agency" means ~~((a sheriff's office or a designated entity named by a sheriff that has agreed to participate in the 24/7 sobriety program by enrolling participants, administering one or more of the tests, and submitting reports to~~

~~the Washington association of sheriffs and police chiefs))~~ any entity located in the state of Washington that has a written agreement with the Washington association of sheriffs and police chiefs to participate in the 24/7 sobriety program, and includes, but is not limited to, a sheriff, a police chief, any other local, regional, or state corrections or probation entity, and any other entity designated by a sheriff, police chief, or any other local, regional, or state corrections or probation entity to perform testing in the 24/7 sobriety program.

(4) "Participation agreement" means a written document executed by a participant agreeing to participate in the 24/7 sobriety program in a form approved by the Washington association of sheriffs and police chiefs that contains the following information:

(a) The type, frequency, and time period of testing;

(b) The location of testing;

(c) The fees and payment procedures required for testing; and

(d) The responsibilities and obligations of the participant under the 24/7 sobriety program.

~~((5))~~ "24/7 sobriety program" means a twenty-four hour and seven-day-a-week sobriety program in which a participant submits to the testing of the participant's blood, breath, urine, or other bodily substances in order to determine the presence of alcohol, marijuana, or any controlled substance in the participant's body.)

**Sec. 18.** RCW 36.28A.370 and 2013 2nd sp.s. c 35 s 30 are each amended to read as follows:

(1) ~~((Funds in the 24/7 sobriety account shall be distributed as follows:~~

~~((a))~~ Any daily user fee, installation fee, deactivation fee, enrollment fee, or monitoring fee ~~((collected under the 24/7 sobriety program shall))~~ must be collected by the ~~((sheriff or chief, or an entity designated by the sheriff or chief, and deposited with the county or city treasurer of the proper county or city, the proceeds of which shall be applied))~~ participating agency and used ~~((only))~~ to defray the ~~((recurring))~~ participating agency's costs of the 24/7 sobriety program ~~((including maintaining equipment, funding support services, and ensuring compliance; and)).~~

~~((b))~~ (2) Any participation fee must be collected ~~((in the administration of testing under))~~ by the participating agency and deposited in the state 24/7 sobriety ((program)) account to cover 24/7 sobriety program administration costs incurred by the Washington association of sheriffs and police chiefs ~~((shall be collected by the sheriff or chief, or an entity designated by the sheriff or chief, and deposited in the 24/7 sobriety account)).~~

~~((2))~~ (3) All applicable fees shall be paid by the participant contemporaneously or in advance of the time when the fee becomes due; however, cities and counties may subsidize or pay any applicable fees.

(4) A city or county may accept donations, gifts, grants, and other assistance to defray the participating agency's costs of the 24/7 sobriety program.

**Sec. 19.** RCW 36.28A.390 and 2013 2nd sp.s. c 35 s 32 are each amended to read as follows:

(1) A general authority Washington peace officer, as defined in RCW 10.93.020, who has probable cause to believe that a participant has violated the terms of participation in the 24/7 sobriety program may immediately take the participant into custody and cause him or her to be held until an appearance before a judge on the next judicial day.

(2) A participant who violates the terms of participation in the 24/7 sobriety program or does not pay the required fees or associated costs pretrial or posttrial shall, at a minimum:

(a) Receive a written warning notice for a first violation;

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(b) Serve ~~((a term))~~ the lesser of two days imprisonment or if posttrial, the entire remaining sentence imposed by the court for a second violation;

(c) Serve ~~((a term of up to))~~ the lesser of five days imprisonment or if posttrial, the entire remaining sentence imposed by the court for a third violation;

(d) Serve ~~((a term of up to))~~ the lesser of ten days imprisonment or if posttrial, the entire remaining sentence imposed by the court for a fourth violation; and

(e) For a fifth or subsequent violation pretrial, the participant shall abide by the order of the court. For posttrial participants, the participant shall serve the entire remaining sentence imposed by the court.

~~((2) A sheriff or chief, or the designee of a sheriff or chief, who has probable cause to believe that a participant has violated the terms of participation in the 24/7 sobriety program or has not paid the required fees or associated costs shall immediately take the participant into custody and cause him or her to be held until an appearance before a judge on the next judicial day.))~~ (3) The court may remove a participant from the 24/7 sobriety program at any time for noncompliance with the terms of participation.

**Sec. 20.** RCW 10.21.015 and 2014 c 24 s 1 are each amended to read as follows:

(1) Under this chapter, "pretrial release program" is any program, either run directly by a county or city, or by a private or public entity through contract with a county or city, into whose custody an offender is released prior to trial and which agrees to supervise the offender. As used in this section, "supervision" includes, but is not limited to, work release, day monitoring, ~~((or))~~ electronic monitoring, or participation in a 24/7 sobriety program.

(2) A pretrial release program may not agree to supervise, or accept into its custody, an offender who is currently awaiting trial for a violent offense or sex offense, as defined in RCW 9.94A.030, who has been convicted of one or more violent offenses or sex offenses in the ten years before the date of the current offense, unless the offender's release before trial was secured with a payment of bail.

**NEW SECTION. Sec. 21.** A new section is added to chapter 18.130 RCW to read as follows:

It is not professional misconduct for a physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood, to collect a blood sample without a person's consent when the physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood was directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant or exigent circumstances: **PROVIDED,** That nothing in this section shall relieve a physician, registered nurse, licensed practical nurse, nursing assistant as defined in chapter 18.88A RCW, physician assistant as defined in chapter 18.71A RCW, first responder as defined in chapter 18.73 RCW, emergency medical technician as defined in chapter 18.73 RCW, health care assistant as defined in chapter 18.135 RCW, a forensic phlebotomist under section 23 of this act, or any technician trained in withdrawing blood from professional

discipline arising from the use of improper procedures or from failing to exercise the required standard of care.

**NEW SECTION. Sec. 22.** A new section is added to chapter 43.70 RCW to read as follows:

(1) The secretary, in consultation with health profession boards and commissions, the Washington state criminal justice training commission, and the Washington state patrol, shall establish by rule the administrative procedures and administrative requirements for initial issue, renewal, and reissue of a credential for forensic phlebotomists as defined in section 23 of this act. Failure to renew invalidates the credential and all privileges granted by the credential. Administrative procedures and administrative requirements do not include establishing, monitoring, and enforcing qualifications for licensure, scope or standards of practice, continuing competency mechanisms, and discipline when such authority is authorized in statute to a health profession board or commission or to the criminal justice training commission. For the purposes of this section, "in consultation with" means providing an opportunity for meaningful participation in development of rules consistent with processes set forth in RCW 34.05.310.

(2) Notwithstanding any provision of law to the contrary that provides for a licensing period for any type of license subject to this chapter including those under RCW 18.130.040, the secretary may, from time to time, extend or otherwise modify the duration of any licensing, certification, or registration period, whether an initial or renewal period, if the secretary determines that it would result in a more economical or efficient operation of state government and that the public health, safety, or welfare would not be substantially adversely affected thereby. However, no license, certification, or registration may be issued or approved for a period in excess of four years, without renewal. Such extension, reduction, or other modification of a licensing, certification, or registration period shall be by rule or regulation of the department adopted in accordance with the provisions of chapter 34.05 RCW. Such rules and regulations may provide a method for imposing and collecting such additional proportional fee as may be required for the extended or modified period.

**NEW SECTION. Sec. 23.** A new section is added to chapter 46.04 RCW to read as follows:

"Forensic phlebotomist" means a police officer, law enforcement officer, or employee of a correctional facility or detention facility, who completed a venipuncture training program required under section 22 of this act and who is collecting a blood sample for forensic testing pursuant to a search warrant, a waiver of the warrant requirement, or exigent circumstances.

**Sec. 24.** RCW 46.61.506 and 2013 c 3 s 37 are each amended to read as follows:

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08 or the person's THC concentration is less than 5.00, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2)(a) The breath analysis of the person's alcohol concentration shall be based upon grams of alcohol per two hundred ten liters of breath.

(b) The blood analysis of the person's THC concentration shall be based upon nanograms per milliliter of whole blood.

(c) The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent

evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under the provisions of this section or RCW 46.61.502 or 46.61.504 shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

(4)(a) A breath test performed by any instrument approved by the state toxicologist shall be admissible at trial or in an administrative proceeding if the prosecution or department produces prima facie evidence of the following:

(i) The person who performed the test was authorized to perform such test by the state toxicologist;

(ii) The person being tested did not vomit or have anything to eat, drink, or smoke for at least fifteen minutes prior to administration of the test;

(iii) The person being tested did not have any foreign substances, not to include dental work, fixed or removable, in his or her mouth at the beginning of the fifteen-minute observation period;

(iv) Prior to the start of the test, the temperature of any liquid simulator solution utilized as an external standard, as measured by a thermometer approved of by the state toxicologist was thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

(v) The internal standard test resulted in the message "verified";

(vi) The two breath samples agree to within plus or minus ten percent of their mean to be determined by the method approved by the state toxicologist;

(vii) The result of the test of the liquid simulator solution external standard or dry gas external standard result did lie between .072 to .088 inclusive; and

(viii) All blank tests gave results of .000.

(b) For purposes of this section, "prima facie evidence" is evidence of sufficient circumstances that would support a logical and reasonable inference of the facts sought to be proved. In assessing whether there is sufficient evidence of the foundational facts, the court or administrative tribunal is to assume the truth of the prosecution's or department's evidence and all reasonable inferences from it in a light most favorable to the prosecution or department.

(c) Nothing in this section shall be deemed to prevent the subject of the test from challenging the reliability or accuracy of the test, the reliability or functioning of the instrument, or any maintenance procedures. Such challenges, however, shall not preclude the admissibility of the test once the prosecution or department has made a prima facie showing of the requirements contained in (a) of this subsection. Instead, such challenges may be considered by the trier of fact in determining what weight to give to the test result.

(5) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician(~~, a registered nurse, a licensed practical nurse, a nursing assistant as defined in chapter 18.88A RCW, a physician assistant as defined in chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW, an emergency medical technician as defined in chapter 18.73 RCW, a health care assistant as defined in chapter 18.135 RCW, or any technician trained in~~

~~withdrawing blood~~) licensed under chapter 18.71 RCW; an osteopathic physician licensed under chapter 18.57 RCW; a registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW; a physician assistant licensed under chapter 18.71A RCW; an osteopathic physician assistant licensed under chapter 18.57A RCW; an advanced emergency medical technician or paramedic licensed under chapter 18.73 RCW; until July 1, 2016, a health care assistant certified under chapter 18.135 RCW; or a medical assistant-certified or medical assistant-phlebotomist certified under chapter 18.360 RCW. This limitation shall not apply to the taking of breath specimens.

(6) The person tested may have a (~~physician~~) licensed or certified health care provider listed in subsection (5) of this section, or a qualified technician, chemist, (~~registered nurse~~) or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The test will be admissible if the person establishes the general acceptability of the testing technique or method. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(7) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney.

**Sec. 25.** RCW 46.61.508 and 1977 ex.s. c 143 s 1 are each amended to read as follows:

No physician(~~, registered nurse, qualified technician~~) licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW; physician assistant licensed under chapter 18.71A RCW; osteopathic physician assistant licensed under chapter 18.57A RCW; advanced emergency medical technician or paramedic licensed under chapter 18.73 RCW; until July 1, 2016, health care assistant certified under chapter 18.135 RCW; or medical assistant-certified or medical assistant-phlebotomist certified under chapter 18.360 RCW, or hospital, or duly licensed clinical laboratory employing or utilizing services of such (~~physician, registered nurse, or qualified technician~~) licensed or certified health care provider, shall incur any civil or criminal liability as a result of the act of withdrawing blood from any person when directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant, a waiver of the search warrant requirement, exigent circumstances, any other authority of law, or RCW 46.20.308, as now or hereafter amended: PROVIDED, That nothing in this section shall relieve (~~any physician, registered nurse, qualified technician~~) such licensed or certified health care provider, or hospital or duly licensed clinical laboratory from civil liability arising from the use of improper procedures or failing to exercise the required standard of care.

**Sec. 26.** RCW 46.61.504 and 2013 c 3 s 35 are each amended to read as follows:

(1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has, within two hours after being in actual physical control of a vehicle, a THC concentration of 5.00 or

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higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section and it is an affirmative defense to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny the privilege to drive if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after being in control of the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4)(a) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(c) or (d) of this section.

(b) Analyses of blood samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in control of the vehicle, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a);

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(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.502(6).

**Sec. 27.** RCW 18.360.030 and 2012 c 153 s 4 are each amended to read as follows:

(1) The secretary shall adopt rules specifying the minimum qualifications for a medical assistant-certified, medical assistant-hemodialysis technician, and medical assistant-phlebotomist. The qualifications for a medical assistant-hemodialysis technician must be equivalent to the qualifications for hemodialysis technicians regulated pursuant to chapter 18.135 RCW as of January 1, 2012.

(2) The secretary shall adopt rules that establish the minimum requirements necessary for a health care practitioner, clinic, or group practice to endorse a medical assistant as qualified to perform the duties authorized by this chapter and be able to file an attestation of that endorsement with the department.

(3) The medical quality assurance commission, the board of osteopathic medicine and surgery, the podiatric medical board, the nursing care quality assurance commission, the board of naturopathy, and the optometry board shall each review and identify other specialty assistive personnel not included in this chapter and the tasks they perform. The department of health shall compile the information from each disciplining authority listed in this subsection and submit the compiled information to the legislature no later than December 15, 2012.

(4) The secretary shall adopt rules specifying requirements for delegation, training, and supervision for a medical assistant-phlebotomist who is also a local, state, federal, or tribal law enforcement employee or correctional employee, and whose practice is limited to collecting blood samples for forensic testing under the provisions of RCW 46.20.308 or pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law."

Senator Padden spoke in favor of adoption of the striking amendment.

#### POINT OF INQUIRY

Senator Hasegawa: "Would Senator Padden concede to a question? I'm not going to blind-side you, don't look so tentative. The question is: In your explanation of the striking amendment you said that it establishes the position of forensic phlebotomists. My understanding that this striking amendment actually does not do that. Is that correct?"

Senator Padden: "Well the language is at the back of the striking amendment and it indicates that the Secretary of Health shall adopt rules specifying requirements for delegation training and it would be under their circumstances. I think they may call that a medical assistant phlebotomists and I know Senator Keiser is aware of that terminology. Yes."

Senator Frockt spoke in favor of the adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Padden and Keiser to Engrossed Second Substitute House Bill No. 1276.

The motion by Senator Padden carried and the striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "driving;" strike the remainder of the title and insert "amending RCW 10.21.055, 46.20.385, 46.20.740, 46.20.308, 46.20.750, 46.25.120, 46.61.5055, 46.01.260, 43.43.395, 9.94A.589, 46.61.503, 46.20.755, 36.28A.320, 36.28A.330, 36.28A.370, 36.28A.390, 10.21.015, 46.61.506, 46.61.508, 46.61.504, and 18.360.030; reenacting and amending RCW 46.52.130; adding a new section to chapter 46.61 RCW; adding a new section to chapter 18.130 RCW; adding a new section to chapter 43.70 RCW; adding a new section to chapter 46.04 RCW; creating a new section; and prescribing penalties."

#### MOTION

On motion of Senator Padden, the rules were suspended, Engrossed Second Substitute House Bill No. 1276 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Padden, Keiser and Darneille spoke in favor of passage of the bill.

Senators Hasegawa and Fraser spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 1276 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1276 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 39; Nays, 9; Absent, 0; Excused, 1.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Cleveland, Conway, Dammeier, Darneille, Ericksen, Fain, Frockt, Habib, Hargrove, Hatfield, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Liias, Litzow, McCoy, Miloschia, Mullet, O'Ban, Padden, Parlette, Pearson, Pedersen, Rivers, Roach, Schoesler and Warnick

Voting nay: Senators Chase, Dansel, Fraser, Hasegawa, Hewitt, McAuliffe, Nelson, Ranker and Rolfes

Excused: Senator Sheldon

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1276 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 2000, by Representatives Hurst, Condotta and Tarleton

Authorizing the governor to enter into agreements with federally recognized Indian tribes in the state of Washington concerning marijuana.

The measure was read the second time.

#### MOTION

Senator Baumgartner moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 43.06 RCW to read as follows:

The legislature intends to further the government-to-government relationship between the state of Washington and federally recognized Indian tribes in the state of Washington by authorizing the governor to enter into agreements concerning the regulation of marijuana. Such agreements may include provisions pertaining to: The lawful commercial production, processing, sale, and possession of marijuana for both recreational and medical purposes; marijuana-related research activities; law enforcement, both criminal and civil; and taxation. The legislature finds that these agreements will facilitate and promote a cooperative and mutually beneficial relationship between the state and the tribes regarding matters relating to the legalization of marijuana, particularly in light of the fact that federal Indian law precludes the state from enforcing its civil regulatory laws in Indian country. Such cooperative agreements will enhance public health and safety, ensure a lawful and well-regulated marijuana market, encourage economic development, and provide fiscal benefits to both the tribes and the state.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.06 RCW to read as follows:

(1) The governor may enter into agreements with federally recognized Indian tribes concerning marijuana. Marijuana agreements may address any marijuana-related issue that involves both state and tribal interests or otherwise has an impact on tribal-state relations. Such agreements may include, but are not limited to, the following provisions and subject matter:

(a) Criminal and civil law enforcement;

(b) Regulatory issues related to the commercial production, processing, sale, and possession of marijuana, and processed marijuana products, for both recreational and medical purposes;

(c) Medical and pharmaceutical research involving marijuana;

(d) Taxation in accordance with subsection (2) of this section;

(e) Any tribal immunities or preemption of state law regarding the production, processing, or marketing of marijuana; and

(f) Dispute resolution, including the use of mediation or other nonjudicial process.

(2) Each marijuana agreement adopted under this section must provide for a tribal marijuana tax that is at least one hundred percent of the state marijuana excise tax imposed under RCW 69.50.535 and state and local sales and use taxes on sales of marijuana. Marijuana agreements shall apply to sales in which Indian businesses make delivery and physical transfer of possession of the marijuana from the seller to the buyer within Indian country, and not to transactions by non-Indian businesses. The tribe may allow an exemption for sales to tribal members.

(3) Any marijuana agreement relating to the production, processing, and sale of marijuana in Indian country, whether for recreational or medical purposes, must address the following issues:

(a) Preservation of public health and safety;

(b) Ensuring the security of production, processing, retail, and research facilities; and

(c) Cross-border commerce in marijuana.

(4) The governor may delegate the power to negotiate marijuana agreements to the state liquor control board. In conducting such negotiations, the state liquor control board must,



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when necessary, consult with the governor and/or the department of revenue.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Indian business" means (i) a business wholly owned and operated by an Indian tribe, or (ii) a business wholly owned and operated by a tribal member and licensed by the tribe.

(b) "Indian country" has the same meaning as in RCW 82.24.010.

(c) "Indian tribe" or "tribe" means a federally recognized Indian tribe located within the geographical boundaries of the state of Washington.

(d) "Marijuana" means "marijuana," "marijuana concentrates," "marijuana-infused products," and "useable marijuana," as those terms are defined in RCW 69.50.101.

**NEW SECTION. Sec. 3.** A new section is added to chapter 69.50 RCW to read as follows:

The taxes, fees, assessments, and other charges imposed by this chapter do not apply to commercial activities related to the production, processing, sale, and possession of marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products covered by an agreement entered into under section 2 of this act.

**NEW SECTION. Sec. 4.** A new section is added to chapter 82.08 RCW to read as follows:

The taxes imposed by this chapter do not apply to the retail sale of marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products covered by an agreement entered into under section 2 of this act. "Marijuana," "useable marijuana," "marijuana concentrates," and "marijuana-infused products" have the same meaning as defined in RCW 69.50.101.

**NEW SECTION. Sec. 5.** A new section is added to chapter 82.12 RCW to read as follows:

The taxes imposed by this chapter do not apply to the use of marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products covered by an agreement entered into under section 2 of this act. "Marijuana," "useable marijuana," "marijuana concentrates," and "marijuana-infused products" have the same meaning as defined in RCW 69.50.101.

**Sec. 6.** RCW 69.50.360 and 2014 c 192 s 5 are each amended to read as follows:

The following acts, when performed by a validly licensed marijuana retailer or employee of a validly licensed retail outlet in compliance with rules adopted by the state liquor control board to implement and enforce chapter 3, Laws of 2013, ~~((shall))~~ **do** not constitute criminal or civil offenses under Washington state law:

(1) Purchase and receipt of marijuana concentrates, useable marijuana, or marijuana-infused products that have been properly packaged and labeled from a marijuana processor validly licensed under chapter 3, Laws of 2013;

(2) Possession of quantities of marijuana concentrates, useable marijuana, or marijuana-infused products that do not exceed the maximum amounts established by the state liquor control board under RCW 69.50.345(5); ~~((and))~~

(3) Delivery, distribution, and sale, on the premises of the retail outlet, of any combination of the following amounts of marijuana concentrates, useable marijuana, or marijuana-infused product to any person twenty-one years of age or older:

(a) One ounce of useable marijuana;

(b) Sixteen ounces of marijuana-infused product in solid form;

(c) Seventy-two ounces of marijuana-infused product in liquid form; or

(d) Seven grams of marijuana concentrate; and

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(4) Purchase and receipt of marijuana concentrates, useable marijuana, or marijuana-infused products that have been properly packaged and labeled from a federally recognized Indian tribe as permitted under an agreement between the state and the tribe entered into under section 2 of this act.

**Sec. 7.** RCW 69.50.363 and 2013 c 3 s 16 are each amended to read as follows:

The following acts, when performed by a validly licensed marijuana processor or employee of a validly licensed marijuana processor in compliance with rules adopted by the state liquor control board to implement and enforce chapter 3, Laws of 2013, ~~((shall))~~ **do** not constitute criminal or civil offenses under Washington state law:

(1) Purchase and receipt of marijuana that has been properly packaged and labeled from a marijuana producer validly licensed under chapter 3, Laws of 2013;

(2) Possession, processing, packaging, and labeling of quantities of marijuana, useable marijuana, and marijuana-infused products that do not exceed the maximum amounts established by the state liquor control board under RCW 69.50.345(4); ~~((and))~~

(3) Delivery, distribution, and sale of useable marijuana or marijuana-infused products to a marijuana retailer validly licensed under chapter 3, Laws of 2013; and

(4) Delivery, distribution, and sale of useable marijuana, marijuana concentrates, or marijuana-infused products to a federally recognized Indian tribe as permitted under an agreement between the state and the tribe entered into under section 2 of this act.

**Sec. 8.** RCW 69.50.366 and 2013 c 3 s 17 are each amended to read as follows:

The following acts, when performed by a validly licensed marijuana producer or employee of a validly licensed marijuana producer in compliance with rules adopted by the state liquor control board to implement and enforce chapter 3, Laws of 2013, ~~((shall))~~ **do** not constitute criminal or civil offenses under Washington state law:

(1) Production or possession of quantities of marijuana that do not exceed the maximum amounts established by the state liquor control board under RCW 69.50.345(3); ~~((and))~~

(2) Delivery, distribution, and sale of marijuana to a marijuana processor or another marijuana producer validly licensed under chapter 3, Laws of 2013; and

(3) Delivery, distribution, and sale of marijuana or useable marijuana to a federally recognized Indian tribe as permitted under an agreement between the state and the tribe entered into under section 2 of this act."

Senator Baumgartner spoke in favor of adoption of the committee striking amendment.

Senator Hargrove spoke against adoption of the committee striking amendment.

MOTION

On motion of Senator Fain, further consideration of House Bill No. 2000 was deferred and the bill held its place on the day's second reading calendar.

Senator Fain announced a break for lunch and requested that the Caucuses meet at 1:00 p.m. to review the measures added to the floor calendar as a result of yesterday's Committee on Rules meeting.

Senator Fraser announced a meeting of the Senate Democratization Caucus at 1:00 p.m.

## MOTION

At 12:00 o'clock p.m., on motion of Senator Fain, the Senate was declared to be at ease subject to the call of the President.

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The Senate was called to order at 2:17 p.m. by President Owen.

## SECOND READING

HOUSE BILL NO. 1977, by Representatives Moscoso, Orcutt, Clibborn, Bergquist, Zeiger, Pollet and Tarleton

Creating a tuition and fees exemption for children and surviving spouses of certain highway workers.

The measure was read the second time.

## MOTION

On motion of Senator King, the rules were suspended, House Bill No. 1977 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1977.

## ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1977 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Liias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

Voting nay: Senator Angel

HOUSE BILL NO. 1977, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

The Senate resumed consideration of House Bill No. 2000 which was had been deferred earlier in the day.

Senator Baumgartner spoke in favor of the adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to House Bill No. 2000.

The motion by Senator Baumgartner carried and the committee striking amendment was adopted by voice vote.

## MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 3 of the title, after "marijuana;" strike the remainder of the title and insert "amending RCW 69.50.360, 69.50.363, and 69.50.366; adding new sections to chapter 43.06 RCW; adding a new section to chapter 69.50 RCW; adding a new section to chapter 82.08 RCW; and adding a new section to chapter 82.12 RCW."

## MOTION

On motion of Senator Baumgartner, the rules were suspended, House Bill No. 2000 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Baumgartner, Hill and Nelson spoke in favor of passage of the bill.

Senator McCoy spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2000 as amended by the Senate.

## ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2000 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 36; Nays, 13; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Cleveland, Conway, Dammeier, Dansel, Darneille, Fain, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Honeyford, King, Litzow, McAuliffe, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Rivers, Roach, Schoesler, Sheldon and Warnick

Voting nay: Senators Chase, Ericksen, Fraser, Frockt, Habib, Hobbs, Jayapal, Keiser, Kohl-Welles, Liias, McCoy, Ranker and Rolfes

HOUSE BILL NO. 2000 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

## SECOND READING

ENGROSSED HOUSE BILL NO. 1943, by Representatives Shea, Goodman, McCaslin and Scott

Concerning home detention.

The measure was read the second time.

## MOTION

Senator Padden moved that the following committee striking amendment by the Committee on Law & Justice be not adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 9.94A.030 and 2012 c 143 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for

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monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

(6) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(7) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "Confinement" means total or partial confinement.

(9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter 9.68 RCW).

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(16) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(20) "Domestic violence" has the same meaning as defined in RCW 10.99.020 and 26.50.010.

(21) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(22) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(24) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(25) "Electronic monitoring" means tracking the location of an individual, whether pretrial or posttrial, through the use of technology that is capable of determining or identifying the monitored individual's presence or absence at a particular location including, but not limited to:

(a) Radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and notifies the monitoring agency of the time that the monitored individual either leaves the approved location or tampers with or removes the monitoring device; or

(b) Active or passive global positioning system technology, which detects the location of the monitored individual and notifies the monitoring agency of the monitored individual's location.

(26) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

~~((26))~~ (27) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

~~((27))~~ (28) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

~~((28))~~ (29) "Home detention" is a subset of electronic monitoring and means a program of partial confinement available to offenders wherein the offender is confined in a private residence twenty-four hours a day, unless an absence from the residence is approved, authorized, or otherwise permitted in the order by the court or other supervising agency that ordered home detention, and the offender is subject to electronic ~~((surveillance))~~ monitoring.

~~((29))~~ (30) "Homelessness" or "homeless" means a condition where an individual lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is:

(a) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations;

(b) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

(c) A private residence where the individual stays as a transient invitee.

~~((30))~~ (31) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

~~((31))~~ (32) "Minor child" means a biological or adopted child of the offender who is under age eighteen at the time of the offender's current offense.

~~((32))~~ (33) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and

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RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under this title and Title 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

~~((33))~~ (34) "Nonviolent offense" means an offense which is not a violent offense.

~~((34))~~ (35) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer ordered by a superior court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and supervised by the department pursuant to RCW 9.94A.501 and 9.94A.5011. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

~~((35))~~ (36) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention, electronic monitoring, or work crew has been ordered by the court or home detention has been ordered by the department as part of the parenting program, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, electronic monitoring, and a combination of work crew, electronic monitoring, and home detention.

~~((36))~~ (37) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

~~((37))~~ (38) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection ~~((37))~~ (38)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

~~((38))~~ (39) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b)

the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

~~((39))~~ (40) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

~~((40))~~ (41) "Public school" has the same meaning as in RCW 28A.150.010.

~~((41))~~ (42) "Repetitive domestic violence offense" means any:

(a)(i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;

(ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;

(iii) Domestic violence violation of a protection order under chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense;

(iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or

(v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

(b) Any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

~~((42))~~ (43) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

~~((43))~~ (44) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

~~((44))~~ (45) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

~~((45))~~ (46) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

~~((46))~~ (47) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080;

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or

(v) A felony violation of RCW 9A.44.132(1) (failure to register) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register) on at least one prior occasion;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

~~((47))~~ (48) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

~~((48))~~ (49) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((49))~~ (50) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

~~((50))~~ (51) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

~~((51))~~ (52) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

~~((52))~~ (53) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

~~((53))~~ (54) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

~~((54))~~ (55) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

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- (v) Indecent liberties if committed by forcible compulsion;
- (vi) Kidnapping in the second degree;
- (vii) Arson in the second degree;
- (viii) Assault in the second degree;
- (ix) Assault of a child in the second degree;
- (x) Extortion in the first degree;
- (xi) Robbery in the second degree;
- (xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

~~((55))~~ (56) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

~~((56))~~ (57) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

~~((57))~~ (58) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

**Sec. 2.** RCW 9.94A.734 and 2010 c 224 s 9 are each amended to read as follows:

(1) Home detention may not be imposed for offenders convicted of the following offenses, unless imposed as partial confinement in the department's parenting program under RCW 9.94A.6551:

- (a) A violent offense;
- (b) Any sex offense;
- (c) Any drug offense;
- (d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;
- (e) Assault in the third degree as defined in RCW 9A.36.031;
- (f) Assault of a child in the third degree;
- (g) Unlawful imprisonment as defined in RCW 9A.40.040; or
- (h) Harassment as defined in RCW 9A.46.020.

Home detention may be imposed for offenders convicted of possession of a controlled substance under RCW 69.50.4013 or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this section and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.

(2) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender:

- (a) Successfully completing twenty-one days in a work release program;
- (b) Having no convictions for burglary in the second degree or residential burglary during the preceding two years and not

more than two prior convictions for burglary or residential burglary;

(c) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(d) Having no prior charges of escape; and

(e) Fulfilling the other conditions of the home detention program.

(3) Home detention may be imposed for offenders convicted of taking a motor vehicle without permission in the second degree as defined in RCW 9A.56.075, theft of a motor vehicle as defined under RCW 9A.56.065, or possession of a stolen motor vehicle as defined under RCW 9A.56.068 conditioned upon the offender:

(a) Having no convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle during the preceding five years and not more than two prior convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle;

(b) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(c) Having no prior charges of escape; and

(d) Fulfilling the other conditions of the home detention program.

(4) Participation in a home detention program shall be conditioned upon:

(a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender;

(b) Abiding by the rules of the home detention program; and

(c) Compliance with court-ordered legal financial obligations.

(5) The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

(6)(a) A sentencing court shall deny the imposition of home detention if the court finds that (i) the offender has previously and knowingly violated the terms of a home detention program and (ii) the previous violation is not a technical, minor, or nonsubstantive violation.

(b) A sentencing court may deny the imposition of home detention if the court finds that (i) the offender has previously and knowingly violated the terms of a home detention program and (ii) the previous violation or violations were technical, minor, or nonsubstantive violations.

(7) A home detention program must be administered by a monitoring agency that meets the conditions described in section 3 of this act.

**NEW SECTION. Sec. 3.** A new section is added to chapter 9.94A RCW to read as follows:

(1) A supervising agency must establish terms and conditions of electronic monitoring for each individual subject to electronic monitoring under the agency's jurisdiction. The supervising agency must communicate those terms and conditions to the monitoring agency. A supervising agency must also establish protocols for when and how a monitoring agency must notify the

supervising agency when a violation of the terms and conditions occurs. A monitoring agency must comply with the terms and conditions as established by the supervising agency.

(2) A monitoring agency shall:

(a) Provide notification within twenty-four hours to the court or other supervising agency when the monitoring agency discovers that the monitored individual is unaccounted for, or is beyond an approved location, for twenty-four consecutive hours. Notification shall also be provided to the probation department, the prosecuting attorney, local law enforcement, the local detention facility, or the department, as applicable;

(b) Verify and document the monitored individual's absence at any court-ordered activities including, but not limited to, employment, counseling, treatment, and school;

(c) Verify the location of the offender through in-person contact on a random basis at least once per month; and

(d) Ensure compliance with any other condition ordered by the court or supervising agency or otherwise required by law.

(3) In addition, a private monitoring agency shall:

(a) Have detailed contingency plans for the monitoring agency's operation with provisions for power outage, loss of telephone service, fire, flood, malfunction of equipment, death, incapacitation or personal emergency of a monitor, and financial insolvency of the monitoring agency;

(b) Prohibit certain relationships between a monitored individual and a monitoring agency, including:

(i) Personal associations between a monitored individual and a monitoring agency or agency employee;

(ii) A monitoring agency or employee entering into another business relationship with a monitored individual or monitored individual's family during the monitoring; and

(iii) A monitoring agency or employee employing a monitored individual for at least one year after the termination of the monitoring;

(c) Not employ or be owned by any person convicted of a felony offense within the past four years; and

(d) Obtain a background check through the Washington state patrol for every partner, director, officer, owner, employee, or operator of the monitoring agency, at the monitoring agency's expense.

(4) A private monitoring agency that fails to comply with any of the requirements in this section may be subject to a civil penalty, as determined by a court of competent jurisdiction or a court administrator, in an amount of not more than one thousand dollars for each violation, in addition to any penalties imposed by contract. A court or court administrator may cancel a contract with a monitoring agency for any violation by the monitoring agency.

(5)(a) A court that receives notice of a violation by a monitored individual of the terms of electronic monitoring or home detention shall note and maintain a record of the violation in the court file.

(b)(i) The presiding judge of a court must notify the administrative office of the courts if:

(A) The court or court administrator decides it will not allow use of a particular monitoring agency by persons ordered to comply with an electronic monitoring or home detention program; and

(B) The court or court administrator, after previously deciding not to allow use of a particular monitoring agency, decides to resume allowing use of the monitoring agency by persons ordered to comply with a home detention program.

(ii) In either case, the court or court administrator must include in its notice the reasons for the court's decision.

(6) The administrative office of the courts shall, after receiving notice pursuant to subsection (5) of this section,

transmit the notice to all superior courts and courts of limited jurisdiction in the state, and any law enforcement or corrections agency that has requested such notification.

(7) The courts, the administrative office of the courts, and their employees and agents are not liable for acts or omissions pursuant to subsections (5) and (6) of this section absent a showing of gross negligence or bad faith.

(8) For the purposes of this section:

(a) A "monitoring agency" means an entity, private or public, which electronically monitors an individual, pursuant to an electronic monitoring or home detention program, including the department of corrections, a sheriff's office, a police department, a local detention facility, or a private entity; and

(b) A "supervising agency" means the public entity that authorized, approved, administers or manages, whether pretrial or posttrial, the home detention or electronic monitoring program of an individual and has jurisdiction and control over the monitored individual. A supervising agency may also be a monitoring agency.

(9) All government contracts with a private monitoring agency to provide electronic monitoring or home detention must be in writing and may provide contractual penalties in addition to those provided under this act.

**NEW SECTION. Sec. 4.** A new section is added to chapter 9.94A RCW to read as follows:

(1) By December 1, 2015, the administrative office of the courts shall create a pattern form order for use by a court in cases where a court orders a person to comply with a home detention program.

(2) The court shall provide a copy of the form order to the person ordered to comply with a home detention program. The form order must include the following:

(a) In a conspicuous location, a notice of criminal penalties resulting for a violation of the terms and conditions of a home detention program; and

(b) Language stating that a person may leave his or her residence for specific purposes only as ordered by the court, with a list of common purposes, such as school, employment, treatment, counseling, programming, or other activities from which a court may select.

(3) When a court orders a person to comply with the terms of a home detention program, the court must, in addition to its order, complete the form order created pursuant to this section to notify the person of criminal penalties associated with violation of the terms and conditions of the program and of any express permission granted for absence from the residence.

**Sec. 5.** RCW 10.21.030 and 2014 c 24 s 2 are each amended to read as follows:

(1) The judicial officer may at any time amend the order to impose additional or different conditions of release. The conditions imposed under this chapter supplement but do not supplant provisions of law allowing the imposition of conditions to assure the appearance of the defendant at trial or to prevent interference with the administration of justice.

(2) Appropriate conditions of release under this chapter include, but are not limited to, the following:

(a) The defendant may be placed in the custody of a pretrial release program;

(b) The defendant may have restrictions placed upon travel, association, or place of abode during the period of release;

(c) The defendant may be required to comply with a specified curfew;

(d) The defendant may be required to return to custody during specified hours or to be placed on electronic monitoring, as defined in RCW 9.94A.030, if available. The defendant, if



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convicted, may not have the period of incarceration reduced by the number of days spent on electronic monitoring;

(e) The defendant may be required to comply with a program of home detention, as defined in RCW 9.94A.030;

~~(f)~~ The defendant may be prohibited from approaching or communicating in any manner with particular persons or classes of persons;

~~((f))~~ ~~(g)~~ The defendant may be prohibited from going to certain geographical areas or premises;

~~((g))~~ ~~(h)~~ The defendant may be prohibited from possessing any dangerous weapons or firearms;

~~((h))~~ ~~(i)~~ The defendant may be prohibited from possessing or consuming any intoxicating liquors or drugs not prescribed to the defendant. The defendant may be required to submit to testing to determine the defendant's compliance with this condition;

~~((i))~~ ~~(j)~~ The defendant may be prohibited from operating a motor vehicle that is not equipped with an ignition interlock device;

~~((j))~~ ~~(k)~~ The defendant may be required to report regularly to and remain under the supervision of an officer of the court or other person or agency; and

~~((k))~~ ~~(l)~~ The defendant may be prohibited from committing any violations of criminal law.

NEW SECTION. Sec. 6. A new section is added to chapter 10.21 RCW to read as follows:

Under this chapter, "home detention" means any program meeting the definition of home detention in RCW 9.94A.030, and complying with the requirements of section 3 of this act.

**Sec. 7.** RCW 9.94A.704 and 2014 c 35 s 1 are each amended to read as follows:

(1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

- (a) Report as directed to a community corrections officer;
- (b) Remain within prescribed geographical boundaries;
- (c) Notify the community corrections officer of any change in the offender's address or employment;
- (d) Pay the supervision fee assessment; and
- (e) Disclose the fact of supervision to any mental health or chemical dependency treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense, the department may:

(a) Require the offender to refrain from direct or indirect contact with the victim of the crime or immediate family member of the victim of the crime. If a victim or an immediate family member of a victim has requested that the offender not contact him or her after notice as provided in RCW 72.09.340, the department shall require the offender to refrain from contact with the requestor. Where the victim is a minor, the parent or guardian of the victim may make a request on the victim's behalf.

(b) Impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" ~~((means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology))~~ has the same meaning as in RCW 9.94A.030.

(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.

(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

(b) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the offender's risk of reoffending, or the safety of the community.

(8) The department shall notify the offender in writing upon community custody intake of the department's violation process.

(9) The department may require offenders to pay for special services rendered including electronic monitoring, day reporting, and telephone reporting, dependent on the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(10)(a) When a sex offender has been sentenced pursuant to RCW 9.94A.507, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's risk to community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose conditions in addition to court-ordered conditions. The board must consider and may impose department-recommended conditions. The board must impose a condition requiring the offender to refrain from contact with the victim or immediate family member of the victim as provided in subsection (5)(a) of this section.

(c) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

- (i) The crime of conviction;
- (ii) The offender's risk of reoffending;
- (iii) The safety of the community.

(d) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(11) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

**Sec. 8.** RCW 26.50.010 and 2008 c 6 s 406 are each amended to read as follows:

As used in this chapter, the following terms shall have the meanings given them:

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

(2) "Family or household members" means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(4) "Court" includes the superior, district, and municipal courts of the state of Washington.

(5) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

(6) "Electronic monitoring" (~~means a program in which a person's presence at a particular location is monitored from a remote location by use of electronic equipment~~) has the same meaning as in RCW 9.94A.030.

(7) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items.

**Sec. 9.** RCW 10.99.040 and 2012 c 223 s 3 are each amended to read as follows:

(1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his or her client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2)(a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective

order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(b) In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(c) The no-contact order shall also be issued in writing as soon as possible, and shall state that it may be extended as provided in subsection (3) of this section. By January 1, 2011, the administrative office of the courts shall develop a pattern form for all no-contact orders issued under this chapter. A no-contact order issued under this chapter must substantially comply with the pattern form developed by the administrative office of the courts.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. So long as the court finds probable cause, the court may issue or extend a no-contact order even if the defendant fails to appear at arraignment. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring as defined in RCW 9.94A.030. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring.

(4)(a) Willful violation of a court order issued under subsection (2), (3), or (7) of this section is punishable under RCW 26.50.110.

(b) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

(c) A certified copy of the order shall be provided to the victim.

(5) If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed.

(6) Whenever a no-contact order is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated under subsection (3) of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system.

(7) All courts shall develop policies and procedures by January 1, 2011, to grant victims a process to modify or rescind a no-contact order issued under this chapter. The administrative

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office of the courts shall develop a model policy to assist the courts in implementing the requirements of this subsection.

**Sec. 10.** RCW 9.94A.505 and 2010 c 224 s 4 are each amended to read as follows:

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

(iii) RCW 9.94A.570, relating to persistent offenders;

(iv) RCW 9.94A.540, relating to mandatory minimum terms;

(v) RCW 9.94A.650, relating to the first-time offender waiver;

(vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(viii) RCW 9.94A.655, relating to the parenting sentencing alternative;

(ix) RCW 9.94A.507, relating to certain sex offenses;

(x) RCW 9.94A.535, relating to exceptional sentences;

(xi) RCW 9.94A.589, relating to consecutive and concurrent sentences;

(xii) RCW 9.94A.603, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The sentencing court shall not give the offender credit for any time the offender was required to comply with an electronic monitoring program prior to sentencing if the offender was convicted of one of the following offenses:

(a) A violent offense;

(b) Any sex offense;

(c) Any drug offense;

(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;

(e) Assault in the third degree as defined in RCW 9A.36.031;

(f) Assault of a child in the third degree;

(g) Unlawful imprisonment as defined in RCW 9A.40.040; or

(h) Harassment as defined in RCW 9A.46.020.

(8) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

~~((8))~~ (9) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

~~((9))~~ (10) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

**Sec. 11.** RCW 9A.76.130 and 2011 c 336 s 403 are each amended to read as follows:

(1) A person is guilty of escape in the third degree if he or she:

(a) Escapes from custody; or

(b) Knowingly violates the terms of an electronic monitoring program.

(2) Escape in the third degree is a ~~((gross))~~ misdemeanor, except as provided in subsection (3) of this section.

(3)(a) If the person has one prior conviction for escape in the third degree, escape in the third degree is a gross misdemeanor.

(b) If the person has two or more prior convictions for escape in the third degree, escape in the third degree is a class C felony.

NEW SECTION. Sec. 12. A new section is added to chapter 10.21 RCW to read as follows:

A monitoring agency, as defined in section 3 of this act, may not agree to monitor pursuant to home detention or electronic monitoring an offender who is currently awaiting trial for a violent or sex offense, as defined in RCW 9.94A.030, unless the defendant's release before trial is secured with a payment of bail. If bail is revoked by the court or the bail bond agency, the court shall note the reason for the revocation in the court file.

NEW SECTION. Sec. 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

On page 1, line 1 of the title, after "Relating to" strike the remainder of the title and insert "electronic monitoring; amending RCW 9.94A.030, 9.94A.734, 10.21.030, 9.94A.704, 26.50.010, 10.99.040, 9.94A.505, and 9A.76.130; adding new sections to chapter 9.94A RCW; adding new sections to chapter 10.21 RCW; and prescribing penalties."

The President declared the question before the Senate to be the motion by Senator Padden that the committee striking amendment by the Committee on Law & Justice to Engrossed House Bill No. 1943 be not adopted.

The motion by Senator Padden carried and the committee striking amendment was not adopted by voice vote.

#### MOTION

Senator Padden moved that the following striking amendment by Senator Padden be adopted:

Strike everything after the enacting clause and insert the following:

**Sec. 1.** RCW 9.94A.030 and 2012 c 143 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

(6) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(7) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "Confinement" means total or partial confinement.

(9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter 9.68 RCW).

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(16) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(20) "Domestic violence" has the same meaning as defined in RCW 10.99.020 and 26.50.010.

(21) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

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(22) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(24) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(25) "Electronic monitoring" means tracking the location of an individual, whether pretrial or posttrial, through the use of technology that is capable of determining or identifying the monitored individual's presence or absence at a particular location including, but not limited to:

(a) Radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and notifies the monitoring agency of the time that the monitored individual either leaves the approved location or tampers with or removes the monitoring device; or

(b) Active or passive global positioning system technology, which detects the location of the monitored individual and notifies the monitoring agency of the monitored individual's location.

(26) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

~~((26))~~ (27) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

~~((27))~~ (28) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

~~((28))~~ (29) "Home detention" is a subset of electronic monitoring and means a program of partial confinement available to offenders wherein the offender is confined in a private residence twenty-four hours a day, unless an absence from the residence is approved, authorized, or otherwise permitted in the order by the court or other supervising agency that ordered home detention, and the offender is subject to electronic ~~((surveillance))~~ monitoring.

~~((29))~~ (30) "Homelessness" or "homeless" means a condition where an individual lacks a fixed, regular, and adequate

nighttime residence and who has a primary nighttime residence that is:

(a) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations;

(b) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

(c) A private residence where the individual stays as a transient invitee.

~~((30))~~ (31) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

~~((31))~~ (32) "Minor child" means a biological or adopted child of the offender who is under age eighteen at the time of the offender's current offense.

~~((32))~~ (33) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under this title and Title 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

~~((33))~~ (34) "Nonviolent offense" means an offense which is not a violent offense.

~~((34))~~ (35) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanant or gross misdemeanant probationer ordered by a superior court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and supervised by the department pursuant to RCW 9.94A.501 and 9.94A.5011. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

~~((35))~~ (36) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention, electronic monitoring, or work crew has been ordered by the court or home detention has been ordered by the department as part of the parenting program, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, electronic monitoring, and a combination of work crew, electronic monitoring, and home detention.

~~((36))~~ (37) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

~~((37))~~ (38) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection ~~((37))~~ (38)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

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~~((38))~~ (39) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

~~((39))~~ (40) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

~~((40))~~ (41) "Public school" has the same meaning as in RCW 28A.150.010.

~~((41))~~ (42) "Repetitive domestic violence offense" means any:

(a)(i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;

(ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;

(iii) Domestic violence violation of a protection order under chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense;

(iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or

(v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

(b) Any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

~~((42))~~ (43) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

~~((43))~~ (44) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

~~((44))~~ (45) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

~~((45))~~ (46) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

~~((46))~~ (47) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080;

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or

(v) A felony violation of RCW 9A.44.132(1) (failure to register) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register) on at least one prior occasion;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

~~((47))~~ (48) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

~~((48))~~ (49) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((49))~~ (50) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

~~((50))~~ (51) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

~~((51))~~ (52) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

~~((52))~~ (53) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

~~((53))~~ (54) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

~~((54))~~ (55) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

~~((55))~~ (56) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

~~((56))~~ (57) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

~~((57))~~ (58) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

**Sec. 2.** RCW 9.94A.734 and 2010 c 224 s 9 are each amended to read as follows:

(1) Home detention may not be imposed for offenders convicted of the following offenses, unless imposed as partial confinement in the department's parenting program under RCW 9.94A.6551:

(a) A violent offense;

(b) Any sex offense;

(c) Any drug offense;

(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;

(e) Assault in the third degree as defined in RCW 9A.36.031;

(f) Assault of a child in the third degree;

(g) Unlawful imprisonment as defined in RCW 9A.40.040; or

(h) Harassment as defined in RCW 9A.46.020.

Home detention may be imposed for offenders convicted of possession of a controlled substance under RCW 69.50.4013 or forged prescription for a controlled substance under RCW 69.50.403 if the offender fulfills the participation conditions set forth in this section and is monitored for drug use by a treatment alternatives to street crime program or a comparable court or agency-referred program.

(2) Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 or residential burglary conditioned upon the offender:

(a) Successfully completing twenty-one days in a work release program;

(b) Having no convictions for burglary in the second degree or residential burglary during the preceding two years and not more than two prior convictions for burglary or residential burglary;

(c) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(d) Having no prior charges of escape; and

(e) Fulfilling the other conditions of the home detention program.

(3) Home detention may be imposed for offenders convicted of taking a motor vehicle without permission in the second degree as defined in RCW 9A.56.075, theft of a motor vehicle as defined under RCW 9A.56.065, or possession of a stolen motor vehicle as defined under RCW 9A.56.068 conditioned upon the offender:

(a) Having no convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle during the preceding five years and not more than two prior convictions for taking a motor vehicle without permission, theft of a motor vehicle or possession of a stolen motor vehicle;

(b) Having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense;

(c) Having no prior charges of escape; and

(d) Fulfilling the other conditions of the home detention program.

(4) Participation in a home detention program shall be conditioned upon:

(a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender;

(b) Abiding by the rules of the home detention program; and

(c) Compliance with court-ordered legal financial obligations.

(5) The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

(6)(a) A sentencing court shall deny the imposition of home detention if the court finds that (i) the offender has previously and knowingly violated the terms of a home detention program and (ii) the previous violation is not a technical, minor, or nonsubstantive violation.

(b) A sentencing court may deny the imposition of home detention if the court finds that (i) the offender has previously and knowingly violated the terms of a home detention program and (ii) the previous violation or violations were technical, minor, or nonsubstantive violations.

(7) A home detention program must be administered by a monitoring agency that meets the conditions described in section 3 of this act.

NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A RCW to read as follows:



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(1) A supervising agency must establish terms and conditions of electronic monitoring for each individual subject to electronic monitoring under the agency's jurisdiction. The supervising agency must communicate those terms and conditions to the monitoring agency. A supervising agency must also establish protocols for when and how a monitoring agency must notify the supervising agency when a violation of the terms and conditions occurs. A monitoring agency must comply with the terms and conditions as established by the supervising agency.

(2) A monitoring agency shall:

(a) Provide notification within twenty-four hours to the court or other supervising agency when the monitoring agency discovers that the monitored individual is unaccounted for, or is beyond an approved location, for twenty-four consecutive hours. Notification shall also be provided to the probation department, the prosecuting attorney, local law enforcement, the local detention facility, or the department, as applicable;

(b) Establish geographic boundaries consistent with court-ordered activities and report substantive violations of those boundaries;

(c) Verify the location of the offender through in-person contact on a random basis at least once per month; and

(d) Report to the supervising agency or other appropriate authority any known violation of the law or court-ordered condition.

(3) In addition, a private monitoring agency shall:

(a) Have detailed contingency plans for the monitoring agency's operation with provisions for power outage, loss of telephone service, fire, flood, malfunction of equipment, death, incapacitation or personal emergency of a monitor, and financial insolvency of the monitoring agency;

(b) Prohibit certain relationships between a monitored individual and a monitoring agency, including:

(i) Personal associations between a monitored individual and a monitoring agency or agency employee;

(ii) A monitoring agency or employee entering into another business relationship with a monitored individual or monitored individual's family during the monitoring; and

(iii) A monitoring agency or employee employing a monitored individual for at least one year after the termination of the monitoring;

(c) Not employ or be owned by any person convicted of a felony offense within the past four years; and

(d) Obtain a background check through the Washington state patrol for every partner, director, officer, owner, employee, or operator of the monitoring agency, at the monitoring agency's expense.

(4) A private monitoring agency that fails to comply with any of the requirements in this section may be subject to a civil penalty, as determined by a court of competent jurisdiction or a court administrator, in an amount of not more than one thousand dollars for each violation, in addition to any penalties imposed by contract. A court or court administrator may cancel a contract with a monitoring agency for any violation by the monitoring agency.

(5)(a) A court that receives notice of a violation by a monitored individual of the terms of electronic monitoring or home detention shall note and maintain a record of the violation in the court file.

(b)(i) The presiding judge of a court must notify the administrative office of the courts if:

(A) The court or court administrator decides it will not allow use of a particular monitoring agency by persons ordered to comply with an electronic monitoring or home detention program; and

(B) The court or court administrator, after previously deciding not to allow use of a particular monitoring agency, decides to resume allowing use of the monitoring agency by persons ordered to comply with a home detention program.

(ii) In either case, the court or court administrator must include in its notice the reasons for the court's decision.

(6) The administrative office of the courts shall, after receiving notice pursuant to subsection (5) of this section, transmit the notice to all superior courts and courts of limited jurisdiction in the state, and any law enforcement or corrections agency that has requested such notification.

(7) The courts, the administrative office of the courts, and their employees and agents are not liable for acts or omissions pursuant to subsections (5) and (6) of this section absent a showing of gross negligence or bad faith.

(8) For the purposes of this section:

(a) A "monitoring agency" means an entity, private or public, which electronically monitors an individual, pursuant to an electronic monitoring or home detention program, including the department of corrections, a sheriff's office, a police department, a local detention facility, or a private entity; and

(b) A "supervising agency" means the public entity that authorized, approved, administers or manages, whether pretrial or posttrial, the home detention or electronic monitoring program of an individual and has jurisdiction and control over the monitored individual. A supervising agency may also be a monitoring agency.

(9) All government contracts with a private monitoring agency to provide electronic monitoring or home detention must be in writing and may provide contractual penalties in addition to those provided under this act.

**NEW SECTION. Sec. 4.** A new section is added to chapter 9.94A RCW to read as follows:

(1) By December 1, 2015, the administrative office of the courts shall create a pattern form order for use by a court in cases where a court orders a person to comply with a home detention program.

(2) The court shall provide a copy of the form order to the person ordered to comply with a home detention program. The form order must include the following:

(a) In a conspicuous location, a notice of criminal penalties resulting for a violation of the terms and conditions of a home detention program; and

(b) Language stating that a person may leave his or her residence for specific purposes only as ordered by the court, with a list of common purposes, such as school, employment, treatment, counseling, programming, or other activities from which a court may select.

(3) When a court orders a person to comply with the terms of a home detention program, the court must, in addition to its order, complete the form order created pursuant to this section to notify the person of criminal penalties associated with violation of the terms and conditions of the program and of any express permission granted for absence from the residence.

**Sec. 5.** RCW 10.21.030 and 2014 c 24 s 2 are each amended to read as follows:

(1) The judicial officer may at any time amend the order to impose additional or different conditions of release. The conditions imposed under this chapter supplement but do not supplant provisions of law allowing the imposition of conditions to assure the appearance of the defendant at trial or to prevent interference with the administration of justice.

(2) Appropriate conditions of release under this chapter include, but are not limited to, the following:

(a) The defendant may be placed in the custody of a pretrial release program;

(b) The defendant may have restrictions placed upon travel, association, or place of abode during the period of release;

(c) The defendant may be required to comply with a specified curfew;

(d) The defendant may be required to return to custody during specified hours or to be placed on electronic monitoring, as defined in RCW 9.94A.030, if available. The defendant, if convicted, may not have the period of incarceration reduced by the number of days spent on electronic monitoring;

(e) The defendant may be required to comply with a program of home detention, as defined in RCW 9.94A.030;

(f) The defendant may be prohibited from approaching or communicating in any manner with particular persons or classes of persons;

~~((h))~~ (g) The defendant may be prohibited from going to certain geographical areas or premises;

~~((g))~~ (h) The defendant may be prohibited from possessing any dangerous weapons or firearms;

~~((h))~~ (i) The defendant may be prohibited from possessing or consuming any intoxicating liquors or drugs not prescribed to the defendant. The defendant may be required to submit to testing to determine the defendant's compliance with this condition;

~~((h))~~ (j) The defendant may be prohibited from operating a motor vehicle that is not equipped with an ignition interlock device;

~~((h))~~ (k) The defendant may be required to report regularly to and remain under the supervision of an officer of the court or other person or agency; and

~~((h))~~ (l) The defendant may be prohibited from committing any violations of criminal law.

**NEW SECTION. Sec. 6.** A new section is added to chapter 10.21 RCW to read as follows:

Under this chapter, "home detention" means any program meeting the definition of home detention in RCW 9.94A.030, and complying with the requirements of section 3 of this act.

**Sec. 7.** RCW 9.94A.704 and 2014 c 35 s 1 are each amended to read as follows:

(1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

(a) Report as directed to a community corrections officer;

(b) Remain within prescribed geographical boundaries;

(c) Notify the community corrections officer of any change in the offender's address or employment;

(d) Pay the supervision fee assessment; and

(e) Disclose the fact of supervision to any mental health or chemical dependency treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense, the department may:

(a) Require the offender to refrain from direct or indirect contact with the victim of the crime or immediate family member of the victim of the crime. If a victim or an immediate family member of a victim has requested that the offender not contact him or her after notice as provided in RCW 72.09.340, the department shall require the offender to refrain from contact with the requestor. Where the victim is a minor, the parent or guardian of the victim may make a request on the victim's behalf.

(b) Impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" (~~means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology~~) has the same meaning as in RCW 9.94A.030.

(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.

(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

(b) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the offender's risk of reoffending, or the safety of the community.

(8) The department shall notify the offender in writing upon community custody intake of the department's violation process.

(9) The department may require offenders to pay for special services rendered including electronic monitoring, day reporting, and telephone reporting, dependent on the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(10)(a) When a sex offender has been sentenced pursuant to RCW 9.94A.507, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's risk to community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose conditions in addition to court-ordered conditions. The board must consider and may impose department-recommended conditions. The board must impose a condition requiring the offender to refrain from contact with the victim or immediate family member of the victim as provided in subsection (5)(a) of this section.

(c) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

(i) The crime of conviction;

(ii) The offender's risk of reoffending;

(iii) The safety of the community.

(d) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the

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offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(11) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

**Sec. 8.** RCW 26.50.010 and 2008 c 6 s 406 are each amended to read as follows:

As used in this chapter, the following terms shall have the meanings given them:

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

(2) "Family or household members" means spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(4) "Court" includes the superior, district, and municipal courts of the state of Washington.

(5) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

(6) "Electronic monitoring" (~~means a program in which a person's presence at a particular location is monitored from a remote location by use of electronic equipment~~) has the same meaning as in RCW 9.94A.030.

(7) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items.

**Sec. 9.** RCW 10.99.040 and 2012 c 223 s 3 are each amended to read as follows:

(1) Because of the serious nature of domestic violence, the court in domestic violence actions:

(a) Shall not dismiss any charge or delay disposition because of concurrent dissolution or other civil proceedings;

(b) Shall not require proof that either party is seeking a dissolution of marriage prior to instigation of criminal proceedings;

(c) Shall waive any requirement that the victim's location be disclosed to any person, other than the attorney of a criminal defendant, upon a showing that there is a possibility of further violence: PROVIDED, That the court may order a criminal defense attorney not to disclose to his or her client the victim's location; and

(d) Shall identify by any reasonable means on docket sheets those criminal actions arising from acts of domestic violence.

(2)(a) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when any person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial on bail or personal recognizance, the court authorizing the release may prohibit that person from having any contact with the victim. The jurisdiction authorizing the release shall determine whether that person should be prohibited from having any contact with the victim. If there is no outstanding restraining or protective order prohibiting that person from having contact with the victim, the court authorizing release may issue, by telephone, a no-contact order prohibiting the person charged or arrested from having contact with the victim or from knowingly coming within, or knowingly remaining within, a specified distance of a location.

(b) In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(c) The no-contact order shall also be issued in writing as soon as possible, and shall state that it may be extended as provided in subsection (3) of this section. By January 1, 2011, the administrative office of the courts shall develop a pattern form for all no-contact orders issued under this chapter. A no-contact order issued under this chapter must substantially comply with the pattern form developed by the administrative office of the courts.

(3) At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. So long as the court finds probable cause, the court may issue or extend a no-contact order even if the defendant fails to appear at arraignment. The no-contact order shall terminate if the defendant is acquitted or the charges are dismissed. If a no-contact order is issued or extended, the court may also include in the conditions of release a requirement that the defendant submit to electronic monitoring as defined in RCW 9.94A.030. If electronic monitoring is ordered, the court shall specify who shall provide the monitoring services, and the terms under which the monitoring shall be performed. Upon conviction, the court may require as a condition of the sentence that the defendant reimburse the providing agency for the costs of the electronic monitoring.

(4)(a) Willful violation of a court order issued under subsection (2), (3), or (7) of this section is punishable under RCW 26.50.110.

(b) The written order releasing the person charged or arrested shall contain the court's directives and shall bear the legend: "Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order."

(c) A certified copy of the order shall be provided to the victim.

(5) If a no-contact order has been issued prior to charging, that order shall expire at arraignment or within seventy-two hours if charges are not filed.

(6) Whenever a no-contact order is issued, modified, or terminated under subsection (2) or (3) of this section, the clerk of the court shall forward a copy of the order on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order the law enforcement agency shall enter the order for one year or until the expiration date specified on the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the computer-based criminal intelligence information

system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any jurisdiction in the state. Upon receipt of notice that an order has been terminated under subsection (3) of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system.

(7) All courts shall develop policies and procedures by January 1, 2011, to grant victims a process to modify or rescind a no-contact order issued under this chapter. The administrative office of the courts shall develop a model policy to assist the courts in implementing the requirements of this subsection.

**Sec. 10.** RCW 9.94A.505 and 2010 c 224 s 4 are each amended to read as follows:

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

(iii) RCW 9.94A.570, relating to persistent offenders;

(iv) RCW 9.94A.540, relating to mandatory minimum terms;

(v) RCW 9.94A.650, relating to the first-time offender waiver;

(vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(viii) RCW 9.94A.655, relating to the parenting sentencing alternative;

(ix) RCW 9.94A.507, relating to certain sex offenses;

(x) RCW 9.94A.535, relating to exceptional sentences;

(xi) RCW 9.94A.589, relating to consecutive and concurrent sentences;

(xii) RCW 9.94A.603, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that

confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The sentencing court shall not give the offender credit for any time the offender was required to comply with an electronic monitoring program prior to sentencing if the offender was convicted of one of the following offenses:

(a) A violent offense;

(b) Any sex offense;

(c) Any drug offense;

(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;

(e) Assault in the third degree as defined in RCW 9A.36.031;

(f) Assault of a child in the third degree;

(g) Unlawful imprisonment as defined in RCW 9A.40.040; or

(h) Harassment as defined in RCW 9A.46.020.

(8) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

~~((8))~~ (9) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

~~((9))~~ (10) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

**Sec. 11.** RCW 9A.76.130 and 2011 c 336 s 403 are each amended to read as follows:

(1) A person is guilty of escape in the third degree if he or she:

(a) Escapes from custody; or

(b) Knowingly violates the terms of an electronic monitoring program.

(2) Escape in the third degree is a ~~(gross)~~ misdemeanor, except as provided in subsection (3) of this section.

(3)(a) If the person has one prior conviction for escape in the third degree, escape in the third degree is a gross misdemeanor.

(b) If the person has two or more prior convictions for escape in the third degree, escape in the third degree is a class C felony.

NEW SECTION. **Sec. 12.** A new section is added to chapter 10.21 RCW to read as follows:

A monitoring agency, as defined in section 3 of this act, may not agree to monitor pursuant to home detention or electronic monitoring an offender who is currently awaiting trial for a violent or sex offense, as defined in RCW 9.94A.030, unless the defendant's release before trial is secured with a payment of bail. If bail is revoked by the court or the bail bond agency, the court shall note the reason for the revocation in the court file.

NEW SECTION. **Sec. 13.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

Senator Padden spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Padden to Engrossed House Bill No. 1943.

The motion by Senator Padden carried and the striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "Relating to" strike the remainder of the title and insert "electronic monitoring; amending RCW 9.94A.030, 9.94A.734, 10.21.030, 9.94A.704, 26.50.010, 10.99.040, 9.94A.505, and 9A.76.130; adding new sections to

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chapter 9.94A RCW; adding new sections to chapter 10.21 RCW; and prescribing penalties."

MOTION

On motion of Senator Padden, the rules were suspended, Engrossed House Bill No. 1943 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Padden spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 1943 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 1943 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Lias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

ENGROSSED HOUSE BILL NO. 1943 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1279, by Representatives Kochmar and Gregory

Modifying the definition of legislative authority for purposes of local tourism promotion areas.

The measure was read the second time.

MOTION

On motion of Senator Brown, the rules were suspended, House Bill No. 1279 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Brown, Miloscia and Chase spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1279.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1279 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 3; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal,

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Keiser, King, Kohl-Welles, Lias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

Voting nay: Senators Baumgartner, O'Ban and Padden

HOUSE BILL NO. 1279, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1126, by House Committee on Early Learning & Human Services (originally sponsored by Representatives Kagi, MacEwen, Tarleton, Walsh, Goodman, Senn, Gregerson and Ryu)

Concerning department of early learning fatality reviews.

The measure was read the second time.

MOTION

Senator O'Ban moved that the following committee striking amendment by the Committee on Human Services, Mental Health & Housing be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 43.215 RCW to read as follows:

(1) For the purposes of this section, "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition.

(2)(a) The department shall conduct a child fatality review if a child fatality occurs in an early learning program described in RCW 43.215.400 through 43.215.450 or a licensed child care center or a licensed child care home.

(b) The department shall convene a child fatality review committee and determine the membership of the review committee. The committee shall comprise individuals with appropriate expertise, including but not limited to experts from outside the department with knowledge of early learning licensing requirements and program standards, a law enforcement officer with investigative experience, a representative from a county or state health department, and a child advocate with expertise in child fatalities. The department shall invite one parent or guardian for membership on the child fatality review committee who has had a child die in a child care setting. The department shall ensure that the fatality review team is made up of individuals who had no previous involvement in the case.

(c) The department shall allow the parents or guardians whose child's death is being reviewed to testify before the child fatality review committee.

(d) The primary purpose of the fatality review shall be the development of recommendations to the department and legislature regarding changes in licensing requirements, practice, or policy to prevent fatalities and strengthen safety and health protections for children.

(e) Upon conclusion of a child fatality review required pursuant to this section, the department shall, within one hundred eighty days following the fatality, issue a report on the results of the review, unless an extension has been granted by the governor. Reports must be distributed to the appropriate committees of the legislature, and the department shall create a public web site where all child fatality review reports required under this section must be posted and maintained. A child fatality review report completed pursuant to this section is subject to public disclosure

and must be posted on the public web site, except that confidential information may be redacted by the department consistent with the requirements of RCW 13.50.100, 68.50.105, and 74.13.500 through 74.13.525, chapter 42.56 RCW, and other applicable state and federal laws.

(3) The department shall consult with the office of the family and children's ombuds to determine if a review should be conducted in the case of a near child fatality that occurs in an early learning program described in RCW 43.215.400 through 43.215.450 or licensed child care center or licensed child care home.

(4) In any review of a child fatality or near fatality, the department and the fatality review team must have access to all records and files regarding the child or that are otherwise relevant to the review and that have been produced or retained by the early education and assistance program provider or licensed child care center or licensed family home provider.

(5) The child fatality review committee shall coordinate with local law enforcement to ensure that the fatality or near fatality review does not interfere with any ongoing or potential criminal investigation.

(6)(a) A child fatality or near fatality review completed pursuant to this section is subject to discovery in a civil or administrative proceeding, but may not be admitted into evidence or otherwise used in a civil or administrative proceeding except pursuant to this section.

(b) A department employee responsible for conducting a child fatality or near fatality review, or member of a child fatality or near fatality review team, may not be examined in a civil or administrative proceeding regarding the following:

(i) The work of the child fatality or near fatality review team;

(ii) The incident under review;

(iii) The employee's or member's statements, deliberations, thoughts, analyses, or impressions relating to the work of the child fatality or near fatality review team or the incident under review; or

(iv) Statements, deliberations, thoughts, analyses, or impressions of any other member of the child fatality or near fatality review team, or any person who provided information to the child fatality or near fatality review team, relating to the work of the child fatality or near fatality review team or the incident under review.

(c) Documents prepared by or for a child fatality or near fatality review team are inadmissible and may not be used in a civil or administrative proceeding, except that any document that exists before its use or consideration in a child fatality or near fatality review, or that is created independently of such review, does not become inadmissible merely because it is reviewed or used by a child fatality or near fatality review team. A person is not unavailable as a witness merely because the person has been interviewed by or has provided a statement for a child fatality or near fatality review, but if called as a witness, a person may not be examined regarding the person's interactions with the child fatality or near fatality review including, without limitation, whether the person was interviewed during such review, the questions that were asked during such review, and the answers that the person provided during such review. This section may not be construed as restricting a person from testifying fully in any proceeding regarding his or her knowledge of the incident under review.

(d) The restrictions in this section do not apply in a licensing or disciplinary proceeding arising from an agency's effort to revoke or suspend the license of any licensed professional based in whole or in part upon allegations of wrongdoing in connection with a minor's death or near fatality reviewed by a child fatality or near fatality review team.

(7) The department shall develop and implement procedures to carry out the requirements of this section.

(8) Nothing in this section creates a duty for the office of the family and children's ombuds under RCW 43.06A.030 as related to children in the care of an early learning program described in RCW 43.215.400 through 43.215.450, a licensed child care center, or a licensed child care home.

**Sec. 2.** RCW 43.06A.100 and 2013 c 23 s 80 are each amended to read as follows:

(1) The department of social and health services and the department of early learning shall:

~~((1))~~ (a) Allow the ombuds or the ombuds's designee to communicate privately with any child in the custody of the department of social and health services, or any child who is part of a near fatality investigation by the department of early learning, for the purposes of carrying out its duties under this chapter;

~~((2))~~ (b) Permit the ombuds or the ombuds designee physical access to state institutions serving children, and state licensed facilities or residences for the purpose of carrying out its duties under this chapter;

~~((3))~~ (c) Upon the ombuds's request, grant the ombuds or the ombuds's designee the right to access, inspect, and copy all relevant information, records, or documents in the possession or control of the department of social and health services or the department of early learning that the ombuds considers necessary in an investigation; and

~~((4))~~ (d) Grant the office of the family and children's ombuds unrestricted online access to the child welfare case ~~(and)~~ management information system ~~((CAMIS) or any successor)~~ and the department of early learning data information system for the purpose of carrying out its duties under this chapter.

(2) For the purposes of this section, "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition.

(3) Nothing in this section creates a duty for the office of the family and children's ombuds under RCW 43.06A.030 as related to children in the care of an early learning program described in RCW 43.215.400 through 43.215.450, a licensed child care center, or a licensed child care home.

NEW SECTION. Sec. 3. This act may be known and cited as the Eve Uphold act."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services, Mental Health & Housing to Engrossed Substitute House Bill No. 1126.

The motion by Senator O'Ban carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "reviews;" strike the remainder of the title and insert "amending RCW 43.06A.100; adding a new section to chapter 43.215 RCW; and creating a new section."

#### MOTION

On motion of Senator O'Ban, the rules were suspended, Engrossed Substitute House Bill No. 1126 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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Senator O'Ban spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1126 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1126 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Liias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1126 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1389, by Representatives Goodman, Griffey, Klippert, Van De Wege, Tarleton, Chandler, Morris, Lytton, Hayes and Moscoso

Addressing the scope of state fire service mobilization and ensuring compliance with existing state and federal disaster response policies.

The measure was read the second time.

MOTION

Senator Roach moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature recognizes the vital role that our state's fire service personnel play in responding not just to fires but to disasters of varying types and kinds. The legislature further recognizes that the fire service mobilization plan may be a more effective tool for use in all emergencies and disasters to which fire departments, fire districts, and regional fire protection service authorities typically respond. It is the intent of the legislature that state fire service mobilization be allowed in all incidents to which fire departments, fire districts, and regional fire protection service authorities typically respond, so long as the mobilization meets the requirements identified in the Washington state fire service mobilization plan. It is the intent of the legislature to review the use of the fire mobilization plan for emergencies and disasters other than fire suppression to determine if this policy should continue or be modified.

Sec. 2. RCW 43.43.960 and 2003 c 405 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this subchapter.

(1) "Chief" means the chief of the Washington state patrol.

(2) "State fire marshal" means the director of fire protection in the Washington state patrol.

(3) "Fire chief" includes the chief officer of a statutorily authorized fire agency, or the fire chief's authorized representative. Also included are the department of natural resources fire control chief, and the department of natural resources regional managers.

(4) "Jurisdiction" means state, county, city, fire district, regional fire protection service authority, or port district (~~firefighting~~) units, or other units covered by this chapter.

(5) "Mobilization" means that (~~firefighting~~) all risk resources regularly provided by fire departments, fire districts, and regional fire protection service authorities beyond those available through existing agreements will be requested and, when available, sent in response to an emergency or disaster situation that has exceeded the capabilities of available local resources. During a large scale emergency, mobilization includes the redistribution of regional or statewide (~~firefighting~~) risk resources to either direct emergency incident assignments or to assignment in communities where (~~firefighting~~) resources are needed. Fire department resources may not be mobilized to assist law enforcement with police activities during a civil protest or demonstration, however, fire departments, fire districts, and regional fire protection service authorities are not restricted from providing medical care or aid and firefighting when mobilized for any purpose.

When mobilization is declared and authorized as provided in this chapter, all (~~firefighting~~) risk resources regularly provided by fire departments, fire districts, and regional fire protection service authorities including those of the host fire protection authorities, i.e. incident jurisdiction, shall be deemed as mobilized under this chapter, including those that responded earlier under existing mutual aid or other agreement. All nonhost fire protection authorities providing (~~firefighting~~) resources in response to a mobilization declaration shall be eligible for expense reimbursement as provided by this chapter from the time of the mobilization declaration.

This chapter shall not reduce or suspend the authority or responsibility of the department of natural resources under chapter 76.04 RCW.

(6) "Mutual aid" means emergency interagency assistance provided without compensation under an agreement between jurisdictions under chapter 39.34 RCW.

(7) "All risk resources" means those resources regularly provided by fire departments, fire districts, and regional fire protection service authorities required to respond to natural or man-made incidents, including but not limited to:

(a) Wild land fires;

(b) Landslides;

(c) Earthquakes;

(d) Floods; and

(e) Contagious diseases.

Sec. 3. RCW 43.43.961 and 2003 c 405 s 2 are each amended to read as follows:

Because of the possibility of the occurrence of disastrous fires or other disasters of unprecedented size and destructiveness, the need to insure that the state is adequately prepared to respond to such a fire or disaster, the need to establish a mechanism and a procedure to provide for reimbursement to state agencies and local (~~firefighting~~) agencies that respond to help others in time of need or to a host fire district that experiences expenses beyond the resources of the fire district, and generally to protect the public peace, health, safety, lives, and property of the people of Washington, it is hereby declared necessary to:

(1) Provide the policy and organizational structure for large scale mobilization of (~~firefighting~~) all risk resources in the state

through creation of the Washington state fire services mobilization plan;

(2) Confer upon the chief the powers provided herein;

(3) Provide a means for reimbursement to state agencies and local fire jurisdictions that incur expenses when mobilized by the chief under the Washington state fire services mobilization plan; and

(4) Provide for reimbursement of the host fire department or fire protection district when it has: (a) Exhausted all of its resources; and (b) invoked its local mutual aid network and exhausted those resources. Upon implementation of state fire mobilization, the host district resources shall become state fire mobilization resources consistent with the fire mobilization plan.

It is the intent of the legislature that mutual aid and other interlocal agreements providing for enhanced emergency response be encouraged as essential to the public peace, safety, health, and welfare, and for the protection of the lives and property of the people of the state of Washington. If possible, mutual aid agreements should be without stated limitations as to resources available, time, or area. Nothing in this chapter shall be construed or interpreted to limit the eligibility of any nonhost fire protection authority for reimbursement of expenses incurred in providing ~~((firefighting))~~ all risk resources for mobilization provided that the mobilization must meet the requirements identified in the Washington state fire service mobilization plan.

NEW SECTION. Sec. 4. A new section is added to chapter 43.43 RCW to read as follows:

The chief of the Washington state patrol must report on an annual basis the following information for each emergency or disaster in which the Washington state fire service mobilization plan was used for purposes other than fire suppression, and reimbursement was made under RCW 43.43.961:

(1) The type and nature of the disaster or emergency;

(2) The reasons why the host jurisdiction and mutual aid resources were exhausted;

(3) The additional risk resources provided under the mobilization plan;

(4) The cost incurred by the state patrol;

(5) The amount of reimbursement made under RCW 43.43.961 to the host jurisdiction and to each nonhost jurisdiction providing all risk resources; and

(6) An assessment and any recommendations of actions that can be taken by the host jurisdiction and its mutual aid network to prevent future use of the fire mobilization plan for similar disasters or emergencies.

NEW SECTION. Sec. 5. This act expires July 1, 2019."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to House Bill No. 1389.

The motion by Senator Roach carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 3 of the title, after "policies;" strike the remainder of the title and insert "amending RCW 43.43.960 and 43.43.961; adding a new section to chapter 43.43 RCW; creating a new section; and providing an expiration date."

#### MOTION

On motion of Senator Roach, the rules were suspended, House Bill No. 1389 as amended by the Senate was advanced to

third reading, the second reading considered the third and the bill was placed on final passage.

Senators Roach, Lias and Pearson spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1389 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1389 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Lias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

HOUSE BILL NO. 1389 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 1077, by Representatives Kirby, Ryu, McBride and Stanford

Regulating credit for reinsurance.

The measure was read the second time.

#### MOTION

On motion of Senator Schoesler, the rules were suspended, House Bill No. 1077 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Schoesler and Mullet spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1077.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1077 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Lias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

HOUSE BILL NO. 1077, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.



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ENGROSSED SUBSTITUTE HOUSE BILL NO. 1713, by House Committee on Judiciary (originally sponsored by Representatives Cody, Harris, Jinkins, Moeller, Tharinger, Appleton, Ortiz-Self and Pollet)

Integrating the treatment systems for mental health and chemical dependency.

The measure was read the second time.

#### MOTION

Senator O'Ban moved that the following committee striking amendment by the Committee on Ways & Means be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) In 2014, the legislature required the integration of the treatment systems for chemical dependency and mental health into behavioral health organizations beginning April 1, 2016. There currently exists involuntary treatment for mental health and limited involuntary treatment for chemical dependency. With the integration of mental health and chemical dependency into a behavioral health treatment system, it is the intention of the legislature to determine the best course of action for integration of the two involuntary treatment systems into one integrated system.

(2) The Washington state institute for public policy shall complete an evaluation of involuntary treatment systems for chemical dependency and shall submit a report to the appropriate committees of the legislature by December 31, 2015. To the extent it is not duplicative of other studies, the report must study how other states have implemented involuntary chemical dependency treatment with respect to emergency and nonemergency detentions. The study must include, but not be limited to:

- (a) Court processes for referral for involuntary chemical dependency treatment;
- (b) Statutory lengths of stay;
- (c) Types of professionals providing evaluation and referral for treatment;
- (d) Required qualifications of professionals providing evaluation and referral for treatment;
- (e) Number of beds per one thousand residents;
- (f) Less restrictive alternatives to detention; and
- (g) Integration of involuntary mental health and chemical dependency treatment processes.

(3) The Washington state institute for public policy shall update its analyses of Washington's integrated crisis response pilots published in 2007, 2008, and 2011 using the institute's most recent cost benefit analysis methodology."

#### MOTION

Senator Darneille moved that the following amendment by Senators Darneille and Parlette to the committee striking amendment be adopted:

On page 1, after line 34 of the amendment, insert the following:

"**Sec. 2.** RCW 71.24.025 and 2014 c 225 s 10 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020;

(b) Being gravely disabled as defined in RCW 71.05.020 or, in the case of a child, a gravely disabled minor as defined in RCW 71.34.020; or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

(2) "Available resources" means funds appropriated for the purpose of providing community mental health programs, federal funds, except those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals.

(3) "Behavioral health organization" means any county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region.

(4) "Behavioral health services" means mental health services as described in this chapter and chapter 71.36 RCW and ~~((chemical dependency))~~ substance use disorder treatment services as described in this chapter and chapter 70.96A RCW.

(5) "Child" means a person under the age of eighteen years.

(6) "Chronically mentally ill adult" or "adult who is chronically mentally ill" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(7) "Clubhouse" means a community-based program that provides rehabilitation services and is certified by the department of social and health services.

(8) ~~((Community mental health program" means all mental health services, activities, or programs using available resources.~~

~~(9))~~ "Community mental health service delivery system" means public, private, or tribal agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from public sources.

~~((10))~~ (9) "Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for children who are acutely mentally ill or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient

information between service providers, recovery services, and other services determined by behavioral health organizations.

~~((11))~~ (10) "Consensus-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, and may have anecdotal or case study support, or that is agreed but not possible to perform studies with random assignment and controlled groups.

~~((12))~~ (11) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

~~((13))~~ (12) "Department" means the department of social and health services.

~~((14))~~ (13) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

~~((15))~~ (14) "Emerging best practice" or "promising practice" means a program or practice that, based on statistical analyses or a well established theory of change, shows potential for meeting the evidence-based or research-based criteria, which may include the use of a program that is evidence-based for outcomes other than those listed in subsection ~~((16))~~ (15) of this section.

~~((16))~~ (15) "Evidence-based" means a program or practice that has been tested in heterogeneous or intended populations with multiple randomized, or statistically controlled evaluations, or both; or one large multiple site randomized, or statistically controlled evaluation, or both, where the weight of the evidence from a systemic review demonstrates sustained improvements in at least one outcome. "Evidence-based" also means a program or practice that can be implemented with a set of procedures to allow successful replication in Washington and, when possible, is determined to be cost-beneficial.

~~((17))~~ (16) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 or 70.96A RCW or an entity deemed to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department, or tribal attestation that meets state minimum standards, or persons licensed under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

~~((18))~~ (17) "Long-term inpatient care" means inpatient services for persons committed for, or voluntarily receiving intensive treatment for, periods of ninety days or greater under chapter 71.05 RCW. "Long-term inpatient care" as used in this chapter does not include: (a) Services for individuals committed under chapter 71.05 RCW who are receiving services pursuant to a conditional release or a court-ordered less restrictive alternative to detention; or (b) services for individuals voluntarily receiving less restrictive alternative treatment on the grounds of the state hospital.

~~((19))~~ (18) "Mental health services" means all services provided by behavioral health organizations and other services provided by the state for persons who are mentally ill.

~~((20))~~ (19) "Mentally ill persons," "persons who are mentally ill," and "the mentally ill" mean persons and conditions defined in subsections (1), (6), (27), and (28)~~(, and (29))~~ of this section.

~~((21))~~ (20) "Recovery" means the process in which people are able to live, work, learn, and participate fully in their communities.

~~((22))~~ (21) "Registration records" include all the records of the department, behavioral health organizations, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

~~((23))~~ (22) "Research-based" means a program or practice that has been tested with a single randomized, or statistically controlled evaluation, or both, demonstrating sustained desirable outcomes; or where the weight of the evidence from a systemic review supports sustained outcomes as described in subsection ~~((16))~~ (15) of this section but does not meet the full criteria for evidence-based.

~~((24))~~ (23) "Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for persons who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the behavioral health organization to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service persons who are mentally ill in nursing homes, assisted living facilities, and adult family homes, and may include outpatient services provided as an element in a package of services in a supported housing model. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

~~((25))~~ (24) "Resilience" means the personal and community qualities that enable individuals to rebound from adversity, trauma, tragedy, threats, or other stresses, and to live productive lives.

~~((26))~~ (25) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for: (a) Adults and children who are acutely mentally ill; (b) adults who are chronically mentally ill; (c) children who are severely emotionally disturbed; or (d) adults who are seriously disturbed and determined solely by a behavioral health organization to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding enrollment of adults and children who are mentally ill in services and their individual service plan to designated mental health professionals, evaluation and treatment facilities, and others as determined by the behavioral health organization.

~~((27))~~ (26) "Secretary" means the secretary of social and health services.

~~((28))~~ (27) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to himself or herself or others, or to the property of others, as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status, or under a less restrictive alternative order, at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

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(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in chapter 71.34 RCW, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

~~((29))~~ (28) "Severely emotionally disturbed child" or "child who is severely emotionally disturbed" means a child who has been determined by the behavioral health organization to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a caretaker who is mentally ill or inadequate;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

~~((30))~~ (29) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for: (a) Delivery of mental health services; (b) licensed service providers for the provision of mental health services; (c) residential services; and (d) community support services and resource management services.

~~((31))~~ (30) Mental health "treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by behavioral health organizations and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, behavioral health organizations, or a treatment facility if the notes or records are not available to others.

~~((32))~~ (31) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any behavioral health organization that would present a conflict of interest.

(32) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(33) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department of

social and health services as meeting standards adopted under this chapter.

(34) "Behavioral health program" means all expenditures, services, activities, or programs, including reasonable administration and overhead, designed and conducted to prevent or treat chemical dependency and mental illness.

(35) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

(36) "Designated chemical dependency specialist" means a person designated by the behavioral health organization or by the county alcoholism and other drug addiction program coordinator designated by the behavioral health organization to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

(37) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(38) "Early adopter" means a regional service area for which all of the county authorities have requested that the department and the health care authority jointly purchase medical and behavioral health services through a managed care health system as defined under RCW 71.24.380(6).

(39) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

**Sec. 3.** RCW 71.24.035 and 2014 c 225 s 11 are each amended to read as follows:

(1) The department is designated as the state ~~((mental))~~ behavioral health authority which includes recognition as the single state authority for substance use disorders and state mental health authority.

(2) The secretary shall provide for public, client, tribal, and licensed service provider participation in developing the state ~~((mental))~~ behavioral health program, developing contracts with behavioral health organizations, and any waiver request to the federal government under medicaid.

(3) The secretary shall provide for participation in developing the state ~~((mental))~~ behavioral health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state ~~((mental))~~ behavioral health program.

(4) The secretary shall be designated as the behavioral health organization if the behavioral health organization fails to meet state minimum standards or refuses to exercise responsibilities under its contract or RCW 71.24.045, until such time as a new behavioral health organization is designated.

(5) The secretary shall:

(a) Develop a biennial state ~~((mental))~~ behavioral health program that incorporates regional biennial needs assessments and regional mental health service plans and state services for adults and children with mental ~~((illness))~~ disorders or substance use disorders or both;

(b) Assure that any behavioral health organization or county community ~~((mental))~~ behavioral health program provides medically necessary services to medicaid recipients consistent with the state's medicaid state plan or federal waiver authorities, and nonmedicaid services consistent with priorities established by the department;

(c) Develop and adopt rules establishing state minimum standards for the delivery of ~~((mental))~~ behavioral health services pursuant to RCW 71.24.037 including, but not limited to:

(i) Licensed service providers. These rules shall permit a county-operated ~~((mental))~~ behavioral health program to be licensed as a service provider subject to compliance with applicable statutes and rules. The secretary shall provide for deeming of compliance with state minimum standards for those entities accredited by recognized behavioral health accrediting bodies recognized and having a current agreement with the department;

(ii) Inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of persons who are minorities, elderly, disabled, children, low-income, and parents who are respondents in dependency cases are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards which shall be used in contracting with behavioral health organizations. The standard contract shall include a maximum fund balance, which shall be consistent with that required by federal regulations or waiver stipulations;

~~(f)~~ Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including managed care contracts for behavioral health services, contracts entered into under RCW 74.09.522, and contracts with public and private agencies, organizations, and individuals to pay them for behavioral health services;

~~(g)~~ Establish, to the extent possible, a standardized auditing procedure which is designed to assure compliance with contractual agreements authorized by this chapter and minimizes paperwork requirements of behavioral health organizations and licensed service providers. The audit procedure shall focus on the outcomes of service as provided in RCW 43.20A.895, 70.320.020, and 71.36.025;

~~((g))~~ (h) Develop and maintain an information system to be used by the state and behavioral health organizations that includes a tracking method which allows the department and behavioral health organizations to identify ~~((mental))~~ behavioral health clients' participation in any ~~((mental))~~ behavioral health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and chapter 70.02 RCW;

~~((h))~~ (i) License service providers who meet state minimum standards;

~~((i))~~ (j) Periodically monitor the compliance of behavioral health organizations and their network of licensed service providers for compliance with the contract between the department, the behavioral health organization, and federal and state rules at reasonable times and in a reasonable manner;

~~((j))~~ (k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

~~((k))~~ (l) Monitor and audit behavioral health organizations and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

~~((l))~~ (m) Adopt such rules as are necessary to implement the department's responsibilities under this chapter;

~~((m))~~ (n) License or certify crisis stabilization units that meet state minimum standards;

~~((n))~~ (o) License or certify clubhouses that meet state minimum standards; ~~(and~~

~~(o))~~ (p) License or certify triage facilities that meet state minimum standards; and

(q) Administer or supervise the administration of the provisions relating to persons with substance use disorders and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation.

(6) The secretary shall use available resources only for behavioral health organizations, except:

(a) To the extent authorized, and in accordance with any priorities or conditions specified, in the biennial appropriations act; or

(b) To incentivize improved performance with respect to the client outcomes established in RCW 43.20A.895, 70.320.020, and 71.36.025, integration of behavioral health and medical services at the clinical level, and improved care coordination for individuals with complex care needs.

(7) Each behavioral health organization and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A behavioral health organization or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may be subject to the behavioral health organization contractual remedies in RCW 43.20A.894 or may have its service provider certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to: (a) The law; (b) applicable rules and regulations; (c) applicable standards; or (d) state minimum standards.

(9) The superior court may restrain any behavioral health organization or service provider from operating without a contract, certification, or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any behavioral health organization~~((s-organization))~~ or service provider refusing to consent to inspection or examination by the authority.

(11) Notwithstanding the existence or pursuit of any other remedy, the secretary may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a behavioral health organization or service provider without a contract, certification, or a license under this chapter.

~~(12) ((The standards for certification or licensure of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall otherwise assure the effectuation of the purposes of these chapters.~~

~~(13) The standards for certification or licensure of crisis stabilization units shall include standards that:~~

~~(a) Permit location of the units at a jail facility if the unit is physically separate from the general population of the jail;~~

~~(b) Require administration of the unit by mental health professionals who direct the stabilization and rehabilitation efforts; and~~

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~~(e) Provide an environment affording security appropriate with the alleged criminal behavior and necessary to protect the public safety.~~

~~(14) The standards for certification or licensure of a clubhouse shall at a minimum include:~~

~~(a) The facilities may be peer operated and must be recovery focused;~~

~~(b) Members and employees must work together;~~

~~(c) Members must have the opportunity to participate in all the work of the clubhouse, including administration, research, intake and orientation, outreach, hiring, training and evaluation of staff, public relations, advocacy, and evaluation of clubhouse effectiveness;~~

~~(d) Members and staff and ultimately the clubhouse director must be responsible for the operation of the clubhouse, central to this responsibility is the engagement of members and staff in all aspects of clubhouse operations;~~

~~(e) Clubhouse programs must be comprised of structured activities including but not limited to social skills training, vocational rehabilitation, employment training and job placement, and community resource development;~~

~~(f) Clubhouse programs must provide in-house educational programs that significantly utilize the teaching and tutoring skills of members and assist members by helping them to take advantage of adult education opportunities in the community;~~

~~(g) Clubhouse programs must focus on strengths, talents, and abilities of its members;~~

~~(h) The work ordered day may not include medication clinics, day treatment, or other therapy programs within the clubhouse.~~

~~(15)) The department shall distribute appropriated state and federal funds in accordance with any priorities, terms, or conditions specified in the appropriations act.~~

~~((16)) (13) The secretary shall assume all duties assigned to the nonparticipating behavioral health organizations under chapters 71.05 and 71.34 RCW and this chapter. Such responsibilities shall include those which would have been assigned to the nonparticipating counties in regions where there are not participating behavioral health organizations.~~

The behavioral health organizations, or the secretary's assumption of all responsibilities under chapters 71.05 and 71.34 RCW and this chapter, shall be included in all state and federal plans affecting the state ~~((mental))~~ behavioral health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

~~((17)) (14) The secretary shall:~~

(a) Disburse funds for the behavioral health organizations within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with behavioral health organizations. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) Notify behavioral health organizations of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(d) Deny all or part of the funding allocations to behavioral health organizations based solely upon formal findings of noncompliance with the terms of the behavioral health organization's contract with the department. Behavioral health organizations disputing the decision of the secretary to withhold

funding allocations are limited to the remedies provided in the department's contracts with the behavioral health organizations.

~~((18)) (15) The department, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by freestanding evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the appropriate committees of the senate and the house of representatives.~~

~~(16) The department may:~~

~~(a) Plan, establish, and maintain substance use disorder prevention and substance use disorder treatment programs as necessary or desirable;~~

~~(b) Coordinate its activities and cooperate with behavioral programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local, or private agencies in this and other states for behavioral health services and for the common advancement of substance use disorder programs;~~

~~(c) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;~~

~~(d) Keep records and engage in research and the gathering of relevant statistics; and~~

~~(e) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide substance use disorder treatment programs.~~

**Sec. 4.** RCW 70.96A.050 and 2014 c 225 s 23 are each amended to read as follows:

The department shall:

(1) Develop, encourage, and foster statewide, regional, and local plans and programs for the prevention of alcoholism and other drug addiction, treatment of persons with substance use disorders and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) Assure that any behavioral health organization managed care contract, or managed care contract under RCW 74.09.522 for behavioral health services or programs for the treatment of persons with substance use disorders and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons provides medically necessary services to medicaid recipients. This must include a continuum of mental health and ~~((chemical dependency))~~ substance use disorder services consistent with the state's medicaid plan or federal waiver authorities, and nonmedicaid services consistent with priorities established by the department;

(3) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and drug addiction, and treatment of persons with substance use disorders and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(4) Cooperate with public and private agencies in establishing and conducting programs to provide treatment for persons with substance use disorders and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons who are clients of the correctional system;

(5) Cooperate with the superintendent of public instruction, state board of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of ~~((alcoholism and other drug addiction))~~ substance use disorders, treatment of persons with substance use disorders and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education;

(6) Prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol and other psychoactive chemicals and the consequences of their use;

(7) Develop and implement, as an integral part of substance use disorder treatment programs, an educational program for use in the treatment of persons with substance use disorders, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol and other psychoactive chemicals, the consequences of their use, the principles of recovery, and HIV and AIDS;

(8) Organize and foster training programs for persons engaged in treatment of persons with substance use disorders, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(9) Sponsor and encourage research into the causes and nature of ~~((alcoholism and other drug addiction))~~ substance use disorders, treatment of persons with substance use disorders, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, and serve as a clearinghouse for information relating to ~~((alcoholism or other drug addiction))~~ substance use disorders;

(10) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(11) Advise the governor in the preparation of a comprehensive plan for treatment of persons with substance use disorders, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons for inclusion in the state's comprehensive health plan;

(12) Review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to substance use disorders;

(13) Assist in the development of, and cooperate with, programs for alcohol and other psychoactive chemical education and treatment for employees of state and local governments and businesses and industries in the state;

(14) Use the support and assistance of interested persons in the community to encourage persons with substance use disorders voluntarily to undergo treatment;

(15) Cooperate with public and private agencies in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;

(16) Encourage general hospitals and other appropriate health facilities to admit without discrimination persons with substance use disorders, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and to provide them with adequate and appropriate treatment;

(17) Encourage all health and disability insurance programs to include ~~((alcoholism and other drug addiction))~~ substance use disorders as a covered illness; and

(18) Organize and sponsor a statewide program to help court personnel, including judges, better understand ~~((the disease of~~

~~alcoholism and other drug addiction))~~ substance use disorders and the uses of ~~((chemical dependency))~~ substance use disorder treatment programs.

**Sec. 5.** RCW 71.24.037 and 2001 c 323 s 11 are each amended to read as follows:

(1) The secretary shall by rule establish state minimum standards for licensed behavioral health service providers and services, whether those service providers and services are licensed to provide solely mental health services, substance use disorder treatment services, or services to persons with co-occurring disorders.

(2) Minimum standards for licensed behavioral health service providers shall, at a minimum, establish: Qualifications for staff providing services directly to ((mentally ill)) persons with mental disorders, substance use disorders, or both, the intended result of each service, and the rights and responsibilities of persons receiving ((mental)) behavioral health services pursuant to this chapter. The secretary shall provide for deeming of licensed behavioral health service providers as meeting state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department.

(3) Minimum standards for community support services and resource management services shall include at least qualifications for resource management services, client tracking systems, and the transfer of patient information between behavioral health service providers.

(4) The department may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(5) No licensed behavioral health service provider may advertise or represent itself as a licensed behavioral health service provider if approval has not been granted, has been denied, suspended, revoked, or canceled.

(6) Licensure as a behavioral health service provider is effective for one calendar year from the date of issuance of the license. The license must specify the types of services provided by the behavioral health service provider that meet the standards adopted under this chapter. Renewal of a license must be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(7) Licensure as a licensed behavioral health service provider must specify the types of services provided that meet the standards adopted under this chapter. Renewal of a license must be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(8) Licensed behavioral health service providers may not provide types of services for which the licensed behavioral health service provider has not been certified. Licensed behavioral health service providers may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

(9) The department periodically shall inspect licensed behavioral health service providers at reasonable times and in a reasonable manner.

(10) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any licensed behavioral health service provider refusing to consent to inspection or

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examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

(11) The department shall maintain and periodically publish a current list of licensed behavioral health service providers.

(12) Each licensed behavioral health service provider shall file with the department upon request, data, statistics, schedules, and information the department reasonably requires. A licensed behavioral health service provider that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may have its license revoked or suspended.

(13) The department shall use the data provided in subsection (12) of this section to evaluate each program that admits children to inpatient substance use disorder treatment upon application of their parents. The evaluation must be done at least once every twelve months. In addition, the department shall randomly select and review the information on individual children who are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into substance use disorder treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

**Sec. 6.** RCW 70.96A.090 and 2005 c 70 s 2 are each amended to read as follows:

~~(1) (The department shall adopt rules establishing standards for approved treatment programs, the process for the review and inspection program applying to the department for certification as an approved treatment program, and fixing the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.~~

~~(2) The department may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.~~

~~(3) No treatment program may advertise or represent itself as an approved treatment program if approval has not been granted, has been denied, suspended, revoked, or canceled.~~

~~(4) Certification as an approved treatment program is effective for one calendar year from the date of issuance of the certificate. The certification shall specify the types of services provided by the approved treatment program that meet the standards adopted under this chapter. Renewal of certification shall be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.~~

~~(5) Approved treatment programs shall not provide alcoholism or other drug addiction treatment services for which the approved treatment program has not been certified. Approved treatment programs may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.~~

~~(6) The department periodically shall inspect approved public and private treatment programs at reasonable times and in a reasonable manner.~~

~~(7) The department shall maintain and periodically publish a current list of approved treatment programs.~~

~~(8) Each approved treatment program shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved treatment program that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of~~

~~approved treatment programs, and its certification revoked or suspended.~~

~~(9) The department shall use the data provided in subsection (8) of this section to evaluate each program that admits children to inpatient treatment upon application of their parents. The evaluation shall be done at least once every twelve months. In addition, the department shall randomly select and review the information on individual children who are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.~~

~~(10) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment program refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.~~

~~(11)(a)) All approved opiate substitution treatment programs that provide services to women who are pregnant are required to disseminate up-to-date and accurate health education information to all their pregnant clients concerning the possible addiction and health risks that their opiate substitution treatment may have on their baby. All pregnant clients must also be advised of the risks to both them and their baby associated with not remaining on the opiate substitute program. The information must be provided to these clients both verbally and in writing. The health education information provided to the pregnant clients must include referral options for the addicted baby.~~

~~((b)) (2) The department shall adopt rules that require all opiate treatment programs to educate all pregnant women in their program on the benefits and risks of methadone treatment to their fetus before they are provided these medications, as part of their addiction treatment. The department shall meet the requirements under this subsection within the appropriations provided for opiate treatment programs. The department, working with treatment providers and medical experts, shall develop and disseminate the educational materials to all certified opiate treatment programs.~~

**NEW SECTION. Sec. 7.** A new section is added to chapter 71.24 RCW to read as follows:

The standards for certification or licensure of evaluation and treatment facilities must include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapters 71.05 and 71.34 RCW, and must otherwise assure the effectuation of the purposes of these chapters.

**NEW SECTION. Sec. 8.** A new section is added to chapter 71.24 RCW to read as follows:

The standards for certification or licensure of crisis stabilization units must include standards that:

(1) Permit location of the units at a jail facility if the unit is physically separate from the general population of the jail;

(2) Require administration of the unit by mental health professionals who direct the stabilization and rehabilitation efforts; and

(3) Provide an environment affording security appropriate with the alleged criminal behavior and necessary to protect the public safety.

**NEW SECTION. Sec. 9.** A new section is added to chapter 71.24 RCW to read as follows:

The standards for certification or licensure of a clubhouse must at a minimum include:

(1) The facilities may be peer-operated and must be recovery-focused;

(2) Members and employees must work together;

(3) Members must have the opportunity to participate in all the work of the clubhouse, including administration, research, intake and orientation, outreach, hiring, training and evaluation of staff, public relations, advocacy, and evaluation of clubhouse effectiveness;

(4) Members and staff and ultimately the clubhouse director must be responsible for the operation of the clubhouse, central to this responsibility is the engagement of members and staff in all aspects of clubhouse operations;

(5) Clubhouse programs must be comprised of structured activities including but not limited to social skills training, vocational rehabilitation, employment training and job placement, and community resource development;

(6) Clubhouse programs must provide in-house educational programs that significantly utilize the teaching and tutoring skills of members and assist members by helping them to take advantage of adult education opportunities in the community;

(7) Clubhouse programs must focus on strengths, talents, and abilities of its members;

(8) The work-ordered day may not include medication clinics, day treatment, or other therapy programs within the clubhouse.

**Sec. 10.** RCW 71.24.385 and 2014 c 225 s 9 are each amended to read as follows:

(1) Within funds appropriated by the legislature for this purpose, behavioral health organizations shall develop the means to serve the needs of people;

(a) With mental disorders residing within the boundaries of their regional service area. Elements of the program may include:

~~((a))~~ (i) Crisis diversion services;

~~((b))~~ (ii) Evaluation and treatment and community hospital beds;

~~((c))~~ (iii) Residential treatment;

~~((d))~~ (iv) Programs for intensive community treatment;

~~((e))~~ (v) Outpatient services;

~~((f))~~ (vi) Peer support services;

~~((g))~~ (vii) Community support services;

~~((h))~~ (viii) Resource management services; and

~~((i))~~ (ix) Supported housing and supported employment services.

(b) With substance use disorders and their families, people incapacitated by alcohol or other psychoactive chemicals, and intoxicated people.

(i) Elements of the program shall include, but not necessarily be limited to, a continuum of substance use disorder treatment services that includes:

(A) Withdrawal management;

(B) Residential treatment; and

(C) Outpatient treatment.

(ii) The program may include peer support, supported housing, supported employment, crisis diversion, or recovery support services.

(iii) The department may contract for the use of an approved substance use disorder treatment program or other individual or organization if the secretary considers this to be an effective and economical course to follow.

(2) The behavioral health organization shall have the flexibility, within the funds appropriated by the legislature for this purpose and the terms of their contract, to design the mix of services that will be most effective within their service area of meeting the needs of people with ~~((mental))~~ behavioral health disorders and avoiding placement of such individuals at the state

mental hospital. Behavioral health organizations are encouraged to maximize the use of evidence-based practices and alternative resources with the goal of substantially reducing and potentially eliminating the use of institutions for mental diseases.

(3)(a) Treatment provided under this chapter must be purchased primarily through managed care contracts.

(b) Consistent with RCW 70.96A.350 (as recodified by this act), services and funding provided through the criminal justice treatment account are intended to be exempted from managed care contracting.

**Sec. 11.** RCW 70.96A.350 and 2013 2nd sp.s. c 4 s 990 are each amended to read as follows:

(1) The criminal justice treatment account is created in the state treasury. Moneys in the account may be expended solely for: (a) Substance ~~((abuse))~~ use disorder treatment and treatment support services for offenders with ~~((an addiction or a substance abuse problem))~~ a substance use disorder that, if not treated, would result in addiction, against whom charges are filed by a prosecuting attorney in Washington state; (b) the provision of ~~((drug and alcohol))~~ substance use disorder treatment services and treatment support services for nonviolent offenders within a drug court program; and (c) the administrative and overhead costs associated with the operation of a drug court ~~((; and (d) during the 2011-2013 biennium, the legislature may appropriate up to three million dollars from the account in order to offset reductions in the state general fund for treatment services provided by counties. This amount is not subject to the requirements of subsections (5) through (9) of this section. During the 2013-2015 fiscal biennium, the legislature may transfer from the criminal justice treatment account to the state general fund amounts as reflect the state savings associated with the implementation of the medicaid expansion of the federal affordable care act)).~~ Moneys in the account may be spent only after appropriation.

(2) For purposes of this section:

(a) "Treatment" means services that are critical to a participant's successful completion of his or her substance ~~((abuse))~~ use disorder treatment program, but does not include the following services: Housing other than that provided as part of an inpatient substance ~~((abuse))~~ use disorder treatment program, vocational training, and mental health counseling; and

(b) "Treatment support" means transportation to or from inpatient or outpatient treatment services when no viable alternative exists, and child care services that are necessary to ensure a participant's ability to attend outpatient treatment sessions.

(3) Revenues to the criminal justice treatment account consist of: (a) Funds transferred to the account pursuant to this section; and (b) any other revenues appropriated to or deposited in the account.

~~(4)(a) ((For the fiscal biennium beginning July 1, 2003, the state treasurer shall transfer eight million nine hundred fifty thousand dollars from the general fund into the criminal justice treatment account, divided into eight equal quarterly payments.))~~

For the fiscal year beginning July 1, 2005, and each subsequent fiscal year, the state treasurer shall transfer eight million two hundred fifty thousand dollars from the general fund to the criminal justice treatment account, divided into four equal quarterly payments. For the fiscal year beginning July 1, 2006, and each subsequent fiscal year, the amount transferred shall be increased on an annual basis by the implicit price deflator as published by the federal bureau of labor statistics.

(b) In each odd-numbered year, the legislature shall appropriate the amount transferred to the criminal justice treatment account in (a) of this subsection to the ~~((division of alcohol and substance abuse))~~ department for the purposes of subsection (5) of this section.



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(5) Moneys appropriated to the ~~((division of alcohol and substance abuse))~~ department from the criminal justice treatment account shall be distributed as specified in this subsection. The department ~~((shall serve as the fiscal agent for purposes of distribution. Until July 1, 2004, the department may not use moneys appropriated from the criminal justice treatment account for administrative expenses and shall distribute all amounts appropriated under subsection (4)(b) of this section in accordance with this subsection. Beginning in July 1, 2004, the department))~~ may retain up to three percent of the amount appropriated under subsection (4)(b) of this section for its administrative costs.

(a) Seventy percent of amounts appropriated to the ~~((division))~~ department from the account shall be distributed to counties pursuant to the distribution formula adopted under this section. The division of alcohol and substance abuse, in consultation with the department of corrections, the Washington state association of counties, the Washington state association of drug court professionals, the superior court judges' association, the Washington association of prosecuting attorneys, representatives of the criminal defense bar, representatives of substance ~~((abuse))~~ use disorder treatment providers, and any other person deemed by the ~~((division))~~ department to be necessary, shall establish a fair and reasonable methodology for distribution to counties of moneys in the criminal justice treatment account. County or regional plans submitted for the expenditure of formula funds must be approved by the panel established in (b) of this subsection.

(b) Thirty percent of the amounts appropriated to the ~~((division))~~ department from the account shall be distributed as grants for purposes of treating offenders against whom charges are filed by a county prosecuting attorney. The ~~((division))~~ department shall appoint a panel of representatives from the Washington association of prosecuting attorneys, the Washington association of sheriffs and police chiefs, the superior court judges' association, the Washington state association of counties, the Washington defender's association or the Washington association of criminal defense lawyers, the department of corrections, the Washington state association of drug court professionals, substance ~~((abuse))~~ use disorder treatment providers, and the division. The panel shall review county or regional plans for funding under (a) of this subsection and grants approved under this subsection. The panel shall attempt to ensure that treatment as funded by the grants is available to offenders statewide.

(6) The county alcohol and drug coordinator, county prosecutor, county sheriff, county superior court, a substance abuse treatment provider appointed by the county legislative authority, a member of the criminal defense bar appointed by the county legislative authority, and, in counties with a drug court, a representative of the drug court shall jointly submit a plan, approved by the county legislative authority or authorities, to the panel established in subsection (5)(b) of this section, for disposition of all the funds provided from the criminal justice treatment account within that county. The funds shall be used solely to provide approved alcohol and substance abuse treatment pursuant to RCW 70.96A.090 (as recodified by this act), treatment support services, and for the administrative and overhead costs associated with the operation of a drug court.

(a) No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent on the administrative and overhead costs associated with the operation of a drug court.

(b) No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group

of counties participating in a regional agreement shall be spent for treatment support services.

(7) Counties are encouraged to consider regional agreements and submit regional plans for the efficient delivery of treatment under this section.

(8) Moneys allocated under this section shall be used to supplement, not supplant, other federal, state, and local funds used for substance abuse treatment.

(9) Counties must meet the criteria established in RCW 2.28.170(3)(b).

(10) The authority under this section to use funds from the criminal justice treatment account for the administrative and overhead costs associated with the operation of a drug court expires June 30, 2015.

**Sec. 12.** RCW 70.96A.035 and 2005 c 504 s 302 are each amended to read as follows:

(1) ~~((Not later than January 1, 2007,))~~ All persons providing treatment under this chapter shall also implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders adopted pursuant to RCW 70.96C.010 and shall document the numbers of clients with co-occurring mental and substance abuse disorders based on a quadrant system of low and high needs.

(2) Treatment providers contracted to provide treatment under this chapter who fail to implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders ~~((by July 1, 2007,))~~ are subject to contractual penalties established under RCW 70.96C.010 (as recodified by this act).

**Sec. 13.** RCW 70.96C.010 and 2014 c 225 s 77 are each amended to read as follows:

(1) The department of social and health services ~~((in consultation with the members of the team charged with developing the state plan for co-occurring mental and substance abuse disorders, shall adopt, not later than January 1, 2006,))~~ shall maintain an integrated and comprehensive screening and assessment process for ~~((chemical dependency))~~ substance use and mental disorders and co-occurring ~~((chemical dependency))~~ substance use and mental disorders.

(a) The process adopted shall include, at a minimum:

(i) An initial screening tool that can be used by intake personnel system-wide and which will identify the most common types of co-occurring disorders;

(ii) An assessment process for those cases in which assessment is indicated that provides an appropriate degree of assessment for most situations, which can be expanded for complex situations;

(iii) Identification of triggers in the screening that indicate the need to begin an assessment;

(iv) Identification of triggers after or outside the screening that indicate a need to begin or resume an assessment;

(v) The components of an assessment process and a protocol for determining whether part or all of the assessment is necessary, and at what point; and

(vi) Emphasis that the process adopted under this section is to replace and not to duplicate existing intake, screening, and assessment tools and processes.

(b) The department shall consider existing models, including those already adopted by other states, and to the extent possible, adopt an established, proven model.

(c) The integrated, comprehensive screening and assessment process shall be implemented statewide by all ~~((chemical dependency))~~ substance use disorder and mental health treatment providers as well as all designated mental health professionals,

designated chemical dependency specialists, and designated crisis responders (~~(not later than January 1, 2007)~~).

(2) The department shall provide adequate training to effect statewide implementation by the dates designated in this section and shall report the rates of co-occurring disorders and the stage of screening or assessment at which the co-occurring disorder was identified to the appropriate committees of the legislature.

(3) The department shall establish contractual penalties to contracted treatment providers, the behavioral health organizations, and their contracted providers for failure to implement the integrated screening and assessment process (~~(by July 1, 2007)~~).

**Sec. 14.** RCW 70.96A.037 and 2011 c 89 s 9 are each amended to read as follows:

(1) The department of social and health services shall contract for chemical dependency specialist services at division of children and family services offices to enhance the timeliness and quality of child protective services assessments and to better connect families to needed treatment services.

(2) The chemical dependency specialist's duties may include, but are not limited to: Conducting on-site (~~(chemical dependency)~~) substance use disorder screening and assessment, facilitating progress reports to department employees, in-service training of department employees and staff on substance (~~(abuse)~~) use disorder issues, referring clients from the department to treatment providers, and providing consultation on cases to department employees.

(3) The department of social and health services shall provide training in and ensure that each case-carrying employee is trained in uniform screening for mental health and (~~(chemical dependency)~~) substance use disorder.

**Sec. 15.** RCW 70.96A.047 and 1989 c 270 s 11 are each amended to read as follows:

Except as provided in this chapter, the secretary shall not approve any substance use disorder facility, plan, or program for financial assistance under RCW 70.96A.040 (as recodified by this act) unless at least ten percent of the amount spent for the facility, plan, or program is provided from local public or private sources. When deemed necessary to maintain public standards of care in the substance use disorder facility, plan, or program, the secretary may require the substance use disorder facility, plan, or program to provide up to fifty percent of the total spent for the program through fees, gifts, contributions, or volunteer services. The secretary shall determine the value of the gifts, contributions, and volunteer services.

**Sec. 16.** RCW 70.96A.055 and 1999 c 197 s 10 are each amended to read as follows:

The department shall contract with counties operating drug courts and counties in the process of implementing new drug courts for the provision of (~~(drug and alcohol)~~) substance use disorder treatment services.

**Sec. 17.** RCW 70.96A.087 and 1989 c 270 s 13 are each amended to read as follows:

To be eligible to receive its share of liquor taxes and profits, each city and county shall devote no less than two percent of its share of liquor taxes and profits to the support of a substance use disorder program (~~(of alcoholism and other drug addiction)~~) approved by the (~~(alcoholism and other drug addiction board authorized by RCW 70.96A.300)~~) behavioral health organization and the secretary.

**Sec. 18.** RCW 70.96A.170 and 1989 c 270 s 30 are each amended to read as follows:

(1) The state and counties, cities, and other municipalities may establish or contract for emergency service patrols which are to be under the administration of the appropriate jurisdiction. A patrol consists of persons trained to give assistance in the streets

and in other public places to persons who are intoxicated. Members of an emergency service patrol shall be capable of providing first aid in emergency situations and may transport intoxicated persons to their homes and to and from substance use disorder treatment programs.

(2) The secretary shall adopt rules pursuant to chapter 34.05 RCW for the establishment, training, and conduct of emergency service patrols.

**Sec. 19.** RCW 70.96A.180 and 2012 c 117 s 413 are each amended to read as follows:

(1) If substance use disorder treatment is provided by an approved substance use disorder treatment program and the patient has not paid or is unable to pay the charge therefor, the program is entitled to any payment (a) received by the patient or to which he or she may be entitled because of the services rendered, and (b) from any public or private source available to the program because of the treatment provided to the patient.

(2) A patient in a substance use disorder program, or the estate of the patient, or a person obligated to provide for the cost of treatment and having sufficient financial ability, is liable to the program for cost of maintenance and treatment of the patient therein in accordance with rates established.

(3) The secretary shall adopt rules governing financial ability that take into consideration the income, savings, and other personal and real property of the person required to pay, and any support being furnished by him or her to any person he or she is required by law to support.

**Sec. 20.** RCW 70.96A.095 and 1998 c 296 s 23 are each amended to read as follows:

Any person thirteen years of age or older may give consent for himself or herself to the furnishing of outpatient treatment by a (~~(chemical dependency)~~) substance use disorder treatment program certified by the department. Parental authorization is required for any treatment of a minor under the age of thirteen.

**Sec. 21.** RCW 70.96A.096 and 1996 c 133 s 5 are each amended to read as follows:

School district personnel who contact a (~~(chemical dependency)~~) substance use disorder inpatient treatment program or provider for the purpose of referring a student to inpatient treatment shall provide the parents with notice of the contact within forty-eight hours.

**Sec. 22.** RCW 70.96A.097 and 1998 c 296 s 28 are each amended to read as follows:

(1) The department shall ensure that, for any minor admitted to inpatient treatment under RCW 70.96A.245 (as recodified by this act), a review is conducted by a physician or chemical dependency counselor, as defined in rule by the department, who is employed by the department or an agency under contract with the department and who neither has a financial interest in continued inpatient treatment of the minor nor is affiliated with the program providing the treatment. The physician or chemical dependency counselor shall conduct the review not less than seven nor more than fourteen days following the date the minor was brought to the facility under RCW 70.96A.245(1) (as recodified by this act) to determine whether it is a medical necessity to continue the minor's treatment on an inpatient basis.

(2) In making a determination under subsection (1) of this section whether it is a medical necessity to release the minor from inpatient treatment, the department shall consider the opinion of the treatment provider, the safety of the minor, the likelihood the minor's (~~(chemical dependency)~~) substance use disorder recovery will deteriorate if released from inpatient treatment, and the wishes of the parent.

(3) If, after any review conducted by the department under this section, the department determines it is no longer a medical necessity for a minor to receive inpatient treatment, the

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department shall immediately notify the parents and the professional person in charge. The professional person in charge shall release the minor to the parents within twenty-four hours of receiving notice. If the professional person in charge and the parent believe that it is a medical necessity for the minor to remain in inpatient treatment, the minor shall be released to the parent on the second judicial day following the department's determination in order to allow the parent time to file an at-risk youth petition under chapter 13.32A RCW. If the department determines it is a medical necessity for the minor to receive outpatient treatment and the minor declines to obtain such treatment, such refusal shall be grounds for the parent to file an at-risk youth petition.

(4) The department may, subject to available funds, contract with other governmental agencies for the conduct of the reviews conducted under this section and may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

(5) In addition to the review required under this section, the department may periodically determine and redetermine the medical necessity of treatment for purposes of payment with public funds.

**Sec. 23.** RCW 70.96A.235 and 1998 c 296 s 25 are each amended to read as follows:

Parental consent is required for inpatient ~~((chemical dependency))~~ substance use disorder treatment of a minor, unless the child meets the definition of a child in need of services in RCW 13.32A.030~~((4))~~ (5)(c) as determined by the department~~((PROVIDED))~~, except that parental consent is required for any treatment of a minor under the age of thirteen.

This section does not apply to petitions filed under this chapter.

**Sec. 24.** RCW 70.96A.240 and 1998 c 296 s 26 are each amended to read as follows:

(1) The parent of a minor is not liable for payment of inpatient or outpatient ~~((chemical dependency))~~ substance use disorder treatment unless the parent has joined in the consent to the treatment.

(2) The ability of a parent to apply to a certified treatment program for the admission of his or her minor child does not create a right to obtain or benefit from any funds or resources of the state. However, the state may provide services for indigent minors to the extent that funds are available therefor.

**Sec. 25.** RCW 70.96A.245 and 1998 c 296 s 27 are each amended to read as follows:

(1) A parent may bring, or authorize the bringing of, his or her minor child to a certified treatment program and request that a ~~((chemical dependency))~~ substance use disorder assessment be conducted by a professional person to determine whether the minor ~~((is chemically dependent))~~ has a substance use disorder and in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the program.

(3) An appropriately trained professional person may evaluate whether the minor ~~((is chemically dependent))~~ has a substance use disorder. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the program, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person

determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. Within twenty-four hours of completion of the evaluation, the professional person shall notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the program based solely on his or her request.

**Sec. 26.** RCW 70.96A.250 and 1998 c 296 s 29 are each amended to read as follows:

(1) A parent may bring, or authorize the bringing of, his or her minor child to a provider of outpatient ~~((chemical dependency))~~ substance use disorder treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a ~~((chemical dependency))~~ substance use disorder and is in need of outpatient treatment.

(2) The consent of the minor is not required for evaluation if the parent brings the minor to the provider.

(3) The professional person in charge of the program may evaluate whether the minor has a ~~((chemical dependency))~~ substance use disorder and is in need of outpatient treatment.

(4) Any minor admitted to inpatient treatment under RCW 70.96A.245 (as recodified by this act) shall be discharged immediately from inpatient treatment upon written request of the parent.

**Sec. 27.** RCW 70.96A.265 and 1998 c 296 s 32 are each amended to read as follows:

For purposes of eligibility for medical assistance under chapter 74.09 RCW, minors in inpatient ~~((chemical dependency))~~ substance use disorder treatment shall be considered to be part of their parent's or legal guardian's household, unless the minor has been assessed by the department or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the parents are found to not be exercising responsibility for care and control of the minor. Payment for such care by the department shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department.

**Sec. 28.** RCW 70.96A.400 and 2001 c 242 s 1 are each amended to read as follows:

The state of Washington declares that there is no fundamental right to opiate substitution treatment. The state of Washington further declares that while opiate substitution drugs used in the treatment of opiate dependency are addictive substances, that they nevertheless have several legal, important, and justified uses and that one of their appropriate and legal uses is, in conjunction with other required therapeutic procedures, in the treatment of persons addicted to or habituated to opioids. Opiate substitution treatment should only be used for participants who are deemed appropriate to need this level of intervention and should not be the first treatment intervention for all opiate addicts.

Because opiate substitution drugs, used in the treatment of opiate dependency are addictive and are listed as a schedule II controlled substance in chapter 69.50 RCW, the state of Washington has the legal obligation and right to regulate the use of opiate substitution treatment. The state of Washington declares its authority to control and regulate carefully, in consultation with counties and cities, all clinical uses of opiate substitution drugs used in the treatment of opiate addiction.

Further, the state declares that the primary goal of opiate substitution treatment is total abstinence from ~~((chemical dependency))~~ substance use for the individuals who participate in the treatment program. The state recognizes that a small percentage of persons who participate in opiate substitution treatment programs require treatment for an extended period of time. Opiate substitution treatment programs shall provide a comprehensive transition program to eliminate ~~((chemical dependency))~~ substance use, including opiate and opiate substitute addiction of program participants.

**Sec. 29.** RCW 70.96A.800 and 2014 c 225 s 33 are each amended to read as follows:

(1) Subject to funds appropriated for this specific purpose, the secretary shall select and contract with ~~((counties))~~ behavioral health organizations to provide intensive case management for ~~((chemically dependent))~~ persons with substance use disorders and histories of high utilization of crisis services at two sites. In selecting the two sites, the secretary shall endeavor to site one in an urban county, and one in a rural county; and to site them in counties other than those selected pursuant to RCW 70.96B.020, to the extent necessary to facilitate evaluation of pilot project results. Subject to funds appropriated for this specific purpose, the secretary may contract with additional counties to provide intensive case management.

(2) The contracted sites shall implement the pilot programs by providing intensive case management to persons with a primary ~~((chemical dependency))~~ substance use disorder diagnosis or dual primary ~~((chemical dependency))~~ substance use disorder and mental health diagnoses, through the employment of ~~((chemical dependency))~~ substance use disorder case managers. The ~~((chemical dependency))~~ substance use disorder case managers shall:

(a) Be trained in and use the integrated, comprehensive screening and assessment process adopted under RCW 70.96C.010;

(b) Reduce the use of crisis medical, ~~((chemical dependency))~~ substance use disorder treatment and mental health services, including but not limited to, emergency room admissions, hospitalizations, withdrawal management programs, inpatient psychiatric admissions, involuntary treatment petitions, emergency medical services, and ambulance services;

(c) Reduce the use of emergency first responder services including police, fire, emergency medical, and ambulance services;

(d) Reduce the number of criminal justice interventions including arrests, violations of conditions of supervision, bookings, jail days, prison sanction day for violations, court appearances, and prosecutor and defense costs;

(e) Where appropriate and available, work with therapeutic courts including drug courts and mental health courts to maximize the outcomes for the individual and reduce the likelihood of reoffense;

(f) Coordinate with local offices of the economic services administration to assist the person in accessing and remaining enrolled in those programs to which the person may be entitled;

(g) Where appropriate and available, coordinate with primary care and other programs operated through the federal government including federally qualified health centers, Indian health programs, and veterans' health programs for which the person is eligible to reduce duplication of services and conflicts in case approach;

(h) Where appropriate, advocate for the client's needs to assist the person in achieving and maintaining stability and progress toward recovery;

(i) Document the numbers of persons with co-occurring mental and substance ~~((abuse))~~ use disorders and the point of

determination of the co-occurring disorder by quadrant of intensity of need; and

(j) Where a program participant is under supervision by the department of corrections, collaborate with the department of corrections to maximize treatment outcomes and reduce the likelihood of reoffense.

(3) The pilot programs established by this section shall begin providing services by March 1, 2006.

**Sec. 30.** RCW 70.96A.905 and 1992 c 205 s 306 are each amended to read as follows:

The department shall ensure that the provisions of this chapter are applied by the ~~((counties))~~ behavioral health organizations in a consistent and uniform manner. The department shall also ensure that, to the extent possible within available funds, the ~~((county designated))~~ behavioral health organization-designated chemical dependency specialists are specifically trained in adolescent chemical dependency issues, the chemical dependency commitment laws, and the criteria for commitment, as specified in this chapter and chapter 70.96A RCW.

**Sec. 31.** RCW 71.24.300 and 2014 c 225 s 39 are each amended to read as follows:

(1) Upon the request of a tribal authority or authorities within a behavioral health organization the joint operating agreement or the county authority shall allow for the inclusion of the tribal authority to be represented as a party to the behavioral health organization.

(2) The roles and responsibilities of the county and tribal authorities shall be determined by the terms of that agreement including a determination of membership on the governing board and advisory committees, the number of tribal representatives to be party to the agreement, and the provisions of law and shall assure the provision of culturally competent services to the tribes served.

(3) The state ~~((mental))~~ behavioral health authority may not determine the roles and responsibilities of county authorities as to each other under behavioral health organizations by rule, except to assure that all duties required of behavioral health organizations are assigned and that counties and the behavioral health organization do not duplicate functions and that a single authority has final responsibility for all available resources and performance under the behavioral health organization's contract with the secretary.

(4) If a behavioral health organization is a private entity, the department shall allow for the inclusion of the tribal authority to be represented as a party to the behavioral health organization.

(5) The roles and responsibilities of the private entity and the tribal authorities shall be determined by the department, through negotiation with the tribal authority.

(6) Behavioral health organizations shall submit an overall six-year operating and capital plan, timeline, and budget and submit progress reports and an updated two-year plan biennially thereafter, to assume within available resources all of the following duties:

(a) Administer and provide for the availability of all resource management services, residential services, and community support services.

(b) Administer and provide for the availability of all investigation, transportation, court-related, and other services provided by the state or counties pursuant to chapter 71.05 RCW.

(c) Provide within the boundaries of each behavioral health organization evaluation and treatment services for at least ninety percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. Behavioral health organizations may contract to purchase evaluation and treatment services from other organizations if they are unable to provide for appropriate resources within their boundaries. Insofar

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as the original intent of serving persons in the community is maintained, the secretary is authorized to approve exceptions on a case-by-case basis to the requirement to provide evaluation and treatment services within the boundaries of each behavioral health organization. Such exceptions are limited to:

- (i) Contracts with neighboring or contiguous regions; or
- (ii) Individuals detained or committed for periods up to seventeen days at the state hospitals at the discretion of the secretary.

(d) Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, employment services as described in RCW 71.24.035, and mental health services to children.

(e) Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.

(7) A behavioral health organization may request that any state-owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the persons with mental illness and which is within the boundaries of a behavioral health organization be made available to support the operations of the behavioral health organization. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.

(8) Each behavioral health organization shall appoint a ~~((mental))~~ behavioral health advisory board which shall review and provide comments on plans and policies developed under this chapter, provide local oversight regarding the activities of the behavioral health organization, and work with the behavioral health organization to resolve significant concerns regarding service delivery and outcomes. The department shall establish statewide procedures for the operation of regional advisory committees including mechanisms for advisory board feedback to the department regarding behavioral health organization performance. The composition of the board shall be broadly representative of the demographic character of the region and shall include, but not be limited to, representatives of consumers of substance use disorder and mental health services and their families, law enforcement, and, where the county is not the behavioral health organization, county elected officials. Composition and length of terms of board members may differ between behavioral health organizations but shall be included in each behavioral health organization's contract and approved by the secretary.

(9) Behavioral health organizations shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the secretary.

(10) Behavioral health organizations may receive technical assistance from the housing trust fund and may identify and submit projects for housing and housing support services to the housing trust fund established under chapter 43.185 RCW. Projects identified or submitted under this subsection must be fully integrated with the behavioral health organization six-year operating and capital plan, timeline, and budget required by subsection (6) of this section.

**Sec. 32.** RCW 71.24.350 and 2014 c 225 s 41 are each amended to read as follows:

The department shall require each behavioral health organization to provide for a separately funded ~~((mental))~~ behavioral health ombuds office in each behavioral health organization that is independent of the behavioral health organization. The ombuds office shall maximize the use of consumer advocates.

**Sec. 33.** RCW 70.96A.020 and 2014 c 225 s 20 are each reenacted and amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(2) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.

(3) "Behavioral health organization" means a county authority or group of county authorities or other entity recognized by the secretary in contract in a defined regional service area.

(4) ~~"Behavioral health program" has the same meaning as in RCW 71.24.025.~~

~~(5) "Behavioral health services" means mental health services as described in chapters 71.24 and 71.36 RCW and ((chemical dependency)) substance use disorder treatment services as described in this chapter.~~

~~((5))~~ (6) "Chemical dependency" means: (a) Alcoholism; (b) drug addiction; or (c) dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

~~((6) "Chemical dependency program" means expenditures and activities of the department designed and conducted to prevent or treat alcoholism and other drug addiction, including reasonable administration and overhead.)~~

(7) "Department" means the department of social and health services.

(8) "Designated chemical dependency specialist" or "specialist" means a person designated by the behavioral health organization or by the county ~~((alcoholism and other drug addiction))~~ substance use disorder treatment program coordinator designated ~~((under RCW 70.96A.310))~~ by the behavioral health organization to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

~~((9) ("Director" means the person administering the substance use disorder program within the department.~~

~~((10))~~ (9) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

~~((11) "Emergency service patrol" means a patrol established under RCW 70.96A.170.~~

~~((12))~~ (10) "Gravely disabled by alcohol or other psychoactive chemicals" or "gravely disabled" means that a person, as a result of the use of alcohol or other psychoactive chemicals: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety.

~~((13))~~ (11) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts

committed, in a mental health facility, or a long-term alcoholism or drug treatment facility, or in confinement.

~~((14))~~ (12) "Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, is gravely disabled or presents a likelihood of serious harm to himself or herself, to any other person, or to property.

~~((15))~~ (13) "Incompetent person" means a person who has been adjudged incompetent by the superior court.

~~((16))~~ (14) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

~~((17))~~ (15) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

~~((18))~~ (16) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's self; (ii) physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused the harm or that places another person or persons in reasonable fear of sustaining the harm; or (iii) physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts.

~~((19))~~ (17) "Medical necessity" for inpatient care of a minor means a requested certified inpatient service that is reasonably calculated to: (a) Diagnose, arrest, or alleviate a chemical dependency; or (b) prevent the progression of substance use disorders that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

~~((20))~~ (18) "Minor" means a person less than eighteen years of age.

~~((21))~~ (19) "Parent" means the parent or parents who have the legal right to custody of the child. Parent includes custodian or guardian.

~~((22))~~ (20) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

~~((23))~~ (21) "Person" means an individual, including a minor.

~~((24))~~ (22) "Professional person in charge" or "professional person" means a physician or chemical dependency counselor as defined in rule by the department, who is empowered by a certified treatment program with authority to make assessment, admission, continuing care, and discharge decisions on behalf of the certified program.

~~((25))~~ (23) "Secretary" means the secretary of the department of social and health services.

~~((26))~~ (24) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

~~((27))~~ (25) "Treatment" means the broad range of emergency, withdrawal management, residential, and outpatient services and care, including diagnostic evaluation, ~~(chemical dependency)~~ substance use disorder education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be

extended to persons with substance use disorders and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

~~((28))~~ (26) "Substance use disorder treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of persons with substance use ~~(disorder[s])~~ disorders.

~~((29))~~ (27) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

**Sec. 34.** RCW 2.28.170 and 2013 2nd sp.s. c 4 s 952 are each amended to read as follows:

(1) Jurisdictions may establish and operate drug courts.

(2) For the purposes of this section, "drug court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing felony and nonfelony offenders, whether adult or juvenile, by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

(3)(a) Any jurisdiction that seeks a state appropriation to fund a drug court program must first:

(i) Exhaust all federal funding that is available to support the operations of its drug court and associated services; and

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for drug court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for drug court operations and associated services. However, from July 26, 2009, until June 30, 2015, no match is required for state moneys expended for the administrative and overhead costs associated with the operation of a drug court pursuant to RCW 70.96A.350 (as recodified by this act).

(b) Any jurisdiction that establishes a drug court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The drug court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

(i) The offender would benefit from substance abuse treatment;

(ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and

(iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:

(A) That is a sex offense;

(B) That is a serious violent offense;

(C) During which the defendant used a firearm; or

(D) During which the defendant caused substantial or great bodily harm or death to another person.

**Sec. 35.** RCW 9.94A.660 and 2009 c 389 s 3 are each amended to read as follows:

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a liquor driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before

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conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-based alternative under RCW 9.94A.664. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a chemical dependency screening report as provided in RCW 9.94A.500.

(5)(a) If the court is considering imposing a sentence under the residential chemical dependency treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

(i) Whether the offender suffers from drug addiction;

(ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the ~~((division of alcohol and substance abuse of the))~~ department of social and health services; and

(iv) Whether the offender and the community will benefit from the use of the alternative.

(b) The examination report must contain:

(i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(ii) Recommended crime-related prohibitions and affirmative conditions.

(6) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.

(b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and 9.94A.737.

(7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

(9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(10) Costs of examinations and preparing treatment plans under a special drug offender sentencing alternative may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350 (as recodified by this act).

**Sec. 36.** RCW 10.05.020 and 2010 c 269 s 9 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the petitioner shall allege under oath in the petition that the wrongful conduct charged is the result of or caused by ~~((alcoholism, drug addiction,))~~ substance use disorders or mental problems for which the person is in need of treatment and unless treated the probability of future recurrence is great, along with a statement that the person agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems if financially able to do so. The petition shall also contain a case history and written assessment prepared by an approved ~~((alcoholism))~~ substance use disorder treatment program as designated in chapter ~~((70.96A))~~ 71.24 RCW if the petition alleges ~~((alcoholism, an approved drug program as designated in chapter 71.24 RCW if the petition alleges drug addiction,))~~ a substance use disorder or by an approved mental health center if the petition alleges a mental problem.

(2) In the case of a petitioner charged with a misdemeanor or gross misdemeanor under chapter 9A.42 RCW, the petitioner shall allege under oath in the petition that the petitioner is the natural or adoptive parent of the alleged victim; that the wrongful conduct charged is the result of parenting problems for which the petitioner is in need of services; that the petitioner is in need of child welfare services under chapter 74.13 RCW to improve his or her parenting skills in order to better provide his or her child or children with the basic necessities of life; that the petitioner wants to correct his or her conduct to reduce the likelihood of harm to his or her minor children; that in the absence of child welfare services the petitioner may be unable to reduce the likelihood of harm to his or her minor children; and that the petitioner has cooperated with the department of social and health services to develop a plan to receive appropriate child welfare services; along with a statement that the person agrees to pay the cost of the services if he or she is financially able to do so. The petition shall

also contain a case history and a written service plan from the department of social and health services.

(3) Before entry of an order deferring prosecution, a petitioner shall be advised of his or her rights as an accused and execute, as a condition of receiving treatment, a statement that contains: (a) An acknowledgment of his or her rights; (b) an acknowledgment and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; (c) a stipulation to the admissibility and sufficiency of the facts contained in the written police report; and (d) an acknowledgment that the statement will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting deferred prosecution. The petitioner shall also be advised that he or she may, if he or she proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be ordered upon the condition that he or she seek treatment and, further, that he or she may seek treatment from public and private agencies at any time without regard to whether or not he or she is found guilty of the offense charged. He or she shall also be advised that the court will not accept a petition for deferred prosecution from a person who: (i) Sincerely believes that he or she is innocent of the charges; (ii) sincerely believes that he or she does not, in fact, suffer from alcoholism, drug addiction, or mental problems; or (iii) in the case of a petitioner charged under chapter 9A.42 RCW, sincerely believes that he or she does not need child welfare services.

(4) Before entering an order deferring prosecution, the court shall make specific findings that: (a) The petitioner has stipulated to the admissibility and sufficiency of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution; (c) the petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her defense, and the right to a jury trial; and (d) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included in the order granting deferred prosecution.

**Sec. 37.** RCW 10.05.030 and 2002 c 219 s 8 are each amended to read as follows:

The arraignment judge upon consideration of the petition and with the concurrence of the prosecuting attorney may continue the arraignment and refer such person for a diagnostic investigation and evaluation to an approved ~~((alcoholism))~~ substance use disorder treatment program as designated in chapter ~~((70.96A))~~ 71.24 RCW, if the petition alleges ~~((an alcohol problem, an approved drug treatment center as designated in chapter 71.24 RCW, if the petition alleges a drug problem))~~ a substance use disorder, to an approved mental health center, if the petition alleges a mental problem, or the department of social and health services if the petition is brought under RCW 10.05.020(2).

**Sec. 38.** RCW 10.05.150 and 1999 c 143 s 43 are each amended to read as follows:

A deferred prosecution program for alcoholism shall be for a two-year period and shall include, but not be limited to, the following requirements:

(1) Total abstinence from alcohol and all other nonprescribed mind-altering drugs;

(2) Participation in an intensive inpatient or intensive outpatient program in a state-approved ~~((alcoholism))~~ substance use disorder treatment program;

(3) Participation in a minimum of two meetings per week of an alcoholism self-help recovery support group, as determined by the assessing agency, for the duration of the treatment program;

(4) Participation in an alcoholism self-help recovery support group, as determined by the assessing agency, from the date of court approval of the plan to entry into intensive treatment;

(5) Not less than weekly approved outpatient counseling, group or individual, for a minimum of six months following the intensive phase of treatment;

(6) Not less than monthly outpatient contact, group or individual, for the remainder of the two-year deferred prosecution period;

(7) The decision to include the use of prescribed drugs, including disulfiram, as a condition of treatment shall be reserved to the treating facility and the petitioner's physician;

(8) All treatment within the purview of this section shall occur within or be approved by a state-approved ~~((alcoholism))~~ substance use disorder treatment program as described in chapter 70.96A RCW;

(9) Signature of the petitioner agreeing to the terms and conditions of the treatment program.

NEW SECTION. **Sec. 39.** RCW 43.135.03901 is decodified.

**Sec. 40.** RCW 46.61.5055 and 2014 c 100 s 1 are each amended to read as follows:

(1) **No prior offenses in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

(a) **Penalty for alcohol concentration less than 0.15.** In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one day nor more than three hundred sixty-four days. Twenty-four consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(a)(i), the court may order not less than fifteen days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device or other separate alcohol monitoring device to include an alcohol detection breathalyzer, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than three hundred fifty dollars nor more than five thousand dollars. Three hundred fifty dollars of the fine may not be suspended unless the court finds the offender to be indigent; or

(b) **Penalty for alcohol concentration at least 0.15.** In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than two days nor more than three hundred sixty-four days. Forty-eight consecutive hours of the imprisonment may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would



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impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based. In lieu of the mandatory minimum term of imprisonment required under this subsection (1)(b)(i), the court may order not less than thirty days of electronic home monitoring. The offender shall pay the cost of electronic home monitoring. The county or municipality in which the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device to include an alcohol detection breathalyzer or other separate alcohol monitoring device, and the court may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(2) **One prior offense in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

(a) **Penalty for alcohol concentration less than 0.15.** In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than thirty days nor more than three hundred sixty-four days and sixty days of electronic home monitoring. In lieu of the mandatory minimum term of sixty days electronic home monitoring, the court may order at least an additional four days in jail or, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and the court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Thirty days of imprisonment and sixty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

(ii) By a fine of not less than five hundred dollars nor more than five thousand dollars. Five hundred dollars of the fine may not be suspended unless the court finds the offender to be indigent; or

(b) **Penalty for alcohol concentration at least 0.15.** In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than forty-five days nor more than three hundred sixty-four days and ninety days of electronic home monitoring. In lieu of the mandatory minimum term of ninety days electronic home monitoring, the court may order at least an additional six days in jail or, if available in that county or

city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and the court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Forty-five days of imprisonment and ninety days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

(ii) By a fine of not less than seven hundred fifty dollars nor more than five thousand dollars. Seven hundred fifty dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(3) **Two or three prior offenses in seven years.** Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or three prior offenses within seven years shall be punished as follows:

(a) **Penalty for alcohol concentration less than 0.15.** In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than ninety days nor more than three hundred sixty-four days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred twenty days of electronic home monitoring. In lieu of the mandatory minimum term of one hundred twenty days of electronic home monitoring, the court may order at least an additional eight days in jail. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. Ninety days of imprisonment and one hundred twenty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

(ii) By a fine of not less than one thousand dollars nor more than five thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent; or

(b) **Penalty for alcohol concentration at least 0.15.** In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) By imprisonment for not less than one hundred twenty days nor more than three hundred sixty-four days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty days of electronic home monitoring. In lieu of the mandatory minimum term of one hundred fifty days of electronic home monitoring, the court may order at least an additional ten days in jail. The offender shall pay for the cost of the electronic monitoring. The court shall order an expanded alcohol assessment and treatment, if deemed appropriate by the assessment. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended, the court shall state in writing the reason for granting the suspension and the facts upon which the suspension is based; and

(ii) By a fine of not less than one thousand five hundred dollars nor more than five thousand dollars. One thousand five hundred dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(4) **Four or more prior offenses in ten years.** A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished under chapter 9.94A RCW if:

(a) The person has four or more prior offenses within ten years; or

(b) The person has ever previously been convicted of:

(i) A violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(ii) A violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

(5) **Monitoring.**

(a) **Ignition interlock device.** The court shall require any person convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to comply with the rules and requirements of the department regarding the installation and use of a functioning ignition interlock device installed on all motor vehicles operated by the person.

(b) **Monitoring devices.** If the court orders that a person refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person's system. The person shall pay for the cost of the monitoring, unless the court specifies that the cost of monitoring will be paid with funds that are available from an alternative source identified by the court. The county or municipality where the penalty is being imposed shall determine the cost.

(c) **Ignition interlock device substituted for 24/7 sobriety program monitoring.** In any county or city where a 24/7 sobriety program is available and verified by the Washington association of sheriffs and police chiefs, the court shall:

(i) Order the person to install and use a functioning ignition interlock or other device in lieu of such period of 24/7 sobriety program monitoring;

(ii) Order the person to a period of 24/7 sobriety program monitoring pursuant to subsections (1) through (3) of this section; or

(iii) Order the person to install and use a functioning ignition interlock or other device in addition to a period of 24/7 sobriety program monitoring pursuant to subsections (1) through (3) of this section.

(6) **Penalty for having a minor passenger in vehicle.** If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) Order the use of an ignition interlock or other device for an additional six months;

(b) In any case in which the person has no prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional twenty-four hours of imprisonment and a fine of not less than one thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent;

(c) In any case in which the person has one prior offense within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional five days of imprisonment and a fine of not less than two thousand dollars and not more than five thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent;

(d) In any case in which the person has two or three prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional ten days of imprisonment and a fine of not less than three thousand dollars and not more than ten thousand dollars. One thousand dollars of the fine may not be suspended unless the court finds the offender to be indigent.

(7) **Other items courts must consider while setting penalties.** In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

(a) Whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property;

(b) Whether at the time of the offense the person was driving or in physical control of a vehicle with one or more passengers;

(c) Whether the driver was driving in the opposite direction of the normal flow of traffic on a multiple lane highway, as defined by RCW 46.04.350, with a posted speed limit of forty-five miles per hour or greater; and

(d) Whether a child passenger under the age of sixteen was an occupant in the driver's vehicle.

(8) **Treatment and information school.** An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

(9) **Driver's license privileges of the defendant.** The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) **Penalty for alcohol concentration less than 0.15.** If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

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(b) **Penalty for alcohol concentration at least 0.15.** If the person's alcohol concentration was at least 0.15:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) **Penalty for refusing to take test.** If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

Upon its own motion or upon motion by a person, a court may find, on the record, that notice to the department under RCW 46.20.270 has been delayed for three years or more as a result of a clerical or court error. If so, the court may order that the person's license, permit, or nonresident privilege shall not be revoked, suspended, or denied for that offense. The court shall send notice of the finding and order to the department and to the person. Upon receipt of the notice from the court, the department shall not revoke, suspend, or deny the license, permit, or nonresident privilege of the person for that offense.

For purposes of this subsection (9), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

(10) **Probation of driving privilege.** After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

(11) **Conditions of probation.** (a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes up to three hundred sixty-four days in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of liability insurance or other financial responsibility for the future pursuant to RCW 46.30.020; (ii) not driving or being in physical control of a motor vehicle within this state while having an alcohol concentration of 0.08 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drug. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in

part upon violation of a condition of probation during the suspension period.

(b) For each violation of mandatory conditions of probation under (a)(i), (ii), or (iii) of this subsection, the court shall order the convicted person to be confined for thirty days, which shall not be suspended or deferred.

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for thirty days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by thirty days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

(12) **Waiver of electronic home monitoring.** A court may waive the electronic home monitoring requirements of this chapter when:

(a) The offender does not have a dwelling, telephone service, or any other necessity to operate an electronic home monitoring system. However, if a court determines that an alcohol monitoring device utilizing wireless reporting technology is reasonably available, the court may require the person to obtain such a device during the period of required electronic home monitoring;

(b) The offender does not reside in the state of Washington; or

(c) The court determines that there is reason to believe that the offender would violate the conditions of the electronic home monitoring penalty.

Whenever the mandatory minimum term of electronic home monitoring is waived, the court shall state in writing the reason for granting the waiver and the facts upon which the waiver is based, and shall impose an alternative sentence with similar punitive consequences. The alternative sentence may include, but is not limited to, use of an ignition interlock device, the 24/7 sobriety program monitoring, additional jail time, work crew, or work camp.

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-four days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-four days.

(13) **Extraordinary medical placement.** An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(3).

(14) **Definitions.** For purposes of this section and RCW 46.61.502 and 46.61.504:

(a) A "prior offense" means any of the following:

(i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;

(ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;

(iii) A conviction for a violation of RCW 46.25.110 or an equivalent local ordinance;

(iv) A conviction for a violation of RCW 79A.60.040 or an equivalent local ordinance;

(v) A conviction for a violation of RCW 47.68.220 or an equivalent local ordinance;

(vi) A conviction for a violation of RCW 46.09.470(2) or an equivalent local ordinance;

(vii) A conviction for a violation of RCW 46.10.490(2) or an equivalent local ordinance;

(viii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.520 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(ix) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug, or a conviction for a violation of RCW 46.61.522 committed in a reckless manner or with the disregard for the safety of others if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(x) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(xi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (viii), (ix), or (x) of this subsection if committed in this state;

(xii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance;

(xiii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

(xiv) A deferred prosecution granted in another state for a violation of driving or having physical control of a vehicle while under the influence of intoxicating liquor or any drug if the out-of-state deferred prosecution is equivalent to the deferred prosecution under chapter 10.05 RCW, including a requirement that the defendant participate in a chemical dependency treatment program; or

(xv) A deferred sentence imposed in a prosecution for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local ordinance, if the charge under which the deferred sentence was imposed was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or a violation of RCW 46.61.520 or 46.61.522;

If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in this subsection (14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing;

(b) "Treatment" means ~~((alcohol or drug))~~ substance use disorder treatment approved by the department of social and health services;

(c) "Within seven years" means that the arrest for a prior offense occurred within seven years before or after the arrest for the current offense; and

(d) "Within ten years" means that the arrest for a prior offense occurred within ten years before or after the arrest for the current offense.

**Sec. 41.** RCW 46.61.5056 and 2011 c 293 s 13 are each amended to read as follows:

(1) A person subject to alcohol assessment and treatment under RCW 46.61.5055 shall be required by the court to complete a course in an alcohol information school approved by the department of social and health services or to complete more intensive treatment in a substance use disorder treatment program

approved by the department of social and health services, as determined by the court. The court shall notify the department of licensing whenever it orders a person to complete a course or treatment program under this section.

(2) A diagnostic evaluation and treatment recommendation shall be prepared under the direction of the court by an alcoholism agency approved by the department of social and health services or a qualified probation department approved by the department of social and health services. A copy of the report shall be forwarded to the court and the department of licensing. Based on the diagnostic evaluation, the court shall determine whether the person shall be required to complete a course in an alcohol information school approved by the department of social and health services or more intensive treatment in a substance use disorder treatment program approved by the department of social and health services.

(3) Standards for approval for alcohol treatment programs shall be prescribed by the department of social and health services. The department of social and health services shall periodically review the costs of alcohol information schools and treatment programs.

(4) Any agency that provides treatment ordered under RCW 46.61.5055, shall immediately report to the appropriate probation department where applicable, otherwise to the court, and to the department of licensing any noncompliance by a person with the conditions of his or her ordered treatment. The court shall notify the department of licensing and the department of social and health services of any failure by an agency to so report noncompliance. Any agency with knowledge of noncompliance that fails to so report shall be fined two hundred fifty dollars by the department of social and health services. Upon three such failures by an agency within one year, the department of social and health services shall revoke the agency's approval under this section.

(5) The department of licensing and the department of social and health services may adopt such rules as are necessary to carry out this section.

**Sec. 42.** RCW 82.04.4277 and 2014 c 225 s 104 are each amended to read as follows:

(1) A health or social welfare organization may deduct from the measure of tax amounts received as compensation for providing mental health services and chemical dependency services under a government-funded program.

(2) A behavioral health organization may deduct from the measure of tax amounts received from the state of Washington for distribution to a health or social welfare organization that is eligible to deduct the distribution under subsection (1) of this section.

(3) A person claiming a deduction under this section must file a complete annual report with the department under RCW 82.32.534.

(4) The definitions in this subsection apply ~~((to this section))~~ throughout this section unless the context clearly requires otherwise.

(a) "Chemical dependency" has the same meaning as provided in RCW 70.96A.020.

(b) "Health or social welfare organization" has the meaning provided in RCW 82.04.431.

~~((b))~~ (c) "Mental health services" and "behavioral health organization" have the meanings provided in RCW 71.24.025.

(5) This section expires ~~((August 1, 2016))~~ January 1, 2020.

**NEW SECTION. Sec. 43.** The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective April 1, 2016:

(1) RCW 70.96A.030 (Substance use disorder program) and 2014 c 225 s 21, 1989 c 270 s 4, & 1972 ex.s. c 122 s 3;

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(2)RCW 70.96A.045 (Funding prerequisites, facilities, plans, or programs receiving financial assistance) and 1989 c 270 s 10;

(3)RCW 70.96A.060 (Interdepartmental coordinating committee) and 2014 c 225 s 24, 1989 c 270 s 8, 1979 c 158 s 220, & 1972 ex.s. c 122 s 6;

(4)RCW 70.96A.150 (Records of persons treated for alcoholism and drug addiction) and 1990 c 151 s 1, 1989 c 162 s 1, & 1972 ex.s. c 122 s 15;

(5)RCW 70.96A.300 (Counties may create alcoholism and other drug addiction board—Generally) and 2014 c 225 s 31 & 1989 c 270 s 15;

(6)RCW 70.96A.310 (County alcoholism and other drug addiction program—Chief executive officer of program to be program coordinator) and 1989 c 270 s 16;

(7)RCW 70.96A.320 (Alcoholism and other drug addiction program—Generally) and 2014 c 225 s 32, 2013 c 320 s 8, 1990 c 151 s 9, & 1989 c 270 s 17; and

(8)RCW 70.96A.325 (Methamphetamine addiction programs—Counties authorized to seek state funding) and 2006 c 339 s 101.

**NEW SECTION. Sec. 44.** RCW 70.96A.035, RCW 70.96A.037, 70.96A.040, 70.96A.043, 70.96A.047, 70.96A.050, RCW 70.96A.055, 70.96A.080, 70.96A.085, 70.96A.090, 70.96A.095, 70.96A.096, 70.96A.097, 70.96A.170, 70.96A.180, 70.96A.230, 70.96A.235, 70.96A.240, 70.96A.245, 70.96A.250, 70.96A.255, 70.96A.260, 70.96A.265, 70.96A.350, 70.96A.400, 70.96A.410, 70.96A.420, 70.96A.430, 70.96A.500, 70.96A.510, 70.96A.520, 70.96A.800, 70.96A.905, and 70.96C.010 are each recodified as sections in chapter 71.24 RCW.

**NEW SECTION. Sec. 45.** This act takes effect April 1, 2016."

Senators Darneille, O'Ban and Parlette spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Honeyford spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Darneille and Parlette on page 1, after line 34 to the committee striking amendment to Engrossed Substitute House Bill No. 1713.

The motion by Senator Darneille carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Engrossed Substitute House Bill No. 1713.

The motion by Senator O'Ban carried and the committee striking amendment as amended was adopted by voice vote.

#### MOTION

There being no objection, the following title amendments were adopted:

On page 1, line 2 of the title, after "dependency;" strike the remainder of the title and insert "and creating a new section."

On page 2, line 1 of the title amendment, after "dependency;" strike the remainder of the title amendment and insert "amending RCW 71.24.035, 70.96A.050, 71.24.037, 70.96A.090, 71.24.385, 70.96A.350, 70.96A.035, 70.96C.010, 70.96A.037, 70.96A.047, 70.96A.055, 70.96A.087, 70.96A.170, 70.96A.180, 70.96A.095, 70.96A.096, 70.96A.097, 70.96A.235, 70.96A.240, 70.96A.245, 70.96A.250, 70.96A.265, 70.96A.400, 70.96A.800, 70.96A.905, 71.24.300, 71.24.350, 2.28.170, 9.94A.660, 10.05.020, 10.05.030, 10.05.150, 46.61.5055, 46.61.5056, and 82.04.4277;

reenacting and amending RCW 71.24.025 and 70.96A.020; adding new sections to chapter 71.24 RCW; creating a new section; recodifying RCW 70.96A.035, 70.96A.037, 70.96A.040, 70.96A.043, 70.96A.047, 70.96A.050, 70.96A.055, 70.96A.080, 70.96A.085, 70.96A.090, 70.96A.095, 70.96A.096, 70.96A.097, 70.96A.170, 70.96A.180, 70.96A.230, 70.96A.235, 70.96A.240, 70.96A.245, 70.96A.250, 70.96A.255, 70.96A.260, 70.96A.265, 70.96A.350, 70.96A.400, 70.96A.410, 70.96A.420, 70.96A.430, 70.96A.500, 70.96A.510, 70.96A.520, 70.96A.800, 70.96A.905, and 70.96C.010; decodifying RCW 43.135.03901; repealing RCW 70.96A.030, 70.96A.045, 70.96A.060, 70.96A.150, 70.96A.300, 70.96A.310, 70.96A.320, and 70.96A.325; providing an effective date; and providing an expiration date."

#### MOTION

On motion of Senator O'Ban, the rules were suspended, Engrossed Substitute House Bill No. 1713 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator O'Ban spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1713 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1713 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Jayapal, Keiser, King, Kohl-Welles, Lias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

Voting nay: Senator Honeyford

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1713 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1807, by House Committee on Appropriations (originally sponsored by Representatives Condotta and Hurst)

Assisting small businesses licensed to sell spirits in Washington state.

The measure was read the second time.

#### MOTION

Senator Baumgartner moved that the following committee amendment by the Committee on Commerce & Labor be adopted:

On page 5, line 13, at the start of the sentence, strike "(1)"

On page 5, line 18, at the start of the sentence, strike everything through page 6, line 2.

Senator Baumgartner spoke in favor of adoption of the committee amendment.

The President declared the question before the Senate to be the adoption of the committee amendment by the Committee on Commerce & Labor to Engrossed Second Substitute House Bill No. 1807.

The motion by Senator Baumgartner carried and the committee amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "66.04.630;" strike the remainder of the title and insert "and adding a new section to chapter 66.28 RCW."

#### MOTION

On motion of Senator Baumgartner, the rules were suspended, Engrossed Second Substitute House Bill No. 1807 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Baumgartner spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 1807 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1807 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Lias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

Voting nay: Senator Pearson

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1807 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 1045, by House Committee on Health Care & Wellness (originally sponsored by Representatives Tharinger, Harris, Van De Wege, Rodne, Moeller, Clibborn, Cody, G. Hunt, Jinkins, Gregerson, Santos and Riccelli)

Concerning the practice of East Asian medicine.

The measure was read the second time.

#### MOTION

On motion of Senator Becker, the rules were suspended, Substitute House Bill No. 1045 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Becker spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1045.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1045 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Lias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

SUBSTITUTE HOUSE BILL NO. 1045, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 2140, by Representatives Kagi, Orwall, Johnson, Walsh, Sells, Clibborn, Tarleton, Appleton, Ortiz-Self, Hargrove, Zeiger, Senn, Ormsby, Kilduff, Walkinshaw and Goodman

Concerning good cause exceptions during permanency hearings.

The measure was read the second time.

#### MOTION

Senator O'Ban moved that the following committee striking amendment by the Committee on Human Services, Mental Health & Housing be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 13.34.145 and 2013 c 332 s 3, 2013 c 206 s 1, and 2013 c 173 s 3 are each reenacted and amended to read as follows:

(1) The purpose of a permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and reach decisions regarding the permanent placement of the child.

(a) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as provided in this section, following the date of removal unless, prior to the hearing, the child returns to the home

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of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or a permanent custody order is entered, or the dependency is dismissed. Every effort shall be made to provide stability in long-term placement, and to avoid disruption of placement, unless the child is being returned home or it is in the best interest of the child.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(3) When the youth is at least age seventeen years but not older than seventeen years and six months, the department shall provide the youth with written documentation which explains the availability of extended foster care services and detailed instructions regarding how the youth may access such services after he or she reaches age eighteen years.

(4) At the permanency planning hearing, the court shall conduct the following inquiry:

(a) If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate.

(b) In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. The court shall review the permanency plan prepared by the agency and make explicit findings regarding each of the following:

(i) The continuing necessity for, and the safety and appropriateness of, the placement;

(ii) The extent of compliance with the permanency plan by the department or supervising agency and any other service providers, the child's parents, the child, and the child's guardian, if any;

(iii) The extent of any efforts to involve appropriate service providers in addition to department or supervising agency staff in planning to meet the special needs of the child and the child's parents;

(iv) The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child;

(v) The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement; and

(vi) If the child has been placed outside of his or her home for fifteen of the most recent twenty-two months, not including any period during which the child was a runaway from the out-of-home placement or the first six months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan, whether reasonable efforts were made by the department or supervising agency to achieve the goal of the permanency plan, and the circumstances which prevent the child from any of the following:

(A) Being returned safely to his or her home;

(B) Having a petition for the involuntary termination of parental rights filed on behalf of the child;

(C) Being placed for adoption;

(D) Being placed with a guardian;

(E) Being placed in the home of a fit and willing relative of the child; or

(F) Being placed in some other alternative permanent placement, including independent living or long-term foster care.

(5) Following this inquiry, at the permanency planning hearing, the court shall order the department or supervising agency to file a petition seeking termination of parental rights if the child has been in out-of-home care for fifteen of the last twenty-two months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not appropriate. Any good cause finding shall be reviewed at all subsequent hearings pertaining to the child.

(a) For purposes of this subsection, "good cause exception" includes but is not limited to the following:

(i) The child is being cared for by a relative;

(ii) The department has not provided to the child's family such services as the court and the department have deemed necessary for the child's safe return home;

(iii) The department has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the child's best interests; ~~((or))~~

(iv) The parent is incarcerated, or the parent's prior incarceration is a significant factor in why the child has been in foster care for fifteen of the last twenty-two months, the parent maintains a meaningful role in the child's life, and the department has not documented another reason why it would be otherwise appropriate to file a petition pursuant to this section;

(v) ~~((Until June 30, 2015,))~~ Where a parent has been accepted into a dependency treatment court program or long-term substance abuse or dual diagnoses treatment program and is demonstrating compliance with treatment goals; or

(vi) ~~((Until June 30, 2015,))~~ Where a parent who has been court ordered to complete services necessary for the child's safe return home files a declaration under penalty of perjury stating the parent's financial inability to pay for the same court-ordered services, and also declares the department was unwilling or unable to pay for the same services necessary for the child's safe return home.

(b) The court's assessment of whether a parent who is incarcerated maintains a meaningful role in the child's life may include consideration of the following:

(i) The parent's expressions or acts of manifesting concern for the child, such as letters, telephone calls, visits, and other forms of communication with the child;

(ii) The parent's efforts to communicate and work with the department or supervising agency or other individuals for the purpose of complying with the service plan and repairing, maintaining, or building the parent-child relationship;

(iii) A positive response by the parent to the reasonable efforts of the department or the supervising agency;

(iv) Information provided by individuals or agencies in a reasonable position to assist the court in making this assessment, including but not limited to the parent's attorney, correctional and mental health personnel, or other individuals providing services to the parent;

(v) Limitations in the parent's access to family support programs, therapeutic services, and visiting opportunities, restrictions to telephone and mail services, inability to participate

in foster care planning meetings, and difficulty accessing lawyers and participating meaningfully in court proceedings; and

(vi) Whether the continued involvement of the parent in the child's life is in the child's best interest.

(c) The constraints of a parent's current or prior incarceration and associated delays or barriers to accessing court-mandated services may be considered in rebuttal to a claim of aggravated circumstances under RCW 13.34.132(4)((~~g~~)) (h) for a parent's failure to complete available treatment.

(6)(a) If the permanency plan identifies independent living as a goal, the court at the permanency planning hearing shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial, personal, social, educational, and nonfinancial affairs prior to approving independent living as a permanency plan of care. The court will inquire whether the child has been provided information about extended foster care services.

(b) The permanency plan shall also specifically identify the services, including extended foster care services, where appropriate, that will be provided to assist the child to make a successful transition from foster care to independent living.

(c) The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(7) If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall:

(a) Enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280, 13.34.215(6), and 13.34.096; and

(b) If the department or supervising agency is recommending a placement other than the child's current placement with a foster parent, relative, or other suitable person, enter a finding as to the reasons for the recommendation for a change in placement.

(8) In all cases, at the permanency planning hearing, the court shall:

(a)(i) Order the permanency plan prepared by the supervising agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(9) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(10) Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(11) If the court orders the child returned home, casework supervision by the department or supervising agency shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

(12) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal

custodian. During the pendency of such proceeding, the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(13) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection (12) of this section are met.

(14) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the department or supervising agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(15) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

(16) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter.

NEW SECTION. Sec. 2. This act may be known and cited as the Roger Freeman act.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2015."

Senator O'Ban spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services, Mental Health & Housing to House Bill No. 2140.

The motion by Senator O'Ban carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "hearings;" strike the remainder of the title and insert "reenacting and amending RCW 13.34.145; creating a new section; providing and effective date; and declaring an emergency."

#### MOTION

On motion of Senator O'Ban, the rules were suspended, House Bill No. 2140 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Darneille spoke in favor of passage of the bill.



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The President declared the question before the Senate to be the final passage of House Bill No. 2140 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2140 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Lias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

HOUSE BILL NO. 2140 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED HOUSE BILL NO. 1868, by Representatives Lytton and Morris

Expanding county road fund purposes for certain counties.

The measure was read the second time.

#### MOTION

Senator Roach moved that the following committee striking amendment by the Committee on Transportation be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 36.82.070 and 2010 c 43 s 1 are each amended to read as follows:

(1) Any money paid to any county road fund may be used for the construction, alteration, repair, improvement, or maintenance of county roads and bridges thereon and for wharves necessary for ferriage of motor vehicle traffic, and for ferries, and for the acquiring, operating, and maintaining of machinery, equipment, quarries, or pits for the extraction of materials, and for the cost of establishing county roads, acquiring rights-of-way therefor, and expenses for the operation of the county engineering office, and for any of the following programs when directly related to county road purposes: ~~((4))~~ (a) Insurance; ~~((2))~~ (b) self-insurance programs; and ~~((3))~~ (c) risk management programs; and for any other proper county road purpose. Such expenditure may be made either independently or in conjunction with the state or any city, town, or tax district within the county. County road purposes include the construction, maintenance, or improvement of park and ride lots. County road purposes also include the removal of barriers to fish passage related to county roads, and include, but are not limited to, the following activities associated with the removal of these barriers: Engineering and technical services; stream bank stabilization; streambed restoration; the placement of weirs, rock, or woody debris; planting; and channel modification. County road funds may be used beyond the county right-of-way for activities clearly associated with removal of fish passage barriers that are the responsibility of the county. Activities related to the removal of barriers to fish passage

performed beyond the county right-of-way must not exceed twenty-five percent of the total cost of activities related to fish barrier removal on any one project, and the total annual cost of activities related to the removal of barriers to fish passage performed beyond the county rights-of-way must not exceed one-half of one percent of a county's annual road construction budget. The use of county road funds beyond the county right-of-way for activities associated with the removal of fish barriers is permissive, and wholly within the discretion of the county legislative authority. The use of county road funds beyond the county right-of-way for such activities does not create or impose a legal duty upon a county for salmon recovery work beyond the county right-of-way.

(2) For counties that consist entirely of islands, county road purposes also include marine uses relating to navigation and moorage. Such a county may deposit revenue collected under RCW 84.52.043 and 36.82.040, in the amount or percentage determined by the county, into a subaccount within the county road fund to be used for marine facilities, including mooring buoys, docks, and aids to navigation.

**Sec. 2.** RCW 36.79.140 and 2001 c 221 s 2 and 2001 c 212 s 26 are each reenacted and amended to read as follows:

At the time the board reviews the six-year program of each county each even-numbered year, it shall consider and shall approve for inclusion in its recommended budget, as required by RCW 36.79.130, the portion of the rural arterial construction program scheduled to be performed during the biennial period beginning the following July 1st. Subject to the appropriations actually approved by the legislature, the board shall as soon as feasible approve rural arterial trust account funds to be spent during the ensuing biennium for preliminary proposals in priority sequence as established pursuant to RCW 36.79.090. Only those counties that during the preceding twelve months have spent all revenues collected for road purposes only for such purposes, including removal of barriers to fish passage and accompanying streambed and stream bank repair as specified in RCW 36.82.070, and including traffic law enforcement, as are allowed to the state by Article II, section 40 of the state Constitution or RCW 36.82.070(2) are eligible to receive funds from the rural arterial trust account, except that: (1) Counties with a population of less than eight thousand are exempt from this eligibility restriction; (2) counties expending revenues collected for road purposes only on other governmental services after authorization from the voters of that county under RCW 84.55.050 are also exempt from this eligibility restriction; and (3) this restriction shall not apply to any moneys diverted from the road district levy under chapter 39.89 RCW. The board shall authorize rural arterial trust account funds for the construction project portion of a project previously authorized for a preliminary proposal in the sequence in which the preliminary proposal has been completed and the construction project is to be placed under contract. At such time the board may reserve rural arterial trust account funds for expenditure in future years as may be necessary for completion of preliminary proposals and construction projects to be commenced in the ensuing biennium.

The board may, within the constraints of available rural arterial trust funds, consider additional projects for authorization upon a clear and conclusive showing by the submitting county that the proposed project is of an emergent nature and that its need was unable to be anticipated at the time the six-year program of the county was developed. The proposed projects shall be evaluated on the basis of the priority rating factors specified in RCW 36.79.080."

Senator Lias spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Transportation to Engrossed House Bill No. 1868.

The motion by Senator Roach carried and the committee striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "counties;" strike the remainder of the title and insert "amending RCW 36.82.070; and reenacting and amending RCW 36.79.140."

#### MOTION

On motion of Senator Benton, the rules were suspended, Engrossed House Bill No. 1868 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Benton and Liias spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 1868 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 1868 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 46; Nays, 3; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Jayapal, Keiser, King, Kohl-Welles, Liias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Sheldon and Warnick

Voting nay: Senators Honeyford, Padden and Schoesler

ENGROSSED HOUSE BILL NO. 1868 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 1392, by Representatives Stanford, Tharinger, Dunshee and McBride

Concerning the administrative rate the recreation and conservation funding board may retain to administer the grant programs established in chapter 79A.15 RCW.

The measure was read the second time.

#### MOTION

Senator Pearson moved that the following committee striking amendment by the Committee on Natural Resources & Parks be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 79A.15.030 and 2009 c 341 s 2 are each amended to read as follows:

(1) Moneys appropriated for this chapter shall be divided as follows:

(a) Appropriations for a biennium of forty million dollars or less must be allocated equally between the habitat conservation account and the outdoor recreation account.

(b) If appropriations for a biennium total more than forty million dollars, the money must be allocated as follows: (i) Twenty million dollars to the habitat conservation account and twenty million dollars to the outdoor recreation account; (ii) any amount over forty million dollars up to fifty million dollars shall be allocated as follows: (A) Ten percent to the habitat conservation account; (B) ten percent to the outdoor recreation account; (C) forty percent to the riparian protection account; and (D) forty percent to the farmlands preservation account; and (iii) any amounts over fifty million dollars must be allocated as follows: (A) Thirty percent to the habitat conservation account; (B) thirty percent to the outdoor recreation account; (C) thirty percent to the riparian protection account; and (D) ten percent to the farmlands preservation account.

(2) Except as otherwise provided in chapter 303, Laws of 2005, moneys deposited in these accounts shall be invested as authorized for other state funds, and any earnings on them shall be credited to the respective account.

(3) All moneys deposited in the habitat conservation, outdoor recreation, riparian protection, and farmlands preservation accounts shall be allocated as provided under RCW 79A.15.040, 79A.15.050, 79A.15.120, and 79A.15.130 as grants to state or local agencies or nonprofit nature conservancy organizations or associations for acquisition, development, and renovation within the jurisdiction of those agencies, subject to legislative appropriation. The board may use or permit the use of any funds appropriated for this chapter as matching funds where federal, local, or other funds are made available for projects within the purposes of this chapter. Moneys appropriated to these accounts that are not obligated to a specific project may be used to fund projects from lists of alternate projects from the same account in biennia succeeding the biennium in which the moneys were originally appropriated.

(4) Projects receiving grants under this chapter that are developed or otherwise accessible for public recreational uses shall be available to the public.

(5) The board may make grants to an eligible project from the habitat conservation, outdoor recreation, riparian protection, and farmlands preservation accounts and any one or more of the applicable categories under such accounts described in RCW 79A.15.040, 79A.15.050, 79A.15.120, and 79A.15.130.

(6) The board may accept private donations to the habitat conservation account, the outdoor recreation account, the riparian protection account, and the farmlands preservation account for the purposes specified in this chapter.

(7) The board may (~~apply up to three percent~~) retain a portion of the funds appropriated for this chapter for its office for the administration of the programs and purposes specified in this chapter. The portion of the funds retained for administration may not exceed: (a) The actual administration costs averaged over the previous five biennia as a percentage of the legislature's new appropriation for this chapter; or (b) the amount specified in the appropriation, if any. Each biennium the percentage specified under (a) of this subsection must be approved by the office of financial management and submitted along with the prioritized lists of projects to be funded in RCW 79A.15.060(6), 79A.15.070(7), 79A.15.120(10), and 79A.15.130(11).

(8) Habitat and recreation land and facilities acquired or developed with moneys appropriated for this chapter may not,

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without prior approval of the board, be converted to a use other than that for which funds were originally approved. The board shall adopt rules and procedures governing the approval of such a conversion."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Natural Resources & Parks to House Bill No. 1392.

The motion by Senator Pearson carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 3 of the title, after "79A.15 RCW;" strike the remainder of the title and insert "and amending RCW 79A.15.030."

MOTION

On motion of Senator Pearson, the rules were suspended, House Bill No. 1392 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Pearson spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1392 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1392 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Lias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

Voting nay: Senators Dansel and Padden

HOUSE BILL NO. 1392 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SENATE BILL NO. 5449, by Senators Braun, Rivers, Brown, Hobbs, Dammeier, Becker, Mullet, Sheldon, Warnick, Fain, Honeyford, Hewitt and Frockt

Creating a tax division of the court of appeals.

MOTIONS

On motion of Senator Braun, Second Substitute Senate Bill No. 5449 was substituted for Senate Bill No. 5449 and the second substitute bill was placed on the second reading and read the second time.

On motion of Senator Braun, the rules were suspended, Second Substitute Senate Bill No. 5449 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Braun and Baumgartner spoke in favor of passage of the bill.

Senator Pedersen spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute Senate Bill No. 5449.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute Senate Bill No. 5449 and the bill passed the Senate by the following vote: Yeas, 33; Nays, 16; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Dammeier, Dansel, Ericksen, Fain, Habib, Hewitt, Hill, Hobbs, Honeyford, Keiser, King, Lias, Litzow, Miloscia, Mullet, O'Ban, Padden, Parlette, Pearson, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

Voting nay: Senators Chase, Cleveland, Conway, Darneille, Fraser, Frockt, Hargrove, Hasegawa, Hatfield, Jayapal, Kohl-Welles, McAuliffe, McCoy, Nelson, Pedersen and Ranker

SECOND SUBSTITUTE SENATE BILL NO. 5449, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1546, by House Committee on Appropriations (originally sponsored by Representatives Reykdal, Pollet, Springer, Bergquist, S. Hunt, Lytton, Tarleton, Wylie and McBride)

Concerning dual credit opportunities provided by Washington state's public institutions of higher education.

The measure was read the second time.

MOTION

Senator Dammeier moved that the following committee striking amendment by the Committee on Ways & Means be not adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that Washington has been a front-runner in dual credit innovation through the establishment of the running start and college in the high school programs, and has continued to expand student choices in dual credit programs.

In Washington, a range of dual credit or dual enrollment programs are available to students. Dual credit programs, such as running start, college in the high school, tech prep (course completion options), and AP and international baccalaureate and Cambridge (standardized exam options) offer academically prepared students the opportunity to earn college credits while still in high school. Students who participate in these programs achieve improved high school graduation rates and are more likely to continue on to college and complete a degree. In addition, dual credit and dual enrollment programs support students' individual college and career pathways.

The legislature further finds that through the development and implementation of the 2013 roadmap the student achievement council has identified key barriers that limit access to dual credit programs, particularly for low-income students. Removing these barriers is a critical step toward achieving the state educational attainment goals outlined in the roadmap.

The legislature recognizes that the decision to enroll in a dual credit program should be made by the student and the student's parents or guardians, in consultation with counselors or academic advisors, and based on the academic, cultural, and developmental needs and college and career goals of the student. The decision to choose one dual credit option over another should not be based on the difference in the costs of one option over another.

In the college in the high school program, credit is awarded based on successful course completion and ability to pay tuition and fees. Under the current college in the high school system, some students may successfully complete the course but do not receive credit because they are unable to pay.

Students in the running start program face a different but equally challenging situation. Students in the running start program do not receive funding for books and transportation costs. These financial barriers decrease opportunities for lower income students to benefit from dual credit programs.

Therefore, the legislature intends to increase opportunities for academically prepared high school students to earn up to two years of college credit through dual credit programs, and to reduce disparities in access to, and completion of, these programs. This act provides a new funding model to eliminate tuition in the college in the high school program, and provides flexibility in the academic acceleration incentive program to assist students with transportation and book expenses associated with the running start program. It is the intent of the legislature, once this new funding model is enacted and operational, to establish a distinction between the college in the high school program as a program occurring in high schools and the running start program as a program occurring on a college campus.

The legislature finds that dual credit opportunities are a valuable means of supporting students on their way to successful completion of college and career pathways. The legislature seeks additional recommendations to mitigate financial and other barriers for students enrolled in the running start program, and dual credit programs based on standardized exams.

**Sec. 2.** RCW 28A.320.196 and 2013 c 184 s 3 are each amended to read as follows:

(1) Subject to funds appropriated specifically for this purpose, the academic acceleration incentive program is established as provided in this section. The intent of the legislature is that the funds awarded under the program be used to support teacher training, curriculum, technology, examination fees, textbook fees, and other costs associated with offering dual credit courses to high school students, including transportation for running start students to and from the institution of higher education as defined in RCW 28A.600.300.

(2) The office of the superintendent of public instruction shall allocate half of the funds appropriated for the purposes of this section on a competitive basis to provide one-time grants for high schools to expand the availability of dual credit courses. To be eligible for a grant, a school district must have adopted an academic acceleration policy as provided under RCW 28A.320.195. In making grant awards, the office of the superintendent of public instruction must give priority to grants for high schools with a high proportion of low-income students and high schools seeking to develop new capacity for dual credit courses rather than proposing marginal expansion of current capacity.

(3) The office of the superintendent of public instruction shall allocate half of the funds appropriated for the purposes of this section to school districts as an incentive award for each student who earned dual high school and college credit, as described under subsection (4) of this section, for courses offered by the district's high schools during the previous school year. School districts must distribute the award to the high schools that generated the funds. The award amount for low-income students eligible to participate in the federal free and reduced-price meals program who earn dual credits must be set at one hundred twenty-five percent of the base award for other students. A student who earns more than one dual credit in the same school year counts only once for the purposes of the incentive award.

(4) For the purposes of this section, the following students are considered to have earned dual high school and college credit in a course offered by a high school:

(a) Students who achieve a score of three or higher on an AP examination;

(b) Students who achieve a score of four or higher on an examination of the international baccalaureate diploma programme;

(c) Students who successfully complete a Cambridge advanced international certificate of education examination;

(d) Students who successfully complete a course through the college in the high school program under RCW 28A.600.290 and are awarded credit by the partnering institution of higher education; and

(e) Students who satisfy the dual enrollment and class preparation requirements to earn college credit through a tech prep course.

(5) If a high school provides access to online courses for students to earn dual high school and college credit at no cost to the student, such a course is considered to be offered by the high school. ~~((Students enrolled in the running start program under RCW 28A.600.300 do not generate an incentive award under this section.))~~

(6) The office of the superintendent of public instruction shall report to the education policy committees and the fiscal committees of the legislature, by January 1st of each year, information about the demographics of the students earning dual credits in the schools receiving grants under this section for the prior school year. Demographic data shall be disaggregated pursuant to RCW 28A.300.042.

**Sec. 3.** RCW 28A.600.290 and 2012 c 229 s 801 are each amended to read as follows:

(1) ~~((The superintendent of public instruction, the state board for community and technical colleges, and the public baccalaureate institutions shall jointly develop and each adopt rules governing the college in the high school program. The association of Washington school principals shall be consulted during the rules development. The rules shall be written to encourage the maximum use of the program and may not narrow or limit the enrollment options.~~

(2)) (a) Subject to the availability of amounts appropriated for this specific purpose and commencing with the 2015-16 school year, funding may be allocated at an amount per college credit for students enrolled in college in the high school courses under this section as specified in the omnibus appropriations act and adjusted for inflation from the 2015-16 school year. The maximum annual number of allocated credits per participating student shall be specified in the omnibus appropriations act, which must not exceed ten credits. Funding shall be prioritized in the following order:

(i) Students enrolled in a running start in the high school program in school year 2014-15. These students shall only receive prioritized funding in school year 2015-16;

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(ii) High schools that are twenty driving miles or more from the nearest eligible institution of higher education offering a running start program as measured by the most direct route; and

(iii) High schools eligible for the small school funding enhancement in the omnibus appropriations act.

(b)(i) Subject to the availability of amounts appropriated for this specific purpose and commencing with the 2015-16 school year, and only after the programs in (a) of this subsection are funded, a subsidy may be provided per college credit for students who have been deemed eligible for free or reduced-price lunch enrolled in college in the high school courses under this section as specified in the omnibus appropriations act and adjusted for inflation from the 2015-16 school year. The maximum annual number of subsidized credits per participating student shall be specified in the omnibus appropriations act, which must not exceed five credits.

(ii) Districts wishing to participate in the subsidy program must apply to the office of the superintendent of public instruction by July 1st of each year and report the preliminary estimate of eligible students to receive the subsidy and the total number of projected credit hours.

(iii) The office of the superintendent of public instruction shall notify districts by September 1st of each school year if the district's students will receive the subsidy. If more districts apply than funding is available, the office of the superintendent of public instruction shall prioritize the district applications. The superintendent shall develop factors to determine priority including, but not limited to, the number of dual credit opportunities available for low-income students in the districts.

(c) Districts shall remit any allocations or subsidies on behalf of participating students under (a) and (b) of this subsection to the participating institution of higher education and those students shall not be required to pay for the credits.

(d) The minimum allocation and subsidy under this section is sixty-five dollars per quarter credit for credit-bearing postsecondary coursework. The office of the superintendent of public instruction, the student achievement council, the state board for community and technical colleges, and the public baccalaureate institutions shall review funding levels for the program every four years beginning in 2017 and recommend changes.

(e) Students may pay college in the high school fees with advanced college tuition payment program tuition units at a rate set by the advanced college tuition payment program governing body under chapter 28B.95 RCW.

(2) For the purposes of funding students enrolled in the college in the high school program in accordance with subsection (1) of this section, college in the high school is defined as a dual credit program located on a high school campus or in a high school environment in which a high school student is able to earn both high school and postsecondary credit by completing postsecondary level courses with a passing grade.

(3) College in the high school programs may include both academic and career and technical education.

(4) College in the high school programs shall each be governed by a local contract between the district and the participating institution of higher education, in compliance with the ~~((guidelines adopted by the superintendent of public instruction, the state board for community and technical colleges, and the public baccalaureate institutions))~~ rules adopted by the superintendent of public instruction under this section.

~~((3))~~ (5) The college in the high school program must include the provisions in this subsection.

(a) The high school and participating institution of higher education together shall define the criteria for student eligibility.

The institution of higher education may charge tuition fees to participating students. If specific funding is provided in the omnibus appropriations act for the per credit allocations and per credit subsidies under subsection (1) of this section, the maximum per credit fee charged to any enrolled student may not exceed the amount of the per credit allocation or subsidy.

~~(b) ((School districts shall report no student for more than one full time equivalent including college in the high school courses.~~

~~(e))~~ The funds received by the participating institution of higher education may not be deemed tuition or operating fees and may be retained by the institution of higher education.

~~((4))~~ (c) Enrollment information on persons registered under this section must be maintained by the institution of higher education separately from other enrollment information and may not be included in official enrollment reports, nor may such persons be considered in any enrollment statistics that would affect higher education budgetary determinations.

~~((5))~~ (d) A school district must grant high school credit to a student enrolled in a program course if the student successfully completes the course. If no comparable course is offered by the school district, the school district superintendent shall determine how many credits to award for the course. The determination shall be made in writing before the student enrolls in the course. The credits shall be applied toward graduation requirements and subject area requirements. Evidence of successful completion of each program course shall be included in the student's secondary school records and transcript.

~~((6) Am)~~ (e) A participating institution of higher education must grant college credit to a student enrolled in a program course if the student successfully completes the course. The college credit shall be applied toward general education requirements or ~~((major requirements. If no comparable course is offered by the college, the institution of higher education at which the teacher of the program course is employed shall determine how many credits to award for the course and whether the course fulfills general education or major))~~ degree requirements at institutions of higher education. Evidence of successful completion of each program course must be included in the student's college transcript.

~~((7))~~ (f) Eleventh and twelfth grade students or students who have not yet received a high school diploma or its equivalent and are eligible to be in the eleventh or twelfth grades may participate in the college in the high school program.

~~((8))~~ (g) Participating school districts must provide general information about the college in the high school program to all students in grades ten, eleven, and twelve and to the parents and guardians of those students.

~~((9))~~ (h) Full-time and part-time faculty at institutions of higher education, including adjunct faculty, are eligible to teach program courses.

~~((10))~~ (6) The superintendent of public instruction shall adopt rules for the administration of this section. The rules shall be jointly developed by the superintendent of public instruction, the state board for community and technical colleges, the student achievement council, and the public baccalaureate institutions. The association of Washington school principals must be consulted during the rules development. The rules must outline quality and eligibility standards that are informed by nationally recognized standards or models. In addition, the rules must encourage the maximum use of the program and may not narrow or limit the enrollment options.

(7) The definitions in this subsection apply throughout this section.

(a) "Institution of higher education" has the ~~((meaning))~~ definition in RCW 28B.10.016, and also includes a public tribal

college located in Washington and accredited by the Northwest commission on colleges and universities or another accrediting association recognized by the United States department of education.

(b) "Program course" means a college course offered in a high school under the college in the high school program.

**Sec. 4.** RCW 28A.600.310 and 2012 c 229 s 702 are each amended to read as follows:

(1)(a) Eleventh and twelfth grade students or students who have not yet received the credits required for the award of a high school diploma and are eligible to be in the eleventh or twelfth grades may apply to a participating institution of higher education to enroll in courses or programs offered by the institution of higher education.

(b) The course sections and programs offered as running start courses must also be open for registration to matriculated students at the participating institution of higher education and may not be a course consisting solely of high school students offered at a high school campus.

(c) A student receiving home-based instruction enrolling in a public high school for the sole purpose of participating in courses or programs offered by institutions of higher education shall not be counted by the school district in any required state or federal accountability reporting if the student's parents or guardians filed a declaration of intent to provide home-based instruction and the student received home-based instruction during the school year before the school year in which the student intends to participate in courses or programs offered by the institution of higher education. Students receiving home-based instruction under chapter 28A.200 RCW and students attending private schools approved under chapter 28A.195 RCW shall not be required to meet the student learning goals, obtain a certificate of academic achievement or a certificate of individual achievement to graduate from high school, or to master the essential academic learning requirements. However, students are eligible to enroll in courses or programs in participating universities only if the board of directors of the student's school district has decided to participate in the program. Participating institutions of higher education, in consultation with school districts, may establish admission standards for these students. If the institution of higher education accepts a secondary school pupil for enrollment under this section, the institution of higher education shall send written notice to the pupil and the pupil's school district within ten days of acceptance. The notice shall indicate the course and hours of enrollment for that pupil.

(2)(a) In lieu of tuition and fees, as defined in RCW 28B.15.020 and 28B.15.041:

(i) Running start students shall pay to the community or technical college all other mandatory fees as established by each community or technical college and, in addition, the state board for community and technical colleges may authorize a fee of up to ten percent of tuition and fees as defined in RCW 28B.15.020 and 28B.15.041; and

(ii) All other institutions of higher education operating a running start program may charge running start students a fee of up to ten percent of tuition and fees as defined in RCW 28B.15.020 and 28B.15.041 in addition to technology fees.

(b) The fees charged under this subsection (2) shall be prorated based on credit load.

(c) Students may pay fees under this subsection with advanced college tuition payment program tuition units at a rate set by the advanced college tuition payment program governing body under chapter 28B.95 RCW.

(3)(a) The institutions of higher education must make available fee waivers for low-income running start students. Each institution must establish a written policy for the determination of

low-income students before offering the fee waiver. A student shall be considered low income and eligible for a fee waiver upon proof that the student is currently qualified to receive free or reduced-price lunch. Acceptable documentation of low-income status may also include, but is not limited to, documentation that a student has been deemed eligible for free or reduced-price lunches in the last five years, or other criteria established in the institution's policy.

(b) Institutions of higher education, in collaboration with relevant student associations, shall aim to have students who can benefit from fee waivers take advantage of these waivers. Institutions shall make every effort to communicate to students and their families the benefits of the waivers and provide assistance to students and their families on how to apply. Information about waivers shall, to the greatest extent possible, be incorporated into financial aid counseling, admission information, and individual billing statements. Institutions also shall, to the greatest extent possible, use all means of communication, including but not limited to web sites, online catalogues, admission and registration forms, mass email messaging, social media, and outside marketing to ensure that information about waivers is visible, compelling, and reaches the maximum number of students and families that can benefit.

(4) The pupil's school district shall transmit to the institution of higher education an amount per each full-time equivalent college student at statewide uniform rates for vocational and nonvocational students. The superintendent of public instruction shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 to school districts for purposes of making such payments and for granting school districts seven percent thereof to offset program related costs. The calculations and allocations shall be based upon the estimated statewide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable rules adopted under chapter 34.05 RCW. The superintendent of public instruction, participating institutions of higher education, and the state board for community and technical colleges shall consult on the calculation and distribution of the funds. The funds received by the institution of higher education from the school district shall not be deemed tuition or operating fees and may be retained by the institution of higher education. A student enrolled under this subsection shall be counted for the purpose of meeting enrollment targets in accordance with terms and conditions specified in the omnibus appropriations act.

~~((5) The state board for community and technical colleges, in collaboration with the other institutions of higher education that participate in the running start program and the office of the superintendent of public instruction, shall identify, assess, and report on alternatives for providing ongoing and adequate financial support for the program. Such alternatives shall include but are not limited to student tuition, increased support from local school districts, and reallocation of existing state financial support among the community and technical college system to account for differential running start enrollment levels and impacts. The state board for community and technical colleges shall report the assessment of alternatives to the governor and to the appropriate fiscal and policy committees of the legislature by September 1, 2010.))~~

**Sec. 5.** RCW 28B.95.020 and 2012 c 229 s 606 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Academic year" means the regular nine-month, three-quarter, or two-semester period annually occurring between August 1st and July 31st.

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(2) "Account" means the Washington advanced college tuition payment program account established for the deposit of all money received by the office from eligible purchasers and interest earnings on investments of funds in the account, as well as for all expenditures on behalf of eligible beneficiaries for the redemption of tuition units and for the development of any authorized college savings program pursuant to RCW 28B.95.150.

(3) "Committee on advanced tuition payment" or "committee" means a committee of the following members: The state treasurer, the director of the office of financial management, the director of the office, or their designees, and two members to be appointed by the governor, one representing program participants and one private business representative with marketing, public relations, or financial expertise.

(4) "Contractual obligation" means a legally binding contract of the state with the purchaser and the beneficiary establishing that purchases of tuition units will be worth the same number of tuition units at the time of redemption as they were worth at the time of the purchase.

(5) "Dual credit fees" means any fees charged to a student for participation in college in the high school under RCW 28A.600.290 or running start under RCW 28A.600.310.

(6) "Eligible beneficiary" means the person for whom the tuition unit will be redeemed for attendance at an institution of higher education, participation in college in the high school under RCW 28A.600.290, or participation in running start under RCW 28A.600.310. The beneficiary is that person named by the purchaser at the time that a tuition unit contract is accepted by the governing body. Qualified organizations, as allowed under section 529 of the federal internal revenue code, purchasing tuition unit contracts as future scholarships need not designate a beneficiary at the time of purchase.

~~((6))~~ (7) "Eligible purchaser" means an individual or organization that has entered into a tuition unit contract with the governing body for the purchase of tuition units for an eligible beneficiary. The state of Washington may be an eligible purchaser for purposes of purchasing tuition units to be held for granting Washington college bound scholarships.

~~((7))~~ (8) "Full-time tuition charges" means resident tuition charges at a state institution of higher education for enrollments between ten credits and eighteen credit hours per academic term.

~~((8))~~ (9) "Governing body" means the committee empowered by the legislature to administer the Washington advanced college tuition payment program.

~~((9))~~ (10) "Institution of higher education" means an institution that offers education beyond the secondary level and is recognized by the internal revenue service under chapter 529 of the internal revenue code.

~~((10))~~ (11) "Investment board" means the state investment board as defined in chapter 43.33A RCW.

~~((11))~~ (12) "Office" means the office of student financial assistance as defined in chapter 28B.76 RCW.

~~((12))~~ (13) "State institution of higher education" means institutions of higher education as defined in RCW 28B.10.016.

~~((13))~~ (14) "Tuition and fees" means undergraduate tuition and services and activities fees as defined in RCW 28B.15.020 and 28B.15.041 rounded to the nearest whole dollar. For purposes of this chapter, services and activities fees do not include fees charged for the payment of bonds heretofore or hereafter issued for, or other indebtedness incurred to pay, all or part of the cost of acquiring, constructing, or installing any lands, buildings, or facilities.

~~((14))~~ (15) "Tuition unit contract" means a contract between an eligible purchaser and the governing body, or a successor

agency appointed for administration of this chapter, for the purchase of tuition units for a specified beneficiary that may be redeemed at a later date for an equal number of tuition units.

~~((15))~~ (16) "Unit purchase price" means the minimum cost to purchase one tuition unit for an eligible beneficiary. Generally, the minimum purchase price is one percent of the undergraduate tuition and fees for the current year, rounded to the nearest whole dollar, adjusted for the costs of administration and adjusted to ensure the actuarial soundness of the account. The analysis for price setting shall also include, but not be limited to consideration of past and projected patterns of tuition increases, program liability, past and projected investment returns, and the need for a prudent stabilization reserve.

**Sec. 6.** RCW 28B.95.030 and 2011 1st sp.s. c 12 s 2 and 2011 1st sp.s. c 11 s 170 are each reenacted and amended to read as follows:

(1) The Washington advanced college tuition payment program shall be administered by the committee on advanced tuition payment which shall be chaired by the director of the office. The committee shall be supported by staff of the office.

(2)(a) The Washington advanced college tuition payment program shall consist of the sale of tuition units, which may be redeemed by the beneficiary at a future date for an equal number of tuition units regardless of any increase in the price of tuition, that may have occurred in the interval.

(b) Each purchase shall be worth a specific number of or fraction of tuition units at each state institution of higher education as determined by the governing body.

(c) The number of tuition units necessary to pay for a full year's, full-time undergraduate tuition and fee charges at a state institution of higher education shall be set by the governing body at the time a purchaser enters into a tuition unit contract.

(d) The governing body may limit the number of tuition units purchased by any one purchaser or on behalf of any one beneficiary, however, no limit may be imposed that is less than that necessary to achieve four years of full-time, undergraduate tuition charges at a state institution of higher education. The governing body also may, at its discretion, limit the number of participants, if needed, to ensure the actuarial soundness and integrity of the program.

(e) While the Washington advanced college tuition payment program is designed to help all citizens of the state of Washington, the governing body may determine residency requirements for eligible purchasers and eligible beneficiaries to ensure the actuarial soundness and integrity of the program.

(3)(a) No tuition unit may be redeemed until two years after the purchase of the unit.

(b) Units may be redeemed for enrollment at any institution of higher education that is recognized by the internal revenue service under chapter 529 of the internal revenue code. Units may also be redeemed to pay for dual credit fees.

(b) Units redeemed at a nonstate institution of higher education or for graduate enrollment shall be redeemed at the rate for state public institutions in effect at the time of redemption.

(4) The governing body shall determine the conditions under which the tuition benefit may be transferred to another family member. In permitting such transfers, the governing body may not allow the tuition benefit to be bought, sold, bartered, or otherwise exchanged for goods and services by either the beneficiary or the purchaser.

(5) The governing body shall administer the Washington advanced college tuition payment program in a manner reasonably designed to be actuarially sound, such that the assets of the trust will be sufficient to defray the obligations of the trust including the costs of administration. The governing body may, at

its discretion, discount the minimum purchase price for certain kinds of purchases such as those from families with young children, as long as the actuarial soundness of the account is not jeopardized.

(6) The governing body shall annually determine current value of a tuition unit.

(7) The governing body shall promote, advertise, and publicize the Washington advanced college tuition payment program.

(8) In addition to any other powers conferred by this chapter, the governing body may:

(a) Impose reasonable limits on the number of tuition units or units that may be used in any one year;

(b) Determine and set any time limits, if necessary, for the use of benefits under this chapter;

(c) Impose and collect administrative fees and charges in connection with any transaction under this chapter;

(d) Appoint and use advisory committees and the state actuary as needed to provide program direction and guidance;

(e) Formulate and adopt all other policies and rules necessary for the efficient administration of the program;

(f) Consider the addition of an advanced payment program for room and board contracts and also consider a college savings program;

(g) Purchase insurance from insurers licensed to do business in the state, to provide for coverage against any loss in connection with the account's property, assets, or activities or to further insure the value of the tuition units;

(h) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of its powers and duties under this chapter;

(i) Contract for the provision for all or part of the services necessary for the management and operation of the program with other state or nonstate entities authorized to do business in the state;

(j) Contract for other services or for goods needed by the governing body in the conduct of its business under this chapter;

(k) Contract with financial consultants, actuaries, auditors, and other consultants as necessary to carry out its responsibilities under this chapter;

(l) Solicit and accept cash donations and grants from any person, governmental agency, private business, or organization; and

(m) Perform all acts necessary and proper to carry out the duties and responsibilities of this program under this chapter.

**NEW SECTION. Sec. 7.** (1) By September 15, 2016, the student achievement council, in collaboration with the state board for community and technical colleges, the office of the superintendent of public instruction, and the public baccalaureate institutions, shall make recommendations to the legislature to streamline and improve dual credit programs in Washington with particular attention to increasing participation of students who are low income and/or currently underrepresented in the running start, AP, international baccalaureate, and Cambridge international programs.

(2) This section expires January 1, 2017."

On page 1, line 2 of the title, after "education;" strike the remainder of the title and insert "amending RCW 28A.320.196, 28A.600.290, and 28A.600.310; reenacting and amending RCW 28B.95.020 and 28B.95.030; creating new sections; and providing an expiration date."

The President declared the question before the Senate to be the motion by Senator Dammeier that the committee striking amendment by the Committee on Ways & Means to Engrossed Second Substitute House Bill No. 1546 be not adopted.

The motion by Senator Dammeier carried and the committee striking amendment was not adopted by voice vote.

## MOTION

Senator Dammeier moved that the following committee striking amendment by the Committee on Early Learning & K-12 Education be not adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that Washington has been a front-runner in dual credit innovation through the establishment of the running start and college in the high school programs, and has continued to expand student choices in dual credit programs.

In Washington, a range of dual credit or dual enrollment programs are available to students. Dual credit programs, such as running start, college in the high school, tech prep (course completion options), and AP and international baccalaureate and Cambridge (standardized exam options) offer academically prepared students the opportunity to earn college credits while still in high school. Students who participate in these programs achieve improved high school graduation rates and are more likely to continue on to college and complete a degree. In addition, dual credit and dual enrollment programs support students' individual college and career pathways.

The legislature further finds that through the development and implementation of the 2013 roadmap the student achievement council has identified key barriers that limit access to dual credit programs, particularly for low-income students. Removing these barriers is a critical step toward achieving the state educational attainment goals outlined in the roadmap.

The legislature recognizes that the decision to enroll in a dual credit program should be made by the student and the student's parents or guardians, in consultation with counselors or academic advisors, and based on the academic, cultural, and developmental needs and college and career goals of the student. The decision to choose one dual credit option over another should not be based on the difference in the costs of one option over another.

In the college in the high school program, credit is awarded based on successful course completion and ability to pay tuition and fees. Under the current college in the high school system, some students may successfully complete the course but do not receive credit because they are unable to pay.

Students in the running start program face a different but equally challenging situation. Students in the running start program do not receive funding for books and transportation costs. These financial barriers decrease opportunities for lower income students to benefit from dual credit programs.

Therefore, the legislature intends to increase opportunities for academically prepared high school students to earn up to two years of college credit through dual credit programs, and to reduce disparities in access to, and completion of, these programs. This act provides a new funding model to eliminate tuition in the college in the high school program, and provides flexibility in the academic acceleration incentive program to assist students with transportation and book expenses associated with the running start program. It is the intent of the legislature, once this new funding model is enacted and operational, to establish a distinction between the college in the high school program as a program occurring in high schools and the running start program as a program occurring on a college campus or on a high school campus that is thirty driving miles or more from the nearest eligible institution of higher education as defined in RCW 28A.600.300 as measured by the most direct route.



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The legislature finds that dual credit opportunities are a valuable means of supporting students on their way to successful completion of college and career pathways. The legislature seeks additional recommendations to mitigate financial and other barriers for students enrolled in the running start program, and dual credit programs based on standardized exams.

**Sec. 2.** RCW 28A.320.196 and 2013 c 184 s 3 are each amended to read as follows:

(1) Subject to funds appropriated specifically for this purpose, the academic acceleration incentive program is established as provided in this section. The intent of the legislature is that the funds awarded under the program be used to support teacher training, curriculum, technology, examination fees, textbook fees, and other costs associated with offering dual credit courses to high school students, including transportation for running start students to and from the institution of higher education as defined in RCW 28A.600.300.

(2) The office of the superintendent of public instruction shall allocate half of the funds appropriated for the purposes of this section on a competitive basis to provide one-time grants for high schools to expand the availability of dual credit courses. To be eligible for a grant, a school district must have adopted an academic acceleration policy as provided under RCW 28A.320.195. In making grant awards, the office of the superintendent of public instruction must give priority to grants for high schools with a high proportion of low-income students and high schools seeking to develop new capacity for dual credit courses rather than proposing marginal expansion of current capacity.

(3) The office of the superintendent of public instruction shall allocate half of the funds appropriated for the purposes of this section to school districts as an incentive award for each student who earned dual high school and college credit, as described under subsection (4) of this section, for courses offered by the district's high schools during the previous school year. School districts must distribute the award to the high schools that generated the funds. The award amount for low-income students eligible to participate in the federal free and reduced-price meals program who earn dual credits must be set at one hundred twenty-five percent of the base award for other students. A student who earns more than one dual credit in the same school year counts only once for the purposes of the incentive award.

(4) For the purposes of this section, the following students are considered to have earned dual high school and college credit in a course offered by a high school:

(a) Students who achieve a score of three or higher on an AP examination;

(b) Students who achieve a score of four or higher on an examination of the international baccalaureate diploma programme;

(c) Students who successfully complete a Cambridge advanced international certificate of education examination;

(d) Students who successfully complete a course through the college in the high school program under RCW 28A.600.290 and are awarded credit by the partnering institution of higher education; and

(e) Students who satisfy the dual enrollment and class performance requirements to earn college credit through a tech prep course.

(5) If a high school provides access to online courses for students to earn dual high school and college credit at no cost to the student, such a course is considered to be offered by the high school. ~~((Students enrolled in the running start program under RCW 28A.600.300 do not generate an incentive award under this section.))~~

(6) The office of the superintendent of public instruction shall report to the education policy committees and the fiscal committees of the legislature, by January 1st of each year, information about the demographics of the students earning dual credits in the schools receiving grants under this section for the prior school year. Demographic data shall be disaggregated pursuant to RCW 28A.300.042.

**Sec. 3.** RCW 28A.600.290 and 2012 c 229 s 801 are each amended to read as follows:

~~(1) ((The superintendent of public instruction, the state board for community and technical colleges, and the public baccalaureate institutions shall jointly develop and each adopt rules governing the college in the high school program. The association of Washington school principals shall be consulted during the rules development. The rules shall be written to encourage the maximum use of the program and may not narrow or limit the enrollment options.~~

~~(2))~~ (2) Commencing with the 2015-16 school year, in addition to a school district's other general fund allocations, districts shall be allocated an amount per college credit for students enrolled in college in the high school courses under this section as specified in the omnibus appropriations act and adjusted for inflation from the 2015-16 school year. The minimum allocation under this section is sixty-five dollars per quarter credit for credit-bearing postsecondary coursework. The office of the superintendent of public instruction, the student achievement council, the state board for community and technical colleges, and the public baccalaureate institutions shall review funding levels for the program every four years beginning in 2017 and recommend changes.

(2) For the purposes of funding students enrolled in the college in the high school program in accordance with subsection (1) of this section, college in the high school is defined as a dual credit program located on a high school campus or in a high school environment in which a high school student is able to earn both high school and postsecondary credit by completing postsecondary level courses with a passing grade.

(3) College in the high school programs may include both academic and career and technical education.

(4) College in the high school programs shall each be governed by a local contract between the district and the participating institution of higher education, in compliance with the ~~((guidelines adopted by the superintendent of public instruction, the state board for community and technical colleges, and the public baccalaureate institutions))~~ rules adopted by the superintendent of public instruction under this section.

~~((3))~~ (5) The college in the high school program must include the provisions in this subsection.

(a) The high school and participating institution of higher education together shall define the criteria for student eligibility. ~~((The institution of higher education may charge tuition fees to participating students.))~~

(b) ~~((School districts shall report no student for more than one full-time equivalent including college in the high school courses))~~ In lieu of tuition and fees as defined in RCW 28B.15.020 and services and activities fees as defined in RCW 28B.15.041, the student's school district shall transmit to the participating institution of higher education as defined in RCW 28B.10.016 an amount per credit for each full-time equivalent student. The superintendent of public instruction shall consult with participating institutions of higher education and the state board for community and technical colleges on the calculation and distribution of the funds.

(c) The funds received by the participating institution of higher education may not be deemed tuition or operating fees and may be retained by the institution of higher education.

(d) Enrollment information on persons registered under this section must be maintained by the institution of higher education separately from other enrollment information and may not be included in official enrollment reports, nor may such persons be considered in any enrollment statistics that would affect higher education budgetary determinations.

(e) A school district must grant high school credit to a student enrolled in a program course if the student successfully completes the course. If no comparable course is offered by the school district, the school district superintendent shall determine how many credits to award for the course. The determination shall be made in writing before the student enrolls in the course. The credits shall be applied toward graduation requirements and subject area requirements. Evidence of successful completion of each program course shall be included in the student's secondary school records and transcript.

(f) ~~((An))~~ A participating institution of higher education must grant college credit to a student enrolled in a program course if the student successfully completes the course. The college credit shall be applied toward general education requirements or ~~((major requirements. If no comparable course is offered by the college, the institution of higher education at which the teacher of the program course is employed shall determine how many credits to award for the course and whether the course fulfills general education or major))~~ degree requirements at institutions of higher education. Evidence of successful completion of each program course must be included in the student's college transcript.

(g) Eleventh and twelfth grade students or students who have not yet received a high school diploma or its equivalent and are eligible to be in the eleventh or twelfth grades may participate in the college in the high school program.

(h) Participating school districts must provide general information about the college in the high school program to all students in grades ten, eleven, and twelve and to the parents and guardians of those students.

~~((i) Full time and part time faculty at institutions of higher education, including adjunct faculty, are eligible to teach program courses.~~

~~((4))~~ (6) The superintendent of public instruction shall adopt rules for the administration of this section. The rules shall be jointly developed by the superintendent of public instruction, the state board for community and technical colleges, the student achievement council, and the public baccalaureate institutions. The association of Washington school principals must be consulted during the rules development. The rules must outline quality and eligibility standards that are informed by nationally recognized standards or models. In addition, the rules must encourage the maximum use of the program and may not narrow or limit the enrollment options.

(7) The definitions in this subsection apply throughout this section.

(a) "Institution of higher education" has the ~~((meaning))~~ definition in RCW 28B.10.016, and also includes a public tribal college located in Washington and accredited by the Northwest commission on colleges and universities or another accrediting association recognized by the United States department of education.

(b) "Program course" means a college course offered in a high school under the college in the high school program.

**Sec. 4.** RCW 28A.600.310 and 2012 c 229 s 702 are each amended to read as follows:

(1)(a) Eleventh and twelfth grade students or students who have not yet received the credits required for the award of a high school diploma and are eligible to be in the eleventh or twelfth grades may apply to a participating institution of higher education to enroll in courses or programs offered by the institution of higher education.

(b) The course sections and programs offered as running start courses must also be open for registration to matriculated students at the participating institution of higher education and may not be a course consisting solely of high school students offered at a high school campus unless the offering high school is thirty driving miles or more from the nearest eligible institution of higher education as measured by the most direct route. Students participating in running start programs offered at a high school campus and consisting solely of high school students may be funded at no more than a combined maximum enrollment of 1.0 full-time equivalents including school district and institution of higher education enrollment. In calculating the combined 1.0 full-time equivalents, the office of the superintendent of public instruction may average the participating student's September through June enrollment to account for differences in the start and end dates for courses provided by the high school and institution of higher education.

(c) A student receiving home-based instruction enrolling in a public high school for the sole purpose of participating in courses or programs offered by institutions of higher education shall not be counted by the school district in any required state or federal accountability reporting if the student's parents or guardians filed a declaration of intent to provide home-based instruction and the student received home-based instruction during the school year before the school year in which the student intends to participate in courses or programs offered by the institution of higher education. Students receiving home-based instruction under chapter 28A.200 RCW and students attending private schools approved under chapter 28A.195 RCW shall not be required to meet the student learning goals, obtain a certificate of academic achievement or a certificate of individual achievement to graduate from high school, or to master the essential academic learning requirements. However, students are eligible to enroll in courses or programs in participating universities only if the board of directors of the student's school district has decided to participate in the program. Participating institutions of higher education, in consultation with school districts, may establish admission standards for these students. If the institution of higher education accepts a secondary school pupil for enrollment under this section, the institution of higher education shall send written notice to the pupil and the pupil's school district within ten days of acceptance. The notice shall indicate the course and hours of enrollment for that pupil.

(2)(a) In lieu of tuition and fees, as defined in RCW 28B.15.020 and 28B.15.041:

(i) Running start students shall pay to the community or technical college all other mandatory fees as established by each community or technical college and, in addition, the state board for community and technical colleges may authorize a fee of up to ten percent of tuition and fees as defined in RCW 28B.15.020 and 28B.15.041; and

(ii) All other institutions of higher education operating a running start program may charge running start students a fee of up to ten percent of tuition and fees as defined in RCW 28B.15.020 and 28B.15.041 in addition to technology fees.

(b) The fees charged under this subsection (2) shall be prorated based on credit load.

(3)(a) The institutions of higher education must make available fee waivers for low-income running start students. Each institution must establish a written policy for the determination of

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low-income students before offering the fee waiver. A student shall be considered low income and eligible for a fee waiver upon proof that the student is currently qualified to receive free or reduced-price lunch. Acceptable documentation of low-income status may also include, but is not limited to, documentation that a student has been deemed eligible for free or reduced-price lunches in the last five years, or other criteria established in the institution's policy.

(b) Institutions of higher education, in collaboration with relevant student associations, shall aim to have students who can benefit from fee waivers take advantage of these waivers. Institutions shall make every effort to communicate to students and their families the benefits of the waivers and provide assistance to students and their families on how to apply. Information about waivers shall, to the greatest extent possible, be incorporated into financial aid counseling, admission information, and individual billing statements. Institutions also shall, to the greatest extent possible, use all means of communication, including but not limited to web sites, online catalogues, admission and registration forms, mass email messaging, social media, and outside marketing to ensure that information about waivers is visible, compelling, and reaches the maximum number of students and families that can benefit.

(4) The pupil's school district shall transmit to the institution of higher education an amount per each full-time equivalent college student at statewide uniform rates for vocational and nonvocational students. The superintendent of public instruction shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 to school districts for purposes of making such payments and for granting school districts seven percent thereof to offset program related costs. The calculations and allocations shall be based upon the estimated statewide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable rules adopted under chapter 34.05 RCW. The superintendent of public instruction, participating institutions of higher education, and the state board for community and technical colleges shall consult on the calculation and distribution of the funds. The funds received by the institution of higher education from the school district shall not be deemed tuition or operating fees and may be retained by the institution of higher education. A student enrolled under this subsection shall be counted for the purpose of meeting enrollment targets in accordance with terms and conditions specified in the omnibus appropriations act.

~~((5) The state board for community and technical colleges, in collaboration with the other institutions of higher education that participate in the running start program and the office of the superintendent of public instruction, shall identify, assess, and report on alternatives for providing ongoing and adequate financial support for the program. Such alternatives shall include but are not limited to student tuition, increased support from local school districts, and reallocation of existing state financial support among the community and technical college system to account for differential running start enrollment levels and impacts. The state board for community and technical colleges shall report the assessment of alternatives to the governor and to the appropriate fiscal and policy committees of the legislature by September 1, 2010.))~~

**NEW SECTION. Sec. 5.** (1) By September 15, 2016, the student achievement council, in collaboration with the state board for community and technical colleges, the office of the superintendent of public instruction, and the public baccalaureate institutions, shall make recommendations to the legislature to streamline and improve dual credit programs in Washington with

particular attention to increasing participation of students who are low income and/or currently underrepresented in the running start, AP, international baccalaureate, and Cambridge international programs.

(2) This section expires January 1, 2017."

On page 1, line 2 of the title, after "education;" strike the remainder of the title and insert "amending RCW 28A.320.196, 28A.600.290, and 28A.600.310; creating new sections; and providing an expiration date."

The President declared the question before the Senate to be the motion by Senator Dammeier that the committee striking amendment by the Committee on Early Learning & K-12 Education to Engrossed Second Substitute House Bill No. 1546 be not adopted.

The motion by Senator Dammeier carried and the committee striking amendment was not adopted by voice vote.

#### MOTION

Senator Dammeier moved that the following striking amendment by Senator Dammeier be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that Washington has been a front-runner in dual credit innovation through the establishment of the running start and college in the high school programs, and has continued to expand student choices in dual credit programs.

In Washington, a range of dual credit or dual enrollment programs are available to students. Dual credit programs, such as running start, college in the high school, tech prep (course completion options), and AP and international baccalaureate and Cambridge (standardized exam options) offer academically prepared students the opportunity to earn college credits while still in high school. Students who participate in these programs achieve improved high school graduation rates and are more likely to continue on to college and complete a degree. In addition, dual credit and dual enrollment programs support students' individual college and career pathways.

The legislature further finds that through the development and implementation of the 2013 roadmap the student achievement council has identified key barriers that limit access to dual credit programs, particularly for low-income students. Removing these barriers is a critical step toward achieving the state educational attainment goals outlined in the roadmap.

The legislature recognizes that the decision to enroll in a dual credit program should be made by the student and the student's parents or guardians, in consultation with counselors or academic advisors, and based on the academic, cultural, and developmental needs and college and career goals of the student. The decision to choose one dual credit option over another should not be based on the difference in the costs of one option over another.

In the college in the high school program, credit is awarded based on successful course completion and ability to pay tuition and fees. Under the current college in the high school system, some students may successfully complete the course but do not receive credit because they are unable to pay.

Students in the running start program face a different but equally challenging situation. Students in the running start program do not receive funding for books and transportation costs. These financial barriers decrease opportunities for lower income students to benefit from dual credit programs.

Therefore, the legislature intends to increase opportunities for academically prepared high school students to earn up to two

years of college credit through dual credit programs, and to reduce disparities in access to, and completion of, these programs. This act provides a new funding model to support tuition in the college in the high school program, and provides flexibility in the academic acceleration incentive program to assist students with transportation and book expenses associated with the running start program. It is the intent of the legislature, once this new funding model is enacted and operational, to establish a distinction between the college in the high school program as a program occurring in high schools and the running start program as a program occurring on a college campus.

The legislature finds that dual credit opportunities are a valuable means of supporting students on their way to successful completion of college and career pathways. The legislature seeks additional recommendations to mitigate financial and other barriers for students enrolled in the running start program, and dual credit programs based on standardized exams.

**Sec. 2.** RCW 28A.320.196 and 2013 c 184 s 3 are each amended to read as follows:

(1) Subject to funds appropriated specifically for this purpose, the academic acceleration incentive program is established as provided in this section. The intent of the legislature is that the funds awarded under the program be used to support teacher training, curriculum, technology, examination fees, textbook fees, and other costs associated with offering dual credit courses to high school students, including transportation for running start students to and from the institution of higher education as defined in RCW 28A.600.300.

(2) The office of the superintendent of public instruction shall allocate half of the funds appropriated for the purposes of this section on a competitive basis to provide one-time grants for high schools to expand the availability of dual credit courses. To be eligible for a grant, a school district must have adopted an academic acceleration policy as provided under RCW 28A.320.195. In making grant awards, the office of the superintendent of public instruction must give priority to grants for high schools with a high proportion of low-income students and high schools seeking to develop new capacity for dual credit courses rather than proposing marginal expansion of current capacity.

(3) The office of the superintendent of public instruction shall allocate half of the funds appropriated for the purposes of this section to school districts as an incentive award for each student who earned dual high school and college credit, as described under subsection (4) of this section, for courses offered by the district's high schools during the previous school year. School districts must distribute the award to the high schools that generated the funds. The award amount for low-income students eligible to participate in the federal free and reduced-price meals program who earn dual credits must be set at one hundred twenty-five percent of the base award for other students. A student who earns more than one dual credit in the same school year counts only once for the purposes of the incentive award.

(4) For the purposes of this section, the following students are considered to have earned dual high school and college credit in a course offered by a high school:

(a) Students who achieve a score of three or higher on an AP examination;

(b) Students who achieve a score of four or higher on an examination of the international baccalaureate diploma programme;

(c) Students who successfully complete a Cambridge advanced international certificate of education examination;

(d) Students who successfully complete a course through the college in the high school program under RCW 28A.600.290 and

are awarded credit by the partnering institution of higher education; and

(e) Students who satisfy the dual enrollment and class performance requirements to earn college credit through a tech prep course.

(5) If a high school provides access to online courses for students to earn dual high school and college credit at no cost to the student, such a course is considered to be offered by the high school. ~~((Students enrolled in the running start program under RCW 28A.600.300 do not generate an incentive award under this section.))~~

(6) The office of the superintendent of public instruction shall report to the education policy committees and the fiscal committees of the legislature, by January 1st of each year, information about the demographics of the students earning dual credits in the schools receiving grants under this section for the prior school year. Demographic data shall be disaggregated pursuant to RCW 28A.300.042.

**Sec. 3.** RCW 28A.600.290 and 2012 c 229 s 801 are each amended to read as follows:

(1) ~~((The superintendent of public instruction, the state board for community and technical colleges, and the public baccalaureate institutions shall jointly develop and each adopt rules governing the college in the high school program. The association of Washington school principals shall be consulted during the rules development. The rules shall be written to encourage the maximum use of the program and may not narrow or limit the enrollment options.~~

(2)) (a) Subject to the availability of amounts appropriated for this specific purpose and commencing with the 2015-16 school year, funding may be allocated at an amount per college credit for eleventh and twelfth grade students or students who have not yet received a high school diploma or its equivalent and are eligible to be in the eleventh or twelfth grade who are enrolled in college in the high school courses under this section as specified in the omnibus appropriations act and adjusted for inflation from the 2015-16 school year. The maximum annual number of allocated credits per participating student shall be specified in the omnibus appropriations act, which must not exceed ten credits. Funding shall be prioritized in the following order:

(i) High schools offering a running start in the high school program in school year 2014-15. These schools shall only receive prioritized funding in school year 2015-16;

(ii) Students whose residence or the high school in which they are enrolled is located twenty driving miles or more as measured by the most direct route from the nearest eligible institution of higher education offering a running start program, whichever is greater; and

(iii) High schools eligible for the small school funding enhancement in the omnibus appropriations act.

(b)(i) Subject to the availability of amounts appropriated for this specific purpose and commencing with the 2015-16 school year, and only after the programs in (a) of this subsection are funded, a subsidy may be provided per college credit for eleventh and twelfth grade students or students who have not yet received a high school diploma or its equivalent and are eligible to be in the eleventh or twelfth grade who have been deemed eligible for free or reduced-price lunch and are enrolled in college in the high school courses under this section as specified in the omnibus appropriations act and adjusted for inflation from the 2015-16 school year. The maximum annual number of subsidized credits per participating student shall be specified in the omnibus appropriations act, which must not exceed five credits.

(ii) Districts wishing to participate in the subsidy program must apply to the office of the superintendent of public

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instruction by July 1st of each year and report the preliminary estimate of eligible students to receive the subsidy and the total number of projected credit hours.

(iii) The office of the superintendent of public instruction shall notify districts by September 1st of each school year if the district's students will receive the subsidy. If more districts apply than funding is available, the office of the superintendent of public instruction shall prioritize the district applications. The superintendent shall develop factors to determine priority including, but not limited to, the number of dual credit opportunities available for low-income students in the districts.

(c) Districts shall remit any allocations or subsidies on behalf of participating students under (a) and (b) of this subsection to the participating institution of higher education and those students shall not be required to pay for the credits.

(d) The minimum allocation and subsidy under this section is sixty-five dollars per quarter credit for credit-bearing postsecondary coursework. The office of the superintendent of public instruction, the student achievement council, the state board for community and technical colleges, and the public baccalaureate institutions shall review funding levels for the program every four years beginning in 2017 and recommend changes.

(e) Students may pay college in the high school fees with advanced college tuition payment program tuition units at a rate set by the advanced college tuition payment program governing body under chapter 28B.95 RCW.

(2) For the purposes of funding students enrolled in the college in the high school program in accordance with subsection (1) of this section, college in the high school is defined as a dual credit program located on a high school campus or in a high school environment in which a high school student is able to earn both high school and postsecondary credit by completing postsecondary level courses with a passing grade.

(3) College in the high school programs may include both academic and career and technical education.

(4) College in the high school programs shall each be governed by a local contract between the district and the participating institution of higher education, in compliance with the ~~((guidelines adopted by the superintendent of public instruction, the state board for community and technical colleges, and the public baccalaureate institutions))~~ rules adopted by the superintendent of public instruction under this section.

~~((3))~~ (5) The college in the high school program must include the provisions in this subsection.

(a) The high school and participating institution of higher education together shall define the criteria for student eligibility. The institution of higher education may charge tuition fees to participating students. If specific funding is provided in the omnibus appropriations act for the per credit allocations and per credit subsidies under subsection (1) of this section, the maximum per credit fee charged to any enrolled student may not exceed the amount of the per credit allocation or subsidy.

(b) ~~((School districts shall report no student for more than one full time equivalent college in the high school courses.~~

(e)) The funds received by the participating institution of higher education may not be deemed tuition or operating fees and may be retained by the institution of higher education.

~~((4))~~ (c) Enrollment information on persons registered under this section must be maintained by the institution of higher education separately from other enrollment information and may not be included in official enrollment reports, nor may such persons be considered in any enrollment statistics that would affect higher education budgetary determinations.

~~((e))~~ (d) A school district must grant high school credit to a student enrolled in a program course if the student successfully completes the course. If no comparable course is offered by the school district, the school district superintendent shall determine how many credits to award for the course. The determination shall be made in writing before the student enrolls in the course. The credits shall be applied toward graduation requirements and subject area requirements. Evidence of successful completion of each program course shall be included in the student's secondary school records and transcript.

~~((f) - An))~~ (e) A participating institution of higher education must grant college credit to a student enrolled in a program course if the student successfully completes the course. The college credit shall be applied toward general education requirements or ~~((major requirements. If no comparable course is offered by the college, the institution of higher education at which the teacher of the program course is employed shall determine how many credits to award for the course and whether the course fulfills general education or major))~~ degree requirements at institutions of higher education. Evidence of successful completion of each program course must be included in the student's college transcript.

~~((g))~~ (f) Tenth, eleventh, and twelfth grade students or students who have not yet received a high school diploma or its equivalent and are eligible to be in the tenth, eleventh, or twelfth grades may participate in the college in the high school program.

~~((h))~~ (g) Participating school districts must provide general information about the college in the high school program to all students in grades ~~((ten, eleven, and))~~ nine through twelve and to the parents and guardians of those students.

~~((i))~~ (h) Full-time and part-time faculty at institutions of higher education, including adjunct faculty, are eligible to teach program courses.

~~((j))~~ (6) The superintendent of public instruction shall adopt rules for the administration of this section. The rules shall be jointly developed by the superintendent of public instruction, the state board for community and technical colleges, the student achievement council, and the public baccalaureate institutions. The association of Washington school principals must be consulted during the rules development. The rules must outline quality and eligibility standards that are informed by nationally recognized standards or models. In addition, the rules must encourage the maximum use of the program and may not narrow or limit the enrollment options.

(7) The definitions in this subsection apply throughout this section.

(a) "Institution of higher education" has the ~~((meaning))~~ definition in RCW 28B.10.016, and also includes a public tribal college located in Washington and accredited by the Northwest commission on colleges and universities or another accrediting association recognized by the United States department of education.

(b) "Program course" means a college course offered in a high school under the college in the high school program.

**Sec. 4.** RCW 28A.600.310 and 2012 c 229 s 702 are each amended to read as follows:

(1)(a) Eleventh and twelfth grade students or students who have not yet received the credits required for the award of a high school diploma and are eligible to be in the eleventh or twelfth grades may apply to a participating institution of higher education to enroll in courses or programs offered by the institution of higher education.

(b) The course sections and programs offered as running start courses must also be open for registration to matriculated students at the participating institution of higher education and

may not be a course consisting solely of high school students offered at a high school campus.

(c) A student receiving home-based instruction enrolling in a public high school for the sole purpose of participating in courses or programs offered by institutions of higher education shall not be counted by the school district in any required state or federal accountability reporting if the student's parents or guardians filed a declaration of intent to provide home-based instruction and the student received home-based instruction during the school year before the school year in which the student intends to participate in courses or programs offered by the institution of higher education. Students receiving home-based instruction under chapter 28A.200 RCW and students attending private schools approved under chapter 28A.195 RCW shall not be required to meet the student learning goals, obtain a certificate of academic achievement or a certificate of individual achievement to graduate from high school, or to master the essential academic learning requirements. However, students are eligible to enroll in courses or programs in participating universities only if the board of directors of the student's school district has decided to participate in the program. Participating institutions of higher education, in consultation with school districts, may establish admission standards for these students. If the institution of higher education accepts a secondary school pupil for enrollment under this section, the institution of higher education shall send written notice to the pupil and the pupil's school district within ten days of acceptance. The notice shall indicate the course and hours of enrollment for that pupil.

(2)(a) In lieu of tuition and fees, as defined in RCW 28B.15.020 and 28B.15.041:

(i) Running start students shall pay to the community or technical college all other mandatory fees as established by each community or technical college and, in addition, the state board for community and technical colleges may authorize a fee of up to ten percent of tuition and fees as defined in RCW 28B.15.020 and 28B.15.041; and

(ii) All other institutions of higher education operating a running start program may charge running start students a fee of up to ten percent of tuition and fees as defined in RCW 28B.15.020 and 28B.15.041 in addition to technology fees.

(b) The fees charged under this subsection (2) shall be prorated based on credit load.

(c) Students may pay fees under this subsection with advanced college tuition payment program tuition units at a rate set by the advanced college tuition payment program governing body under chapter 28B.95 RCW.

(3)(a) The institutions of higher education must make available fee waivers for low-income running start students. Each institution must establish a written policy for the determination of low-income students before offering the fee waiver. A student shall be considered low income and eligible for a fee waiver upon proof that the student is currently qualified to receive free or reduced-price lunch. Acceptable documentation of low-income status may also include, but is not limited to, documentation that a student has been deemed eligible for free or reduced-price lunches in the last five years, or other criteria established in the institution's policy.

(b) Institutions of higher education, in collaboration with relevant student associations, shall aim to have students who can benefit from fee waivers take advantage of these waivers. Institutions shall make every effort to communicate to students and their families the benefits of the waivers and provide assistance to students and their families on how to apply. Information about waivers shall, to the greatest extent possible, be incorporated into financial aid counseling, admission information, and individual billing statements. Institutions also

shall, to the greatest extent possible, use all means of communication, including but not limited to web sites, online catalogues, admission and registration forms, mass email messaging, social media, and outside marketing to ensure that information about waivers is visible, compelling, and reaches the maximum number of students and families that can benefit.

(4) The pupil's school district shall transmit to the institution of higher education an amount per each full-time equivalent college student at statewide uniform rates for vocational and nonvocational students. The superintendent of public instruction shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 to school districts for purposes of making such payments and for granting school districts seven percent thereof to offset program related costs. The calculations and allocations shall be based upon the estimated statewide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable rules adopted under chapter 34.05 RCW. The superintendent of public instruction, participating institutions of higher education, and the state board for community and technical colleges shall consult on the calculation and distribution of the funds. The funds received by the institution of higher education from the school district shall not be deemed tuition or operating fees and may be retained by the institution of higher education. A student enrolled under this subsection shall be counted for the purpose of meeting enrollment targets in accordance with terms and conditions specified in the omnibus appropriations act.

~~((5) The state board for community and technical colleges, in collaboration with the other institutions of higher education that participate in the running start program and the office of the superintendent of public instruction, shall identify, assess, and report on alternatives for providing ongoing and adequate financial support for the program. Such alternatives shall include but are not limited to student tuition, increased support from local school districts, and reallocation of existing state financial support among the community and technical college system to account for differential running start enrollment levels and impacts. The state board for community and technical colleges shall report the assessment of alternatives to the governor and to the appropriate fiscal and policy committees of the legislature by September 1, 2010.))~~

**Sec. 5.** RCW 28B.95.020 and 2012 c 229 s 606 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Academic year" means the regular nine-month, three-quarter, or two-semester period annually occurring between August 1st and July 31st.

(2) "Account" means the Washington advanced college tuition payment program account established for the deposit of all money received by the office from eligible purchasers and interest earnings on investments of funds in the account, as well as for all expenditures on behalf of eligible beneficiaries for the redemption of tuition units and for the development of any authorized college savings program pursuant to RCW 28B.95.150.

(3) "Committee on advanced tuition payment" or "committee" means a committee of the following members: The state treasurer, the director of the office of financial management, the director of the office, or their designees, and two members to be appointed by the governor, one representing program participants and one private business representative with marketing, public relations, or financial expertise.

(4) "Contractual obligation" means a legally binding contract of the state with the purchaser and the beneficiary establishing

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that purchases of tuition units will be worth the same number of tuition units at the time of redemption as they were worth at the time of the purchase.

(5) "Dual credit fees" means any fees charged to a student for participation in college in the high school under RCW 28A.600.290 or running start under RCW 28A.600.310.

(6) "Eligible beneficiary" means the person for whom the tuition unit will be redeemed for attendance at an institution of higher education, participation in college in the high school under RCW 28A.600.290, or participation in running start under RCW 28A.600.310. The beneficiary is that person named by the purchaser at the time that a tuition unit contract is accepted by the governing body. Qualified organizations, as allowed under section 529 of the federal internal revenue code, purchasing tuition unit contracts as future scholarships need not designate a beneficiary at the time of purchase.

~~((6))~~ (7) "Eligible purchaser" means an individual or organization that has entered into a tuition unit contract with the governing body for the purchase of tuition units for an eligible beneficiary. The state of Washington may be an eligible purchaser for purposes of purchasing tuition units to be held for granting Washington college bound scholarships.

~~((7))~~ (8) "Full-time tuition charges" means resident tuition charges at a state institution of higher education for enrollments between ten credits and eighteen credit hours per academic term.

~~((8))~~ (9) "Governing body" means the committee empowered by the legislature to administer the Washington advanced college tuition payment program.

~~((9))~~ (10) "Institution of higher education" means an institution that offers education beyond the secondary level and is recognized by the internal revenue service under chapter 529 of the internal revenue code.

~~((10))~~ (11) "Investment board" means the state investment board as defined in chapter 43.33A RCW.

~~((11))~~ (12) "Office" means the office of student financial assistance as defined in chapter 28B.76 RCW.

~~((12))~~ (13) "State institution of higher education" means institutions of higher education as defined in RCW 28B.10.016.

~~((13))~~ (14) "Tuition and fees" means undergraduate tuition and services and activities fees as defined in RCW 28B.15.020 and 28B.15.041 rounded to the nearest whole dollar. For purposes of this chapter, services and activities fees do not include fees charged for the payment of bonds heretofore or hereafter issued for, or other indebtedness incurred to pay, all or part of the cost of acquiring, constructing, or installing any lands, buildings, or facilities.

~~((14))~~ (15) "Tuition unit contract" means a contract between an eligible purchaser and the governing body, or a successor agency appointed for administration of this chapter, for the purchase of tuition units for a specified beneficiary that may be redeemed at a later date for an equal number of tuition units.

~~((15))~~ (16) "Unit purchase price" means the minimum cost to purchase one tuition unit for an eligible beneficiary. Generally, the minimum purchase price is one percent of the undergraduate tuition and fees for the current year, rounded to the nearest whole dollar, adjusted for the costs of administration and adjusted to ensure the actuarial soundness of the account. The analysis for price setting shall also include, but not be limited to consideration of past and projected patterns of tuition increases, program liability, past and projected investment returns, and the need for a prudent stabilization reserve.

**Sec. 6.** RCW 28B.95.030 and 2011 1st sp.s. c 12 s 2 and 2011 1st sp.s. c 11 s 170 are each reenacted and amended to read as follows:

(1) The Washington advanced college tuition payment program shall be administered by the committee on advanced tuition payment which shall be chaired by the director of the office. The committee shall be supported by staff of the office.

(2)(a) The Washington advanced college tuition payment program shall consist of the sale of tuition units, which may be redeemed by the beneficiary at a future date for an equal number of tuition units regardless of any increase in the price of tuition, that may have occurred in the interval.

(b) Each purchase shall be worth a specific number of or fraction of tuition units at each state institution of higher education as determined by the governing body.

(c) The number of tuition units necessary to pay for a full year's, full-time undergraduate tuition and fee charges at a state institution of higher education shall be set by the governing body at the time a purchaser enters into a tuition unit contract.

(d) The governing body may limit the number of tuition units purchased by any one purchaser or on behalf of any one beneficiary, however, no limit may be imposed that is less than that necessary to achieve four years of full-time, undergraduate tuition charges at a state institution of higher education. The governing body also may, at its discretion, limit the number of participants, if needed, to ensure the actuarial soundness and integrity of the program.

(e) While the Washington advanced college tuition payment program is designed to help all citizens of the state of Washington, the governing body may determine residency requirements for eligible purchasers and eligible beneficiaries to ensure the actuarial soundness and integrity of the program.

(3)(a) No tuition unit may be redeemed until two years after the purchase of the unit.

(b) Units may be redeemed for enrollment at any institution of higher education that is recognized by the internal revenue service under chapter 529 of the internal revenue code. Units may also be redeemed to pay for dual credit fees.

(b) Units redeemed at a nonstate institution of higher education or for graduate enrollment shall be redeemed at the rate for state public institutions in effect at the time of redemption.

(4) The governing body shall determine the conditions under which the tuition benefit may be transferred to another family member. In permitting such transfers, the governing body may not allow the tuition benefit to be bought, sold, bartered, or otherwise exchanged for goods and services by either the beneficiary or the purchaser.

(5) The governing body shall administer the Washington advanced college tuition payment program in a manner reasonably designed to be actuarially sound, such that the assets of the trust will be sufficient to defray the obligations of the trust including the costs of administration. The governing body may, at its discretion, discount the minimum purchase price for certain kinds of purchases such as those from families with young children, as long as the actuarial soundness of the account is not jeopardized.

(6) The governing body shall annually determine current value of a tuition unit.

(7) The governing body shall promote, advertise, and publicize the Washington advanced college tuition payment program.

(8) In addition to any other powers conferred by this chapter, the governing body may:

(a) Impose reasonable limits on the number of tuition units or units that may be used in any one year;

(b) Determine and set any time limits, if necessary, for the use of benefits under this chapter;

(c) Impose and collect administrative fees and charges in connection with any transaction under this chapter;

(d) Appoint and use advisory committees and the state actuary as needed to provide program direction and guidance;

(e) Formulate and adopt all other policies and rules necessary for the efficient administration of the program;

(f) Consider the addition of an advanced payment program for room and board contracts and also consider a college savings program;

(g) Purchase insurance from insurers licensed to do business in the state, to provide for coverage against any loss in connection with the account's property, assets, or activities or to further insure the value of the tuition units;

(h) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of its powers and duties under this chapter;

(i) Contract for the provision for all or part of the services necessary for the management and operation of the program with other state or nonstate entities authorized to do business in the state;

(j) Contract for other services or for goods needed by the governing body in the conduct of its business under this chapter;

(k) Contract with financial consultants, actuaries, auditors, and other consultants as necessary to carry out its responsibilities under this chapter;

(l) Solicit and accept cash donations and grants from any person, governmental agency, private business, or organization; and

(m) Perform all acts necessary and proper to carry out the duties and responsibilities of this program under this chapter.

**NEW SECTION. Sec. 7.** (1) By September 15, 2016, the student achievement council, in collaboration with the state board for community and technical colleges, the office of the superintendent of public instruction, and the public baccalaureate institutions, shall make recommendations to the legislature to streamline and improve dual credit programs in Washington with particular attention to increasing participation of students who are low income and/or currently underrepresented in the running start, AP, international baccalaureate, and Cambridge international programs.

(2) This section expires January 1, 2017."

Senator Dammeier spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Dammeier to Engrossed Second Substitute House Bill No. 1546.

The motion by Senator Dammeier carried and the striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "education;" strike the remainder of the title and insert "amending RCW 28A.320.196, 28A.600.290, and 28A.600.310; reenacting and amending RCW 28B.95.020 and 28B.95.030; creating new sections; and providing an expiration date."

#### MOTION

On motion of Senator Dammeier, the rules were suspended, Engrossed Second Substitute House Bill No. 1546 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Dammeier, Becker, Baumgartner and Warnick spoke in favor of passage of the bill.

Senators Billig and McAuliffe spoke against passage of the bill.

#### MOTION

On motion of Senator Mullet, Senator Nelson was excused.

#### MOTION

On motion of Senator Fraser, Senator Habib was excused.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 1546 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1546 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 32; Nays, 16; Absent, 0; Excused, 1.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Braun, Brown, Dammeier, Ericksen, Fain, Frockt, Hargrove, Hewitt, Hill, Honeyford, King, Kohl-Welles, Liias, Litzow, Miloscia, Mullet, O'Ban, Padden, Parlette, Pearson, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

Voting nay: Senators Billig, Chase, Cleveland, Conway, Dansel, Darneille, Fraser, Hasegawa, Hatfield, Hobbs, Jayapal, Keiser, McAuliffe, McCoy, Nelson and Pedersen

Excused: Senator Habib

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1546 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1639, by House Committee on Public Safety (originally sponsored by Representatives Taylor, Goodman, Morris, Shea, Walkinshaw, Smith, Ryu, Appleton, Condotta, Moscoso, Kagi, Muri, Young, Scott, Schmick, G. Hunt and Farrell)

Concerning technology-enhanced government surveillance.

The measure was read the second time.

#### MOTION

Senator Chase moved that the following amendment by Senator Chase be adopted:

On page 2, beginning on line 30, after "(5)" strike all material through "limited" on line 39 and insert "'Extraordinarily sensed information" means any information relating"

On page 3, line 9, after "acquiring" strike "personal" and insert "extraordinarily sensed"

On page 3, line 32, after "of" strike "personal" and insert "extraordinarily sensed"

On page 4, line 1, after "to" strike "personal" and insert "extraordinarily sensed"

On page 4, line 23, after "disclose" strike "personal" and insert "extraordinarily sensed"



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On page 4, line 27, after "of" strike "personal" and insert "extraordinarily sensed"

On page 4, line 30, after "of" strike "personal" and insert "extraordinarily sensed"

On page 5, line 4, after "collect" strike "personal" and insert "extraordinarily sensed"

On page 5, at the beginning of line 23, strike "personal" and insert "extraordinarily sensed"

On page 6, at the beginning of line 10, strike "personal" and insert "extraordinarily sensed"

On page 6, line 12, after "collect" strike "personal" and insert "extraordinarily sensed"

On page 6, line 13, after "whose" strike "personal" and insert "extraordinarily sensed"

On page 6, at the beginning of line 20, strike "personal" and insert "extraordinarily sensed"

On page 6, line 24, after "and" strike "personal" and insert "extraordinarily sensed"

On page 6, line 25, after "of" strike "personal" and insert "extraordinarily sensed"

On page 7, line 26, after "(1)" strike "Personal" and insert "Extraordinarily sensed"

On page 7, line 31, after "the" strike "personal" and insert "extraordinarily sensed"

On page 7, line 33, after "(2)" strike "Personal" and insert "Extraordinarily sensed"

On page 7, line 34, after "the" strike "personal" and insert "extraordinarily sensed"

On page 7, line 36, after "other" strike "personal" and insert "extraordinarily sensed"

On page 7, line 37, after "the" strike "personal" and insert "extraordinarily sensed"

On page 7, line 39, after "the" strike "personal" and insert "extraordinarily sensed"

On page 8, line 2, after "that" strike "personal" and insert "extraordinarily sensed"

On page 8, line 3, after "that" strike "personal" and insert "extraordinarily sensed"

On page 8, line 6, after "any" strike "personal" and insert "extraordinarily sensed"

On page 8, at the beginning of line 8, strike "personal" and insert "extraordinarily sensed"

On page 8, at the beginning of line 13, strike "personal" and insert "extraordinarily sensed"

On page 9, line 13, after "when" strike "personal" and insert "extraordinarily sensed"

On page 9, line 28, after "of" strike "personal" and insert "extraordinarily sensed"

On page 9, line 30, after "any" strike "personal" and insert "extraordinarily sensed"

WITHDRAWAL OF AMENDMENT

On motion of Senator Chase, the amendment by Senator Chase on page 2, line 30 to Engrossed Substitute House Bill No. 1639 was withdrawn.

MOTION

On motion of Senator Benton, Senator Roach was excused.

MOTION

Senator Chase moved that the following amendment by Senator Chase be adopted:

On page 6, beginning on line 21, after "warrant" strike all material through "act" on line 22

Beginning on page 7, line 26, strike all of section 10 and insert the following:

**NEW SECTION. Sec. 10.** Information collected under this act shall be retained and disclosed in accordance with chapters 40.14 and 42.56 RCW."

WITHDRAWAL OF AMENDMENT

On motion of Senator Chase, the amendment by Senator Chase on page 6, line 21 to Engrossed Substitute House Bill No. 1639 was withdrawn.

MOTION

Senator Hargrove moved that the following striking amendment by Senators Hargrove and Padden be adopted:

Strike everything after the enacting clause and insert the following:

**NEW SECTION. Sec. 1.** The legislature finds that Washington is a leader in responsible, effective, innovative government and the industries that help make this possible. The legislature finds that advances in technology have created valuable opportunities for government agencies to carry out their missions more efficiently, cost-effectively, precisely, and comprehensively. However, these technological advances have provided new, unique equipment that may be utilized for surveillance purposes. These technological advances often outpace statutory protections and can lead to inconsistent or contradictory interpretations between jurisdictions. The legislature finds that regardless of application or size, the use of these extraordinary surveillance technologies, without public debate or clear legal authority, creates uncertainty for citizens and agencies throughout Washington state. The legislature finds that extraordinary surveillance technologies do present a substantial privacy risk potentially contrary to the strong privacy protections enshrined in Article I, section 7 of the Washington state Constitution that reads "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." The legislature further finds that the lack of clear statutory authority for the use of extraordinary surveillance technologies may increase liability to state and local jurisdictions. It is the intent of the legislature to allow for the performance of legitimate state and local agency functions in accordance with clear standards for the lawful use of extraordinary sensing devices. Nothing in this act is intended to affect the leasehold rights of the residents of Washington state.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this subchapter unless the context clearly requires otherwise.

(1) "Agency" means the state of Washington, its state and local agencies, political subdivisions, and their respective employees and agents, except the Washington national guard in Title 32 U.S.C. status.

(2) "Court of competent jurisdiction" means any district court of the United States, or a court of general jurisdiction authorized by the state of Washington to issue search warrants.

(3) "Extraordinary sensing device" means a sensing device attached to or used in conjunction with an aircraft that is operated without the possibility of human intervention from within or on such aircraft, together with its associated elements.

(4) "Governing body" means the council, commission, board, or other controlling body of an agency in which legislative powers are vested, except that for a state agency for which there is

no governing body other than the state legislature, "governing body" means the chief executive officer responsible for the governance of the agency.

(5) "Personally identifiable information" means information that can be used to distinguish or trace an individual's identity including, but not limited to, name, social security number, and biometric records, either alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual including, but not limited to, date and place of birth and mother's maiden name.

(6)(a) "Sensing device" means a device capable of remotely acquiring personally identifiable information from its surroundings.

(b) "Sensing device" does not include equipment whose sole function is to provide information directly necessary for safe air navigation or operation of a vehicle.

**NEW SECTION. Sec. 3.** (1) No state agency including, but not limited to, the Washington state patrol and the department of natural resources, shall procure an extraordinary sensing device unless moneys are expressly appropriated by the legislature for this specific purpose.

(2) No local agency shall procure an extraordinary sensing device without the explicit approval of the governing body of such locality, given for that specific extraordinary sensing device to be used for a specific purpose.

**NEW SECTION. Sec. 4.** (1) The governing body for each local agency and elected or appointed official in charge for each state agency must develop and make publicly available, including on the agency web site, written policies and procedures for the use of any extraordinary sensing device procured, and provide notice and opportunity for public comment prior to adoption of the written policies and procedures. Such written policies and procedures must: (a) Describe the purposes for using an extraordinary sensing device and, if applicable, any agency program or study pursuant to which it intends to use the extraordinary sensing device; (b) describe categories of personally identifiable information, if applicable, that the agency intends to collect during the operation of such extraordinary sensing device, how the collection of such information furthers the agency's purposes stated pursuant to (a) of this subsection, and how the agency plans to use such information; (c) establish policies and procedures for minimizing the collection of information not specified in (b) of this subsection; (d) establish policies and procedures to prevent unauthorized access to personally identifiable information, which may be collected through the agency's use of extraordinary sensing devices, and which policies and procedures may include technical measures such as encryption, hashing, anonymization, and/or deidentification of collected information; (e) identify the unique registration number the agency has affixed, or has previously been affixed, including by another agency, to the extraordinary sensing device it is intending to use; and (f) identify a point of contact for citizen complaints and concerns regarding the agency's use and operation of an extraordinary sensing device.

(2) Within one hundred eighty days of the effective date of this section, the office of the chief information officer shall construct a web site publicly listing every agency's written policies and procedures mandated by this section. The web site shall be easily accessible by the public and a hyperlink to this web site shall appear on <http://access.wa.gov>, or other similar web site, if this web site is altered or ceases to exist.

(3) The operation of an extraordinary sensing device by an agency is prohibited unless the agency has affixed a unique identifier registration number assigned by the agency.

**NEW SECTION. Sec. 5.** Except as otherwise specifically authorized in this subchapter, it is unlawful for an agency to

operate an extraordinary sensing device or use or disclose personally identifiable information about any person acquired through the operation of an extraordinary sensing device.

**NEW SECTION. Sec. 6.** All operations of an extraordinary sensing device, by an agency, or disclosure of personally identifiable information about any person acquired through the operation of an extraordinary sensing device, by an agency, must be conducted in such a way as to minimize the collection and disclosure of personally identifiable information not authorized under this subchapter. If an agency complies with section 4 of this act and adheres to the minimization policies and procedures it adopts pursuant to section 4 of this act, there is a rebuttable presumption that the agency has complied with the minimization requirement under this section. This presumption can be overcome by clear and convincing evidence to the contrary.

**NEW SECTION. Sec. 7.** (1) It is lawful under this section for an agency to operate an extraordinary sensing device without obtaining a warrant if the agency reasonably determines that the operation does not intend to collect personally identifiable information. Allowable purposes under this subsection include, but are not limited to:

(a) Monitoring to discover, locate, observe, and prevent forest fires;

(b) Monitoring an environmental or weather-related catastrophe or damage from such an event;

(c) Surveying for wildlife management, habitat preservation, or environmental damage; and

(d) Surveying for the assessment and evaluation of environmental or weather-related damage, erosion, flood, or contamination.

(2) No agency may make any effort to identify an individual from the information collected by the operation or to associate any information collected by the operation with a particular individual, nor shall the information be disclosed to a third party unless that party agrees to be bound by the same restrictions. These restrictions shall not apply if there is probable cause that the information is evidence of criminal activity.

**NEW SECTION. Sec. 8.** (1) It is lawful under this section for any agency to operate an extraordinary sensing device and disclose personally identifiable information from the operation without obtaining a warrant if:

(a) The agency reasonably determines that:

(i) An emergency situation exists that involves criminal activity and presents immediate danger of death or serious physical injury to any person, including risk of terrorist activity;

(ii) The emergency situation requires operation of an extraordinary sensing device before a warrant authorizing the use can, with due diligence, be obtained; and

(iii) There are grounds upon which a warrant could be entered to authorize such operation;

(b) The agency reasonably determines that an emergency situation exists that:

(i) Does not involve criminal activity;

(ii) Presents immediate danger of death or serious physical injury to any person; and

(iii) Has characteristics such that operation of an extraordinary sensing device may reasonably reduce the danger of death or serious physical injury;

(c) The agency determines that operation is reasonably necessary to locate a missing person;

(d) The operation is limited to use for traffic crash scene photography;

(e) The operation is part of a training exercise conducted on a military base and the extraordinary sensing device does not

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collect personally identifiable information on persons located outside the military base;

(f) The operation is for training, testing, or research purposes by an agency and is not intended to collect personally identifiable information without the specific written consent of any individual whose personally identifiable information is collected; or

(g) The operation is part of the response to an emergency or disaster for which the governor has proclaimed a state of emergency under RCW 43.06.010(12).

(2) Upon completion of the operation of an extraordinary sensing device pursuant to subsection (1)(b) through (g) of this section, any personally identifiable information obtained must be treated as information collected on an individual other than a target of a warrant for purposes of section 10 of this act.

**NEW SECTION. Sec. 9.** (1) An extraordinary sensing device may be operated by an agency and personally identifiable information from the operation disclosed, if the operation and collection of personally identifiable information is pursuant to a search warrant issued by a court of competent jurisdiction, and the operation, collection, and disclosure are compliant with the provisions of this chapter.

(2) Warrants may not be issued for a period greater than ten days. Extensions may be granted, but no longer than the authorizing judicial officer deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days.

(3) Within ten days of the execution of a search warrant, the officer executing the warrant must serve a copy of the warrant upon the target of the warrant, except if notice is delayed pursuant to this section.

(4) An agency acting under this section may, when a warrant is sought, include in the petition a request, which the court shall grant, for an order delaying the notification for a period not to exceed ninety days if the court determines that there is reason to believe that notification of the existence of the warrant may have an adverse result.

(5) An adverse result for the purposes of this section is:

(a) Placing the life or physical safety of an individual in danger;

(b) Causing a person to flee from prosecution;

(c) Causing the destruction of or tampering with evidence;

(d) Causing the intimidation of potential witnesses; or

(e) Jeopardizing an investigation or unduly delaying a trial.

(6) The agency shall maintain a copy of the warrant.

(7) Extension of the delay of notification of up to ninety days each may be granted by the court upon certification by the agency that there is reason to believe that notification of the extension of the warrant may have an adverse result.

(8) Upon expiration of the period of delay of notification under subsection (4) or (7) of this section, the agency shall serve a copy of the warrant upon, or deliver it by registered or first-class mail to the target of the warrant, together with notice that:

(a) States with reasonable specificity the nature of the law enforcement inquiry; and

(b) Informs the target of the warrant: (i) That notification was delayed; (ii) what agency or court made the certification or determination pursuant to which that delay was made; and (iii) the provision of this section allowing the delay.

**NEW SECTION. Sec. 10.** (1) Personally identifiable information collected during the operation of an extraordinary sensing device authorized under sections 7 through 9 of this act may not be used, copied, or disclosed for any purpose after conclusion of the operation for which the extraordinary sensing device was authorized, unless there is probable cause that the

personally identifiable information is evidence of criminal activity.

(2) Personally identifiable information must be deleted, within thirty days if the personally identifiable information was collected on a target of a warrant authorizing the operation of the extraordinary sensing device and within ten days for other personally identifiable information, after there is no longer probable cause that the personally identifiable information is evidence of criminal activity that may be prosecuted. The foregoing shall only apply to the extent the personally identifiable information can be destroyed without destroying other evidence relevant to a pending criminal investigation or case. There is a presumption that personally identifiable information is not evidence of criminal activity if that personally identifiable information is not used in a criminal prosecution within one year of collection.

**NEW SECTION. Sec. 11.** Whenever any personally identifiable information from an extraordinary sensing device has been acquired, no part of such personally identifiable information and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state or a political subdivision thereof if the collection or disclosure of that personally identifiable information would be in violation of this subchapter.

**NEW SECTION. Sec. 12.** Any person who knowingly violates this subchapter is subject to legal action for damages, to be brought by any other person claiming that a violation of this subchapter has injured his or her business, his or her person, or his or her reputation. In addition, the individual is entitled to reasonable attorneys' fees and other costs of litigation.

**NEW SECTION. Sec. 13.** Any use of an extraordinary sensing device must fully comply with all federal aviation administration requirements and guidelines. Compliance with the terms of this subchapter is mandatory and supplemental to compliance with federal aviation administration requirements and guidelines.

**NEW SECTION. Sec. 14.** (1) An agency must maintain records identifying each use of an extraordinary sensing device. The records must include:

(a) Operator name;

(b) Identity of the agency;

(c) Date and time of the flight;

(d) Categories of information collected for each use;

(e) The purpose of using the extraordinary sensing device; and

(f) Whether a warrant was obtained prior to use.

(2) Each state agency having jurisdiction over criminal law or regulatory violation enforcement, for any calendar year in which the agency has used an extraordinary sensing device, must prepare an annual report including, at a minimum in each case, the following:

(a) The number of uses of an extraordinary sensing device organized by types of incidents and types of justification for use;

(b) The number of criminal or regulatory investigations aided by the use and how the use was helpful to the investigation;

(c) The number of uses of an extraordinary sensing device for reasons other than criminal or regulatory investigations and how the use was helpful;

(d) The frequency and type of data collected for individuals or areas other than targets;

(e) The total cost of the extraordinary sensing device;

(f) The dates when personally identifiable information and other data was deleted or destroyed in compliance with the act;

(g) The number of warrants requested, issued, and extended; and

(h) Additional information and analysis the governing body deems useful.

(3) Each state agency other than that in subsection (2) of this section, for any calendar year in which the agency has used an extraordinary sensing device, must prepare an annual report including, at a minimum in each case, the following:

(a) The types of extraordinary sensing devices used, the purposes for which each type of extraordinary sensing device was used, the circumstances under which use was authorized, and the name of the officer or official who authorized the use;

(b) Whether deployment of the device was imperceptible to the public;

(c) The specific kinds of personally identifiable information that the extraordinary sensing device collected about individuals;

(d) The length of time for which any personally identifiable information collected by the extraordinary sensing device was retained;

(e) The specific steps taken to mitigate the impact on an individual's privacy, including protections against unauthorized use and disclosure and a data minimization protocol; and

(f) An individual point of contact for citizen complaints and concerns.

(4) The annual reports required pursuant to this section must be filed electronically to the office of financial management, who must compile the results and submit them electronically to the relevant committees of the legislature by September 1st of each year, beginning in 2016.

**NEW SECTION. Sec. 15.** Any use of an extraordinary sensing device by an agency must fully comply with all applicable federal aviation administration regulations.

**NEW SECTION. Sec. 16.** Nothing in this act abridges, reduces, restricts, or prohibits an officer, employee, or agent of the United States armed forces, or the agent of the United States armed forces to include the national guard in Title 32 U.S.C. from operating an unmanned aerial vehicle.

**NEW SECTION. Sec. 17.** Sections 2 through 16 of this act are each added to chapter 9.73 RCW and codified with the subchapter heading of "extraordinary sensing devices."

**NEW SECTION. Sec. 18.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 19.** This act expires July 1, 2020."

Senators Hargrove and Padden spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Hargrove and Padden to Engrossed Substitute House Bill No. 1639.

The motion by Senator Hargrove carried and the striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "surveillance;" strike the remainder of the title and insert "adding new sections to chapter 9.73 RCW; creating a new section; prescribing penalties; and providing an expiration date."

#### MOTION

On motion of Senator Padden, the rules were suspended, Engrossed Substitute House Bill No. 1639 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Padden spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1639 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1639 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 43; Nays, 4; Absent, 0; Excused, 2.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Danel, Darneille, Ericksen, Fain, Fraser, Frockt, Hargrove, Hasegawa, Hewitt, Hill, Hobbs, Jayapal, Keiser, King, Kohl-Welles, Litzow, McAuliffe, McCoy, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Rolfes, Schoesler, Sheldon and Warnick

Voting nay: Senators Hatfield, Honeyford, Liias and Miloscia  
Excused: Senators Habib and Roach

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1639 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2063, by House Committee on Appropriations (originally sponsored by Representatives Kilduff, Kagi, Jinkins, Springer, Hunter, Ormsby, Tharinger and Tarleton)

Creating an investment program for individuals with disabilities. Revised for 2nd Substitute: Creating a work group to design a qualified achieving a better life experience program.

The measure was read the second time.

#### MOTION

On motion of Senator Becker, the rules were suspended, Second Substitute House Bill No. 2063 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Becker spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2063.

#### ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2063 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 2; Absent, 0; Excused, 1.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Liias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, Padden, Parlette, Pearson,

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Pedersen, Ranker, Rivers, Rolfes, Schoesler, Sheldon and Warnick

Voting nay: Senators Dansel and O'Ban

Excused: Senator Roach

SECOND SUBSTITUTE HOUSE BILL NO. 2063, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 1853, by House Committee on Technology & Economic Development (originally sponsored by Representatives Magendanz, Bergquist, Morris, Muri, Tarleton, Fitzgibbon and Tharinger)

Encouraging utility leadership in electric vehicle charging infrastructure build-out.

The measure was read the second time.

#### MOTION

Senator King moved that the following committee striking amendment by the Committee on Energy, Environment & Telecommunications be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) The legislature finds that the transportation sector is Washington's largest contributor to greenhouse emissions and hazardous air pollutants as defined by federal national ambient air quality standards and mobile source air toxics rules. The sector's portion is considerably higher than the national average because our state relies heavily on hydropower for electricity generation, unlike other states that rely on fossil fuels such as coal, petroleum, and natural gas to generate electricity.

(2) The legislature also finds that federal clean air act regulations and complementary Washington policies supporting renewable energy generation, energy efficiency, and energy conservation are likely to result in further reduction of emissions in the electricity and in the combined residential, commercial, and industrial sectors. The legislature finds that state policy can achieve the greatest return on investment in reducing greenhouse gas emissions and improving air quality by expediting the transition to alternative fuel vehicles, including electric vehicles.

(3) The legislature finds that utilities, who are traditionally responsible for understanding and engineering the electrical grid for safety and reliability, must be fully empowered and incentivized to be engaged in electrification of our transportation system. The legislature further finds that it has given utilities other policy directives to promote energy conservation which do not make the benefits of building out electric vehicle infrastructure, as well as any subsequent increase in energy consumption, readily apparent. Therefore the legislature intends to provide a clear policy directive and financial incentive to utilities for electric vehicle infrastructure build-out.

**NEW SECTION. Sec. 2.** A new section is added to chapter 80.28 RCW to read as follows:

(1) In establishing rates for each electrical company regulated under this title, the commission may allow an incentive rate of return on investment on capital expenditures for electric vehicle supply equipment that is deployed for the benefit of ratepayers. The commission must consider and may adopt other policies to

improve access to and promote fair competition in the provision of electric vehicle supply equipment.

(2) An incentive rate of return on investment under this section may be allowed only if the company chooses to pursue capital investment in electric vehicle supply equipment on a fully regulated basis similar to other capital investments behind a customer's meter. In the case of an incentive rate of return on investment allowed under this section, an increment of up to two percent must be added to the rate of return on common equity allowed on the company's other investments.

(3) The incentive rate of return on investment authorized in subsection (2) of this section applies only to projects which have been installed after July 1, 2015, and which are reasonably expected, at the time they are placed in the rate base, to result in real and tangible benefits for rate payers by being installed and located where electric vehicles are most likely to be parked for intervals longer than two hours.

(4) The incentive rate of return on investment increment pursuant to this section may be earned only for a period up to the depreciable life of the electric vehicle supply equipment as defined in the depreciation schedules developed by the company and submitted to the commission for review. When the capital investment has fully depreciated, an electrical company may gift the electric vehicle supply equipment to the owner of the property on which it is located.

(5) By December 31, 2017, the commission must report to the appropriate committees of the legislature with regard to the use of any incentives allowed under this section, the quantifiable impacts of the incentives on actual electric vehicle deployment, and any recommendations to the legislature about utility participation in the electric vehicle market."

#### MOTION

Senator King moved that the following amendment by Senator King to the committee striking amendment be adopted:

On page 2, line 4 of the amendment, after "ratepayers" insert ", provided that the capital expenditures do not increase costs to ratepayers in excess of one-quarter of one percent"

Senators King and McCoy spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator King on page 2, line 4 to the committee striking amendment to Substitute House Bill No. 1853.

The motion by Senator King carried and the amendment to the committee striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Energy, Environment & Telecommunications as amended to Substitute House Bill No. 1853.

The motion by Senator King carried and the committee striking amendment as amended was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "build-out;" strike the remainder of the title and insert "adding a new section to chapter 80.28 RCW; and creating a new section."

#### MOTION

On motion of Senator King, the rules were suspended, Substitute House Bill No. 1853 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators King and Mullet spoke in favor of passage of the bill.

#### POINT OF INQUIRY

Senator Sheldon: "Would Senator Mullet yield to a question? You mentioned utilities. Does this bill apply to public utilities for just investor-owned utilities? The way I read it in the yellow book, it applies to only investor-owned utilities. Is that correct?"

Senator Mullet: "I do not know the answer to that question."

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1853 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1853 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 33; Nays, 16; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Benton, Billig, Chase, Cleveland, Darneille, Fain, Fraser, Frockt, Habib, Hargrove, Hatfield, Hewitt, Hill, Hobbs, Jayapal, Keiser, King, Kohl-Welles, Lias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, Parlette, Pedersen, Ranker, Roach, Rolfes, Schoesler and Warnick

Voting nay: Senators Bailey, Baumgartner, Becker, Braun, Brown, Conway, Dammeier, Dansel, Ericksen, Hasegawa, Honeyford, O'Ban, Padden, Pearson, Rivers and Sheldon

SUBSTITUTE HOUSE BILL NO. 1853 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced a delegation of government and business leaders from Quangdong Province led by Secretary Ma Xingrui of Shenzhen, former Director, China National Space Administration, who were present in the gallery and recognized by the senate.

#### RULING BY THE PRESIDENT

President Owen: "I know we have a lot to do but the President is going to remind the members of two things: One is, you're not to approach the bar in any way, which includes standing off to the side and signaling to members or winking at or waving to get the staff to come over. You are not to approach the bar during a vote. Also, walking in front of an individual is prohibited while they're speaking in two different sections of the rules, of Reed's Rules. Both of these have been violated seriously. They are your rules and the President intends to enforce your rules until you change them so please adhere to them. Thank you very much."

The Senate resumed consideration of Substitute House Bill No. 1800 which had been deferred on an earlier day, April 9, 2015.

#### MOTION

Senator Roach moved that the following amendment by Senators Roach and Chase to the committee striking amendment be adopted:

On page 1, line 11 of the amendment, after "continue." insert "If a child is placed with nonrelatives, at the hearing the court shall also review the status of the department's efforts to locate and place a child with a relative, if such placement is in the child's best interest. If a relative is identified but placement is not found to be in the child's best interest, the court shall establish in writing the reason why that placement is not in the child's best interest."

Senator Roach spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Roach and Chase on page 1, line 11 to the committee striking amendment to Substitute House Bill No. 1800.

The motion by Senator Roach carried and the amendment to the committee striking amendment was adopted by voice vote.

#### MOTION

On motion of Senator Fain, further consideration of Substitute House Bill No. 1800 was deferred and the bill held its place on the second reading calendar.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 1503, by House Committee on Judiciary (originally sponsored by Representatives Jinkins, Ryu, Tharinger, DeBolt, Senn, Robinson, Harris, Cody, Riccelli, Walsh, Sawyer and Moeller)

Concerning medical liens.

The measure was read the second time.

#### MOTION

Senator Padden moved that the following committee striking amendment by the Committee on Law & Justice be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 60.44.020 and 1975 1st ex.s. c 250 s 2 are each amended to read as follows:

No person shall be entitled to the lien given by RCW 60.44.010 unless such person (~~shall~~):

(1) In any effort to enforce the lien, either attempts to enforce the lien on his or her own behalf or designates a collection agency licensed under chapter 19.16 RCW to collect on his or her behalf;

(2) Discloses the person's use of liens under this chapter as part of the person's billing and collection practices; and

(3) Within twenty days after the date of such injury or receipt of transportation or care, or, if settlement has not been accomplished and payment made to such injured person, then at any time before such settlement and payment, files for record with the county auditor of the county in which said service was performed, a notice of claim stating the name and address of the person claiming the lien and whether such person claims as a practitioner, physician, nurse, ambulance service, or hospital, the name and address of the patient and place of domicile or residence, the time when and place where the alleged fault or negligence of the tort-feasor occurred, and the nature of the injury if any, the name and address of the tort-feasor, if same or any

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thereof are known, which claim shall be subscribed by the claimant and verified before a person authorized to administer oaths.

**Sec. 2.** RCW 60.44.060 and 2012 c 117 s 153 are each amended to read as follows:

(1) Such lien may be enforced by a suit at law brought by the claimant or his or her assignee within one year after the filing of such lien against the said tortfeasor and/or insurer. In the event that such tortfeasor and/or insurer shall have made payment or settlement on account of such injury, the fact of such payment shall only for the purpose of such suit be prima facie evidence of the negligence of the tortfeasor and of the liability of the payer to compensate for such negligence.

(2) No more than thirty days after payment or settlement and acceptance of the amount due to the claimant or his or her assignee, the claimant or his or her assignee shall prepare and execute a release of all lien rights for which payment has been made and deliver the release to the patient. In any suit to compel deliverance of the release thereafter in which the court determines the delay was unjustified, the court shall, in addition to ordering the deliverance of the release, award the costs of the action including reasonable attorneys' fees and any damages.

**Sec. 3.** RCW 19.16.100 and 2013 c 148 s 1 are each reenacted and amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Board" means the Washington state collection agency board.

(2) "Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

(3) "Client" or "customer" means any person authorizing or employing a collection agency to collect a claim.

(4) "Collection agency" means and includes:

(a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself or herself in his or her own name;

(c) Any person who in attempting to collect or in collecting his or her own claim uses a fictitious name or any name other than his or her own which would indicate to the debtor that a third person is collecting or attempting to collect such claim;

(d) Any person or entity that is engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims;

(e) Any person or entity attempting to enforce a lien under chapter 60.44 RCW, other than the person or entity originally entitled to the lien.

(5) "Collection agency" does not mean and does not include:

(a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;

(b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are

carried on in the name of the employer and if the individual is an employee of the employer;

(c) Any person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to: Trust companies; savings and loan associations; building and loan associations; abstract companies doing an escrow business; real estate brokers; property management companies collecting assessments, charges, or fines on behalf of condominium unit owners' associations; associations of apartment owners, or homeowners' associations; public officers acting in their official capacities; persons acting under court order; lawyers; insurance companies; credit unions; loan or finance companies; mortgage banks; and banks;

(d) Any person who on behalf of another person prepares or mails monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account;

(e) An "out-of-state collection agency" as defined in this chapter; or

(f) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of the person is not the collection of debts.

(6) "Commercial claim" means any obligation for payment of money or thing of value arising out of any agreement or contract, express or implied, where the transaction which is the subject of the agreement or contract is not primarily for personal, family, or household purposes.

(7) "Debtor" means any person owing or alleged to owe a claim.

(8) "Director" means the director of licensing.

(9) "Licensee" means any person licensed under this chapter.

(10) "Out-of-state collection agency" means a person whose activities within this state are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission, from the person's location in another state on behalf of clients located outside of this state, but does not include any person who is excluded from the definition of the term "debt collector" under the federal fair debt collection practices act (15 U.S.C. Sec. 1692a(6)).

(11) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.

(12) "Statement of account" means a report setting forth only amounts billed, invoices, credits allowed, or aged balance due."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Law & Justice to Substitute House Bill No. 1503.

The motion by Senator Padden carried and the committee striking amendment was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "liens;" strike the remainder of the title and insert "amending RCW 60.44.020 and 60.44.060; and reenacting and amending RCW 19.16.100."

MOTION

On motion of Senator Padden, the rules were suspended, Substitute House Bill No. 1503 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Padden spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1503 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1503 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway, Dammeier, Dansel, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Liias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

SUBSTITUTE HOUSE BILL NO. 1503 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

ENGROSSED HOUSE BILL NO. 1187, by Representatives Chandler, Blake, Buys, Stanford, Hayes and Parker

Concerning best practices for water banks.

The measure was read the second time.

#### MOTION

Senator Warnick moved that the following committee striking amendment by the Committee on Agriculture, Water & Rural Economic Development be not adopted:

Strike everything after the enacting clause and insert the following:

**NEW SECTION. Sec. 1.** (1) The legislature finds that, unlike other basins in Washington, the Yakima basin is unique in that it has recently undergone a legal adjudication for surface water rights in the basin. In addition, the holders of junior water rights may be subject to water use curtailment. Because of the unique nature of the Yakima basin, there has been the development of an active water market for water reallocation that includes the use of the trust water right program for mitigation purposes and water banking.

(2) In adopting this act to establish standards for domestic water banking in the Yakima basin, it is not the intent of the legislature to imply that the types of water mitigation currently used in the Yakima basin can or should be applied to other parts of Washington.

**Sec. 2.** RCW 90.42.020 and 2009 c 283 s 3 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Local government" means a city, town, public utility district, irrigation district, public port, county, sewer district, or water district.

(3) "Net water savings" means the amount of water that is determined to be conserved and usable within a specified stream reach or reaches for other purposes without impairment or detriment to water rights existing at the time that a water conservation project is undertaken, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other existing water uses.

(4) "Pilot planning areas" means the geographic areas designated under RCW 90.54.045(2).

(5) "Trust water right" means any water right acquired by the state under this chapter for management in the state's trust water rights program.

(6) "Water conservation project" means any project or program that achieves physical or operational improvements that provide for increased water use efficiency in existing systems of diversion, conveyance, application, or use of water under water rights existing on July 28, 1991.

**(7) "Yakima basin domestic water bank sponsor" means any person, corporation, or other entity, including a state agency, nonprofit organization, or local government, that holds a legal or beneficial interest in a trust water right from which mitigation credits will be offered for sale to other parties for domestic supply purposes in the Yakima river basin.**

**NEW SECTION. Sec. 3.** A new section is added to chapter 90.42 RCW to read as follows:

(1)(a) Every Yakima basin domestic water bank sponsor shall file with the department a schedule showing the amount to be charged for a mitigation credit, including all costs and fees.

(b) The department must post the schedule received from all Yakima basin domestic water bank sponsors on its agency internet web site.

(2) No change may be made in the amount charged, or other costs and fees to be paid, unless the Yakima basin domestic water bank sponsor provides notice to the department at least thirty days before the change goes into effect. The notice must plainly state the changes to be made in the schedule then on file with the department and the effective date of the changes.

(3) For water banks established prior to the effective date of this section, the Yakima basin domestic water bank sponsor must submit a schedule to the department within ninety days of the effective date of this section.

**NEW SECTION. Sec. 4.** A new section is added to chapter 90.42 RCW to read as follows:

(1) A Yakima basin domestic water bank sponsor may establish a water bank for any lawful purpose and retains all authority to establish any costs, fees, or other charges for the purchase and sale of mitigation credits. This includes the authority to establish a sliding scale of charges, whereby a charge is made for mitigation based on the quantity of water use or on the services rendered as part of the water bank transaction or operations.

(2) Nothing in this section prohibits a Yakima basin domestic water bank sponsor from establishing a water bank for specific limited purposes, such as providing mitigation credits for certain water uses or users, but not other uses or users. However, a Yakima basin domestic water bank sponsor may not sell or otherwise provide mitigation credits to similarly situated uses or users on different prices or terms.

**NEW SECTION. Sec. 5.** A new section is added to chapter 90.42 RCW to read as follows:

(1) The department shall require each Yakima basin domestic water bank sponsor to:



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(a) Demonstrate the availability of an adequate and reliable water supply to mitigate for the intended purposes for which mitigation is provided; and

(b) Record each mitigation credit with the appropriate county auditor for the parcel of land upon which the mitigation credit is used in like manner and in the same effect as provided for an original certificate or permit to divert water.

(2) The department shall ensure that new water uses for which mitigation is provided will not cause detriment or injury to existing water rights.

**NEW SECTION. Sec. 6.** A new section is added to chapter 90.42 RCW to read as follows:

(1) No Yakima basin domestic water bank sponsor may:

(a) Provide mitigation based on a water right with a priority date of May 10, 1905, or later; or

(b) Use leased water to provide mitigation if an adequate and reliable water supply is otherwise available for mitigation.

(2) Nothing in this section prohibits a Yakima basin domestic water bank sponsor from providing mitigation based in part on a long-term lease or water storage and exchange agreement, between the United States and the state of Washington, as provided in such an agreement.

**NEW SECTION. Sec. 7.** (1) The department of ecology must conduct a study of mitigation options for domestic water use in areas of the Yakima basin for which: (a) Mitigation water is unavailable; and (b) access to water from water banks is unsuitable.

(2) A report of the study's findings must be reported to the legislature by December 1, 2015.

(3) The department of ecology shall conduct the study within the department's appropriations.

**NEW SECTION. Sec. 8.** This act may be known and cited as the Yakima basin domestic water banking best practices act.

**NEW SECTION. Sec. 9.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 10.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

On page 1, line 1 of the title, after "banks;" strike the remainder of the title and insert "reenacting and amending RCW 90.42.020; adding new sections to chapter 90.42 RCW; creating new sections; and declaring an emergency."

The President declared the question before the Senate to be the motion by Senator Warnick that the committee striking amendment by the Committee on Agriculture, Water & Rural Economic Development to Engrossed House Bill No. 1187 be not adopted.

The motion by Senator Warnick carried and the committee striking amendment was not adopted by voice vote.

MOTION

Senator Honeyford moved that the following striking amendment by Senator Honeyford be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) The legislature finds that, unlike other basins in Washington, the Yakima basin is unique in that it has recently undergone a legal adjudication for surface water rights in the basin. In addition, the holders of junior water rights may be subject to water use curtailment. Because of the

unique nature of the Yakima basin, there has been the development of an active water market for water reallocation that includes the use of the trust water right program for mitigation purposes and water banking.

(2) In adopting this act to establish standards for domestic water banking in the Yakima basin, it is not the intent of the legislature to imply that the types of water mitigation currently used in the Yakima basin can or should be applied to other parts of Washington.

**Sec. 2.** RCW 90.42.020 and 2009 c 283 s 3 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Local government" means a city, town, public utility district, irrigation district, public port, county, sewer district, or water district.

(3) "Net water savings" means the amount of water that is determined to be conserved and usable within a specified stream reach or reaches for other purposes without impairment or detriment to water rights existing at the time that a water conservation project is undertaken, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other existing water uses.

(4) "Pilot planning areas" means the geographic areas designated under RCW 90.54.045(2).

(5) "Trust water right" means any water right acquired by the state under this chapter for management in the state's trust water rights program.

(6) "Water conservation project" means any project or program that achieves physical or operational improvements that provide for increased water use efficiency in existing systems of diversion, conveyance, application, or use of water under water rights existing on July 28, 1991.

(7) "Yakima basin domestic water bank sponsor" means any person or entity that holds a legal or beneficial interest in a trust water right from which mitigation credits will be offered for domestic supply purposes in the Yakima basin. The department is not a Yakima basin domestic water bank sponsor.

**NEW SECTION. Sec. 3.** A new section is added to chapter 90.42 RCW to read as follows:

(1)(a) Every Yakima basin domestic water bank sponsor shall file with the department a schedule showing the amount to be charged for a mitigation credit, including all costs and fees.

(b) The department must post the schedule received from each Yakima basin domestic water bank sponsor on its agency internet web site.

(2) No change may be made in the amount charged, or other costs and fees to be paid, unless the Yakima basin domestic water bank sponsor provides notice to the department at least thirty days before the change goes into effect. The notice must plainly state the changes to be made in the schedule then on file with the department and the effective date of the changes.

(3) For water banks established prior to the effective date of this section, a Yakima basin domestic water bank sponsor must submit a schedule to the department within ninety days of the effective date of this section.

**NEW SECTION. Sec. 4.** A new section is added to chapter 90.42 RCW to read as follows:

(1) A Yakima basin domestic water bank sponsor may establish a water bank for any lawful purpose and retains all authority to establish any costs, fees, or other charges for the purchase and sale of mitigation credits. This includes the authority to establish a sliding scale of charges, whereby a charge is made for mitigation based on the quantity of water use or on the

services rendered as part of the water bank transaction or operations.

(2) Nothing in this section prohibits a Yakima basin domestic water bank sponsor from establishing a water bank for specific limited purposes, such as providing mitigation credits for certain water uses or users, but not other uses or users. However, a Yakima basin domestic water bank sponsor may not sell or otherwise provide mitigation credits to similarly situated uses or users on different prices or terms.

**NEW SECTION. Sec. 5.** A new section is added to chapter 90.42 RCW to read as follows:

(1) The department shall require each Yakima basin domestic water bank sponsor to:

(a) Demonstrate the availability of an adequate and reliable water supply to mitigate for the intended purposes for which mitigation is provided; and

(b) Record each mitigation credit provided for new domestic uses with the appropriate county auditor for the parcel of land upon which the mitigation credit is used in like manner and in the same effect as provided for an original certificate or permit to divert water.

(2) The department shall ensure that new water uses for which mitigation is provided will not cause detriment or injury to existing water rights.

**NEW SECTION. Sec. 6.** A new section is added to chapter 90.42 RCW to read as follows:

(1) No Yakima basin domestic water bank sponsor may:

(a) Provide mitigation based on a water right with a priority date of May 10, 1905, or later; or

(b) Except as provided in subsection (2) of this section, use leased water to provide mitigation if an adequate and reliable water supply is otherwise available to provide mitigation.

(2) Nothing in this section prohibits a Yakima basin domestic water bank sponsor from providing mitigation based on:

(a) A long-term lease or water storage and exchange agreement, between the United States and the state of Washington, as provided in such a lease or agreement; or

(b) A water right lease that satisfies mitigation requirements pursuant to an agreement between the department and a county located in the Yakima basin and executed on or before May 15, 2014.

**NEW SECTION. Sec. 7.** (1) The department of ecology must evaluate mitigation options for domestic water use in areas of the Yakima basin for which mitigation water is unavailable and access to water from water banks is unsuitable. The department of ecology must recommend solutions for providing mitigation water for domestic use in such areas.

(2) A report of the department of ecology's findings must be provided to the legislature by December 1, 2015.

(3) The department of ecology shall produce the report within the department's appropriations.

**NEW SECTION. Sec. 8.** This act may be known and cited as the Yakima basin domestic water banking best practices act.

**NEW SECTION. Sec. 9.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 10.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

Senators Honeyford and Hobbs spoke in favor of adoption of the striking amendment.

Senator McCoy spoke against adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Honeyford to Engrossed House Bill No. 1187.

The motion by Senator Honeyford carried and the striking amendment was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "banks;" strike the remainder of the title and insert "reenacting and amending RCW 90.42.020; adding new sections to chapter 90.42 RCW; creating new sections; and declaring an emergency."

#### MOTION

On motion of Senator Honeyford, the rules were suspended, Engrossed House Bill No. 1187 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Honeyford and Warnick spoke in favor of passage of the bill.

Senator McCoy spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 1187 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 1187 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 29; Nays, 20; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Braun, Brown, Dammeier, Dinsel, Ericksen, Fain, Hewitt, Hill, Hobbs, Honeyford, King, Litzow, McAuliffe, Miloscia, Mullet, O'Ban, Padden, Parlette, Pearson, Rivers, Roach, Schoesler, Sheldon and Warnick

Voting nay: Senators Billig, Chase, Cleveland, Conway, Darneille, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Jayapal, Keiser, Kohl-Welles, Lias, McCoy, Nelson, Pedersen, Ranker and Rolfes

ENGROSSED HOUSE BILL NO. 1187 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

SUBSTITUTE HOUSE BILL NO. 1223, by House Committee on Community Development, Housing & Tribal Affairs (originally sponsored by Representatives Springer, Kochmar, Sullivan, Rodne, Pettigrew, Wilcox, Fitzgibbon, McBride, Tarleton, Stokesbary, Sells, Lytton, Bergquist, Ormsby, Pollet, Fey, Santos and Walkinshaw)

Allowing the use of lodging taxes for financing workforce housing.

The measure was read the second time.

#### MOTION

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On motion of Senator O'Ban, the rules were suspended, Substitute House Bill No. 1223 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator O'Ban spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1223.

#### ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1223 and the bill passed the Senate by the following vote: Yeas, 32; Nays, 17; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Billig, Braun, Chase, Cleveland, Conway, Darneille, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hill, Hobbs, Jayapal, Keiser, Kohl-Welles, Liias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Parlette, Pedersen, Ranker, Roach and Sheldon

Voting nay: Senators Angel, Bailey, Baumgartner, Becker, Brown, Dammeier, Dansel, Ericksen, Hewitt, Honeyford, King, Padden, Pearson, Rivers, Rolfes, Schoesler and Warnick

SUBSTITUTE HOUSE BILL NO. 1223, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### SECOND READING

HOUSE BILL NO. 1047, by Representatives Goodman, Haler, Moscoso, Appleton, Klippert, Muri, Hurst, S. Hunt, Hayes, Orwall, Johnson, MacEwen and Gregerson

Concerning state agencies continuity of operations planning requirements.

The measure was read the second time.

#### MOTION

On motion of Senator Roach, the rules were suspended, House Bill No. 1047 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

#### MOTION

On motion of Senator Fain, pursuant to Rule 18, Engrossed Substitute House Bill No. 1449 was made a special order of business to be considered at 4:59 p.m.

Senator Roach spoke in favor of passage of the bill (House Bill No. 1047).

The President declared the question before the Senate to be the final passage of House Bill No. 1047.

#### ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1047 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Billig, Braun, Brown, Chase, Cleveland, Conway,

Dammeier, Darneille, Ericksen, Fain, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hewitt, Hill, Hobbs, Honeyford, Jayapal, Keiser, King, Kohl-Welles, Liias, Litzow, McAuliffe, McCoy, Miloscia, Mullet, Nelson, O'Ban, Padden, Parlette, Pearson, Pedersen, Ranker, Rivers, Roach, Rolfes, Schoesler, Sheldon and Warnick

Voting nay: Senator Dansel

HOUSE BILL NO. 1047, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

The Senate again resumed consideration of Substitute House Bill No. 1800 which had been deferred earlier in the day.

#### PARLIAMENTARY INQUIRY

Senator Fain: "Thank you Mr. President. Do you happen to have the time?"

#### REPLY BY THE PRESIDENT

President Owen: "I happen to have the time. It's 4:58. You're early. I expect you are interested in bringing up Engrossed Substitute House Bill No. 1449 and since we are within seconds, I think that would be alright if you want to do that at this point."

#### REMARKS BY THE PRESIDENT

President Owen: "Substitute House Bill No. 1800, for those who are not familiar with the rule, you will be able to do House Bill 1047, uh, excuse me, the Special Order of Business and go back to Substitute House Bill No. 1800 when we're done."

#### PARLIAMENTARY INQUIRY

Senator Chase: "Can you tell me if those bills that are holding their place on the calendar will also be brought up? Can they be brought up?"

#### REPLY BY THE PRESIDENT

President Owen: "No. The only bills that can be run, based on your rule, are ... Five o'clock is the cut-off but there is a rule that says that you may place a bill on a special order of business. The bill that you're working on when the special order of business comes up, can be finished after you finish the special order of business. That is it. Senator Chase, the President will make one clarification. Bills that are not subject to the cut-off that are on the second reading calendar or are necessary to implement the budget could be heard after that time."

#### SPECIAL ORDER OF BUSINESS

Pursuant to Rule 18, the hour fixed for consideration of a special order of business having arrived, the President called the senate to order and announced Engrossed Substitute House Bill No. 1449 to before the senate.

#### SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1449, by House Committee on Environment (originally sponsored by Representatives Farrell, Carlyle, Fitzgibbon, Ortiz-Self, Peterson, Walkinshaw, Gregerson, Senn, McBride, Robinson, Tarleton, Pollet, Cody, Ormsby, Riccelli, Kagi, Blake, Fey, Hudgins, Lytton, Bergquist, Sells, Takko, Tharinger, Jinkins, Wylie, S.

Hunt, Stanford, Reykdal, Sawyer, Appleton, Van De Wege, Clibborn, Ryu, Goodman and Kilduff)

Concerning oil transportation safety.

The measure was read the second time.

#### MOTION

Senator Ericksen moved that the following committee striking amendment by the Committee on Ways & Means be not adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) Subject to the availability of amounts appropriated for this specific purpose, the department of ecology shall provide grants to emergency responders to assist with oil spill and hazardous materials response and firefighting equipment and resources needed to meet the requirements of this act.

(2) For the purposes of determining grant allocations, the department of ecology, in consultation with emergency first responders, oil spill response cooperatives, representatives from the oil and rail industries, and businesses that are recipients of liquid bulk crude oil shall: (a) Conduct an evaluation of oil spill and hazardous materials response and firefighting equipment and resources currently available for oil spill and hazardous materials response activities throughout the state; (b) review the local emergency management coordinating efforts for oil spill and hazardous materials response; (c) determine the need for additional, new, or updated equipment and resources; and (d) identify areas or regions of the state that are in greatest need of resources and oil spill and hazardous materials response and firefighting equipment.

(3) The department of ecology, in consultation with emergency first responders, oil spill response cooperatives, representatives from the oil and rail industries, and businesses that are recipients of liquid bulk crude oil shall review grant applications to prioritize grant awards using the evaluation of availability of oil spill and hazardous materials response and firefighting equipment and resources as determined in subsection (2) of this section.

(a) The application review must include evaluation of equipment and resource requests, funding requirements, and coordination with existing equipment and resources in the area.

(b) Funding must be prioritized for applicants from areas where the need for firefighting and oil spill and hazardous materials response equipment is the greatest as determined in subsection (2) of this section.

(c) Grants must be coordinated to maximize currently existing equipment and resources that have been put in place by first responders and industry.

**Sec. 2.** RCW 82.23B.010 and 1992 c 73 s 6 are each amended to read as follows:

~~(Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.)~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Barrel" means a unit of measurement of volume equal to forty-two United States gallons of crude oil or petroleum product.

(2) "Bulk oil terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil from a tank car.

(3) "Crude oil" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline.

~~((3))~~ (4) "Department" means the department of revenue.

~~((4))~~ (5) "Marine terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products to or from a waterborne vessel or barge.

~~((5))~~ (6) "Navigable waters" means those waters of the state and their adjoining shorelines that are subject to the ebb and flow of the tide, including the Columbia and Snake rivers.

~~((6))~~ (7) "Person" has the meaning provided in RCW 82.04.030.

~~((7))~~ (8) "Petroleum product" means any liquid hydrocarbons at atmospheric temperature and pressure that are the product of the fractionation, distillation, or other refining or processing of crude oil, and that are used as, useable as, or may be refined as a fuel or fuel blendstock, including but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and fuels containing a blend of alcohol and petroleum.

~~((8))~~ (9) "Tank car" means a rail car, the body of which consists of a tank for transporting liquids.

(10) "Taxpayer" means the person owning crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal in this state ~~(from a waterborne vessel or barge)~~ and who is liable for the taxes imposed by this chapter.

~~((9))~~ (11) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of travelling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine.

**Sec. 3.** RCW 82.23B.020 and 2006 c 256 s 2 are each amended to read as follows:

(1) An oil spill response tax is imposed on the privilege of receiving: (a) Crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state; and (b) crude oil at a bulk oil terminal within this state from a tank car. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal from a tank car or waterborne vessel or barge at the rate of one cent per barrel of crude oil or petroleum product received.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of receiving: (a) Crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state; and (b) crude oil at a bulk oil terminal within this state from a tank car. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal from a tank car or waterborne vessel or barge at the rate of four cents per barrel of crude oil or petroleum product.

(3) The taxes imposed by this chapter ~~((shall))~~ must be collected by the marine or bulk oil terminal operator from the taxpayer. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the ~~((imposition of the))~~ taxes imposed, or having collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she ~~((shall))~~, nevertheless, ~~((be))~~ is personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine or bulk oil terminal operator ~~((shall))~~ must relieve the owner from further liability for the taxes.

(4) Taxes collected under this chapter ~~((shall))~~ must be held in trust until paid to the department. Any person collecting the taxes

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who appropriates or converts the taxes collected (~~(shall be)~~) is guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. The taxes required by this chapter to be collected (~~(shall)~~) must be stated separately from other charges made by the marine or bulk oil terminal operator in any invoice or other statement of account provided to the taxpayer.

(5) If a taxpayer fails to pay the taxes imposed by this chapter to the person charged with collection of the taxes and the person charged with collection fails to pay the taxes to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the taxes.

(6) The taxes (~~(shall be)~~) are due from the marine or bulk oil terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the taxable activity occurs.

(7) The amount of taxes, until paid by the taxpayer to the marine or bulk oil terminal operator or to the department, (~~(shall)~~) constitute a debt from the taxpayer to the marine or bulk oil terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under this chapter (~~(, shall be)~~) is guilty of a misdemeanor as provided in chapter 9A.20 RCW.

(8) Upon prior approval of the department, the taxpayer may pay the taxes imposed by this chapter directly to the department. The department (~~(shall)~~) must give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department (~~(shall)~~) must provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator (~~(shall)~~) must relieve the marine or bulk oil terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9) All receipts from the tax imposed in subsection (1) of this section (~~(shall)~~) must be deposited into the state oil spill response account. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the oil spill prevention account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management (~~(shall)~~) must determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and (~~(shall)~~) may not be used to challenge the validity of any tax imposed under this chapter. The office of financial management (~~(shall)~~) must promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

(a) Tax was imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than nine million dollars; or

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than eight million dollars.

**Sec. 4.** RCW 82.23B.030 and 1992 c 73 s 9 are each amended to read as follows:

The taxes imposed under this chapter (~~(shall)~~) only apply to the first receipt of crude oil or petroleum products at a marine or bulk oil terminal in this state and not to the later transporting and subsequent receipt of the same oil or petroleum product, whether

in the form originally received at a marine or bulk oil terminal in this state or after refining or other processing.

**Sec. 5.** RCW 82.23B.040 and 1992 c 73 s 10 are each amended to read as follows:

Credit (~~(shall)~~) must be allowed against the taxes imposed under this chapter for any crude oil or petroleum products received at a marine or bulk oil terminal and subsequently exported from or sold for export from the state.

**NEW SECTION. Sec. 6.** A new section is added to chapter 90.56 RCW to read as follows:

(1) A facility that receives crude oil from a railroad car must provide advance notice to the department that the facility will receive crude oil from a railroad car, as provided in this section. The advance notice must include the route taken to the facility within the state, if known, and the scheduled time, location, volume, and gravity of the oil, as measured by standards developed by the American petroleum institute. Each week, a facility that provides advance notice under this section must provide the required information regarding the scheduled arrival of railroad cars carrying crude oil to be received by the facility in the succeeding seven-day period. A facility is not required to provide advance notice when there is no receipt of crude oil from a railroad car scheduled for a seven-day period.

(2) The department may share information provided by a facility through the advance notice system established in this section with the state emergency management division and any county, city, tribal, port, or local government emergency response agency upon request.

(3) The department must publish information collected under this section on a quarterly basis on the department's internet web site. The information published by the department must be aggregated on a statewide basis and may include other information available to the department including, but not limited to, place of origin, modes of transport, number of railroad cars delivering crude oil, and number and volume of spills during transport and delivery. The department must publish routes to facilities within the state, but may not include specific information about volume or gravity of oil, as measured by the standards developed by the American petroleum institute transported to any particular facility along the routes.

(4) A facility providing advance notice under this section is not responsible for meeting advance notice time frame requirements under subsection (1) of this section in the event that the schedule of arrivals of railroad cars carrying crude oil changes during a seven-day period.

(5) Consistent with the requirements of chapter 42.56 RCW, the department and any state, local, tribal, or public agency that receives information provided under this section may not disclose any such information to the public or to nongovernmental entities that is not aggregated and that contains proprietary, commercial, or financial information. The requirement for aggregating information does not apply when information is shared by the department with emergency response agencies as provided in subsection (2) of this section.

(6) The department shall adopt rules to implement this section. The advance notice system required in this section must be consistent with the oil transfer reporting system adopted by the department pursuant to RCW 88.46.165.

**Sec. 7.** RCW 88.40.011 and 2007 c 347 s 4 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Barge" means a vessel that is not self-propelled.

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of three hundred or more gross tons.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department of ecology.

(7)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from any vessel with an oil carrying capacity over two hundred fifty barrels or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(8) "Fishing vessel" means a self-propelled commercial vessel of three hundred or more gross tons that is used for catching or processing fish.

(9) "Gross tons" means tonnage as determined by the United States coast guard under 33 C.F.R. section 138.30.

(10) "Hazardous substances" means any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section ~~((401(14)))~~ 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

(a) Wastes listed as F001 through F028 in Table 302.4; and

(b) Wastes listed as K001 through K136 in Table 302.4.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Oil" or "oils" means oil of any kind that is liquid at ~~((atmospheric temperature))~~ twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section ~~((401(14)))~~ 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(18) "Spill" means an unauthorized discharge of oil into the waters of the state.

(19) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(20) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

**Sec. 8.** RCW 88.46.010 and 2011 c 122 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering:

(a) The additional protection provided by the measures;

(b) The technological achievability of the measures; and

(c) The cost of the measures.

(2)(a) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration:

(i) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development; and

(ii) Processes that are currently in use.

(b) In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(6) "Department" means the department of ecology.

(7) "Director" means the director of the department of ecology.

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(8) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(9)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(10) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility.

(13) "Oil" or "oils" means oil of any kind that is liquid at ~~((atmospheric temperature))~~ twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section ~~((401(14)))~~ 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(18) "Race Rocks light" means the nautical landmark located southwest of the city of Victoria, British Columbia.

(19) "Regional vessels of opportunity response group" means a group of nondedicated vessels participating in a vessels of opportunity response system to respond when needed and available to spills in a defined geographic area.

(20) "Severe weather conditions" means observed nautical conditions with sustained winds measured at forty knots and wave heights measured between twelve and eighteen feet.

(21) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(22) "Spill" means an unauthorized discharge of oil into the waters of the state.

(23) "Strait of Juan de Fuca" means waters off the northern coast of the Olympic Peninsula seaward of a line drawn from New Dungeness light in Clallam county to Discovery Island light on Vancouver Island, British Columbia, Canada.

(24) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(25) "Umbrella plan holder" means a nonprofit corporation established consistent with this chapter for the purposes of providing oil spill response and contingency plan coverage.

(26) "Vessel emergency" means a substantial threat of pollution originating from a covered vessel, including loss or serious degradation of propulsion, steering, means of navigation, primary electrical generating capability, and seakeeping capability.

(27) "Vessels of opportunity response system" means nondedicated boats and operators, including fishing and other vessels, that are under contract with and equipped by contingency plan holders to assist with oil spill response activities, including on-water oil recovery in the near shore environment and the placement of oil spill containment booms to protect sensitive habitats.

(28) "Volunteer coordination system" means an oil spill response system that, before a spill occurs, prepares for the coordination of volunteers to assist with appropriate oil spill response activities, which may include shoreline protection and cleanup, wildlife recovery, field observation, light construction, facility maintenance, donations management, clerical support, and other aspects of a spill response.

(29) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(30) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

**Sec. 9.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to

protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Board" means the pollution control hearings board.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(6) "Committee" means the preassessment screening committee established under RCW 90.48.368.

(7) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(8) "Department" means the department of ecology.

(9) "Director" means the director of the department of ecology.

(10) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(11)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(12) "Fund" means the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

(13) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

(14) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(15) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(16) "Necessary expenses" means the expenses incurred by the department and assisting state agencies for (a) investigating the source of the discharge; (b) investigating the extent of the environmental damage caused by the discharge; (c) conducting actions necessary to clean up the discharge; (d) conducting predamage and damage assessment studies; and (e) enforcing the

provisions of this chapter and collecting for damages caused by a discharge.

(17) "Oil" or "oils" means oil of any kind that is liquid at ~~((atmospheric temperature))~~ twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section ~~((101(14)))~~ 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(18) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(19) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(20)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(21) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(22) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(23) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(24) "Spill" means an unauthorized discharge of oil or hazardous substances into the waters of the state.

(25) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(26) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(27) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

**NEW SECTION. Sec. 10.** A new section is added to chapter 88.16 RCW to read as follows:

(1) The board of pilotage commissioners may adopt rules to implement this section. The rules may include tug escort requirements and other safety measures for oil tankers of greater than forty thousand deadweight tons, all articulated tug barges,



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and other towed waterborne vessels or barges within a two-mile radius of the Grays Harbor pilotage district as defined in RCW 88.16.050.

(2)(a) Prior to proposing a draft rule, the board of pilotage commissioners must consult with the department of ecology, the United States coast guard, the Grays Harbor safety committee, area tribes, public ports, local governments, and other appropriate entities. The board of pilotage commissioners may not adopt rules under this section unless a state agency or a local jurisdiction, for a facility within Grays Harbor that is required to have a contingency plan pursuant to chapter 90.56 RCW:

(i) Makes a final determination or issues a final permit after January 1, 2015, to site a new facility; or

(ii) Provides authority to an existing facility to process or receive crude oil for the first time.

(b) This subsection does not apply to a transmission pipeline or railroad facility.

(3) A rule adopted under this section must:

(a) Be designed to achieve best achievable protection as defined in RCW 88.46.010;

(b) Ensure that any escort tugs used have an aggregate shaft horsepower equivalent to at least five percent of the deadweight tons of the escorted oil tanker or articulated tug barge; and

(c) Ensure that escort tugs have sufficient mechanical capabilities to provide for safe escort.

(4) The provisions of this section do not apply to any enrolled vessels.

**NEW SECTION. Sec. 11.** A new section is added to chapter 81.04 RCW to read as follows:

(1) The commission must require a railroad company that transports crude oil in Washington to submit information to the commission relating to the railroad company's ability to pay damages in the event of a spill or accident involving the transport of crude oil by the railroad company in Washington. A railroad company must include the information in the annual report submitted to the commission pursuant to RCW 81.04.080.

(2) The commission may not use the information submitted by a railroad company under this section as a basis for engaging in economic regulation of a railroad company.

(3) The commission may not use the information submitted by a railroad company under this section as a basis for penalizing a railroad company.

(4) Nothing in this section may be construed as assigning liability to a railroad company or establishing liquidated damages for a spill or accident involving the transport of crude oil by a railroad company.

(5) The commission may adopt rules for implementing this section consistent with the requirements of RCW 81.04.080.

**Sec. 12.** RCW 81.53.240 and 1984 c 7 s 375 are each amended to read as follows:

(1) Except to the extent necessary to permit participation by first-class cities in the grade crossing protective fund, when an election to participate is made as provided in RCW 81.53.261 through 81.53.291, or to the extent a first-class city requests to participate in the commission's crossing safety inspection program within the city, this chapter ((81.53 RCW)) is not operative within the limits of first-class cities, and does not apply to street railway lines operating on or across any street, alley, or other public place within the limits of any city, except that a streetcar line outside of cities of the first class shall not cross a railroad at grade without express authority from the commission. The commission may not change the location of a state highway without the approval of the secretary of transportation, or the location of any crossing thereon adopted or approved by the department of transportation, or grant a railroad authority to cross

a state highway at grade without the consent of the secretary of transportation.

(2) Within thirty days of the effective date of this section, first-class cities must provide to the commission a list of all existing public crossings within the limits of a first-class city, including over and under-crossings, including the United States department of transportation number for the crossing. Within thirty days of modifying, closing, or opening a grade crossing within the limits of a first-class city, the city must notify the commission in writing of the action taken, identifying the crossing by the United States department of transportation number. All requirements in this subsection are subject to the availability of amounts appropriated for the specific purposes described.

**Sec. 13.** RCW 38.52.040 and 2011 1st sp.s. c 21 s 27, 2011 c 336 s 789, and 2011 c 79 s 9 are each reenacted and amended to read as follows:

(1) There is hereby created the emergency management council (hereinafter called the council), to consist of not more than seventeen members who shall be appointed by the adjutant general. The membership of the council shall include, but not be limited to, representatives of city and county governments, sheriffs and police chiefs, the Washington state patrol, the military department, the department of ecology, state and local fire chiefs, seismic safety experts, state and local emergency management directors, search and rescue volunteers, medical professions who have expertise in emergency medical care, building officials, and private industry. The representatives of private industry shall include persons knowledgeable in emergency and hazardous materials management. The councilmembers shall elect a chair from within the council membership. The members of the council shall serve without compensation, but may be reimbursed for their travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(2) The emergency management council shall advise the governor and the director on all matters pertaining to state and local emergency management. The council may appoint such ad hoc committees, subcommittees, and working groups as are required to develop specific recommendations for the improvement of emergency management practices, standards, policies, or procedures. The council shall ensure that the governor receives an annual assessment of statewide emergency preparedness including, but not limited to, specific progress on hazard mitigation and reduction efforts, implementation of seismic safety improvements, reduction of flood hazards, and coordination of hazardous materials planning and response activities. The council or a subcommittee thereof shall periodically convene in special session and serve during those sessions as the state emergency response commission required by P.L. 99-499, the emergency planning and community right-to-know act. When sitting in session as the state emergency response commission, the council shall confine its deliberations to those items specified in federal statutes and state administrative rules governing the coordination of hazardous materials policy. Subject to the availability of amounts appropriated for this specific purpose, the council must require local emergency planning organizations to submit hazardous materials plans and to update the plans on a five-year cycle for compliance review by the director. The council shall review administrative rules governing state and local emergency management practices and recommend necessary revisions to the director.

(3)(a) The intrastate mutual aid committee is created and is a subcommittee of the emergency management council. The intrastate mutual aid committee consists of not more than five members who must be appointed by the council chair from council membership. The chair of the intrastate mutual aid committee is the military department representative appointed as a member of the council. Meetings of the intrastate mutual aid committee must be held at least annually.

(b) In support of the intrastate mutual aid system established in chapter 38.56 RCW, the intrastate mutual aid committee shall develop and update guidelines and procedures to facilitate implementation of the intrastate mutual aid system by member jurisdictions, including but not limited to the following: Projected or anticipated costs; checklists and forms for requesting and providing assistance; recordkeeping; reimbursement procedures; and other implementation issues. These guidelines and procedures are not subject to the rule-making requirements of chapter 34.05 RCW.

**Sec. 14.** RCW 38.52.070 and 1997 c 49 s 4 are each amended to read as follows:

(1) Each political subdivision of this state is hereby authorized and directed to establish a local organization or to be a member of a joint local organization for emergency management in accordance with the state comprehensive emergency management plan and program: PROVIDED, That a political subdivision proposing such establishment shall submit its plan and program for emergency management to the state director and secure his or her recommendations thereon, and verification of consistency with the state comprehensive emergency management plan, in order that the plan of the local organization for emergency management may be coordinated with the plan and program of the state. Local comprehensive emergency management plans must: (a) Specify the use of the incident command system for multiagency/multijurisdiction operations; and (b) include hazardous materials plans that are updated on a five-year cycle for compliance review by the director. No political subdivision may be required to include in its plan provisions for the emergency evacuation or relocation of residents in anticipation of nuclear attack. If the director's recommendations are adverse to the plan as submitted, and, if the local organization does not agree to the director's recommendations for modification to the proposal, the matter shall be referred to the council for final action. The director may authorize two or more political subdivisions to join in the establishment and operation of a joint local organization for emergency management as circumstances may warrant, in which case each political subdivision shall contribute to the cost of emergency management upon such fair and equitable basis as may be determined upon by the executive heads of the constituent subdivisions. If in any case the executive heads cannot agree upon the proper division of cost the matter shall be referred to the council for arbitration and its decision shall be final. When two or more political subdivisions join in the establishment and operation of a joint local organization for emergency management each shall pay its share of the cost into a special pooled fund to be administered by the treasurer of the most populous subdivision, which fund shall be known as the . . . . emergency management fund. Each local organization or joint local organization for emergency management shall have a director who shall be appointed by the executive head of the political subdivision, and who shall have direct responsibility for the organization, administration, and operation of such local organization for emergency management, subject to the direction and control of such executive officer or officers. In the case of a joint local organization for emergency management, the director shall be appointed by the joint action of the executive heads of the

constituent political subdivisions. Each local organization or joint local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this chapter.

(2) In carrying out the provisions of this chapter each political subdivision, in which any disaster as described in RCW 38.52.020 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to, budget law limitations, requirements of competitive bidding and publication of notices, provisions pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds.

**Sec. 15.** RCW 81.53.010 and 2013 c 23 s 302 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

~~((The term))~~ (1) "Commission(=)" ~~((when used in this chapter,))~~ means the utilities and transportation commission of Washington.

~~((The term))~~ (2) "Highway(=)" ~~((when used in this chapter,))~~ includes all state and county roads, streets, alleys, avenues, boulevards, parkways, and other public places actually open and in use, or to be opened and used, for travel by the public.

~~((The term))~~ (3) "Railroad(=)" ~~((when used in this chapter,))~~ means every railroad, including interurban and suburban electric railroads, by whatsoever power operated, for the public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. The ~~((said))~~ term ~~((shall))~~ also includes every logging and other industrial railway owned or operated primarily for the purpose of carrying the property of its owners or operators or of a limited class of persons, with all tracks, spurs, and sidings used in connection therewith. The ~~((said))~~ term ~~((shall))~~ does not include street railways operating within the limits of any incorporated city or town.

~~((The term))~~ (4) "Railroad company(=)" ~~((when used in this chapter,))~~ includes every corporation, company, association, joint stock association, partnership, or person, its, their, or his or her lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any railroad ~~((= as that term is defined in this section)).~~

~~((The term))~~ (5) "Over-crossing(=)" ~~((when used in this chapter,))~~ means any point or place where a highway crosses a railroad by passing above the same. "Over-crossing" also means any point or place where one railroad crosses another railroad not at grade.

~~((The term))~~ (6) "Under-crossing(=)" ~~((when used in this chapter,))~~ means any point or place where a highway crosses a railroad by passing under the same. "Under-crossing" also means any point or place where one railroad crosses another railroad not at grade.

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~~((The term "over crossing" or "under crossing," shall also mean any point or place where one railroad crosses another railroad not at grade.~~

~~The term)) (7) "Grade crossing((;))" ((when used in this chapter,)) means any point or place where a railroad crosses a highway or a highway crosses a railroad or one railroad crosses another, at a common grade.~~

~~(8) "Private crossing" means any point or place where a railroad crosses a private road at grade or a private road crosses a railroad at grade, where the private road is not a highway.~~

NEW SECTION. Sec. 16. A new section is added to chapter 81.53 RCW to read as follows:

(1) To address the potential public safety hazards presented by private crossings in the state and by the transportation of hazardous materials in the state, including crude oil, the commission is authorized to adopt rules establishing criteria for inspection of private crossings and governing safety standards for private crossings along the railroad tracks over which crude oil is transported in the state, including, but not limited to, requirements for signage.

(2) Nothing in this section modifies existing agreements between the railroad company and the landowner governing cost allocation for upgrades to private crossing or liability for injuries or damages occurring at the private crossing.

(3) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described.

NEW SECTION. Sec. 17. (1)(a) The department of ecology must convene a panel consisting of representatives from: The oil and rail industries, businesses that are recipients of liquid bulk crude oil, Columbia river harbor safety committees, maritime fire safety associations, the United States coast guard, Columbia river public ports in Oregon and Washington, and Columbia river pilots.

(b) The panel convened under (a) of this subsection must evaluate and assess vessel traffic management and vessel traffic safety within the Columbia river.

(2) The panel shall convene no more than four times to assess and evaluate: (a) The need for tug escorts for oil tankers of greater than forty thousand deadweight tons, all articulated tug barges, and other towed waterborne vessels or barges; (b) best achievable protection; and (c) required tug capabilities to ensure safe escort of vessels on the Columbia river.

(3) By December 15, 2016, the department of ecology must provide to the appropriate committees of the legislature recommendations for vessel traffic management and vessel traffic safety on the Columbia river.

(4) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described.

NEW SECTION. Sec. 18. A new section is added to chapter 81.44 RCW to read as follows:

Commission employees certified by the federal railroad administration to perform hazardous materials inspections may enter the property of any business that receives, ships, or offers for shipment hazardous materials by rail. Entry shall be at a reasonable time and in a reasonable manner. The purpose of entry is limited to performing inspections, investigations, or surveillance of equipment, records, and operations relating to the packaging, loading, unloading, or transportation of hazardous materials by rail, pursuant only to the state participation program outlined in 49 C.F.R. Part 212. The term "business" is all inclusive and is not limited to common carriers or public service companies.

**Sec. 19.** RCW 81.24.010 and 2007 c 234 s 21 are each amended to read as follows:

(1) Every company subject to regulation by the commission, except those listed in subsection (3) of this section, shall, on or before the date specified by the commission for filing annual reports under RCW 81.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars, except railroad companies which shall each pay to the commission a fee ~~((equal))~~ up to ((one)) two and one-half percent of its intrastate gross operating revenue for the purpose of administering the rail safety program. The commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section. Any railroad association that qualifies as a nonprofit charitable organization under the federal internal revenue code section 501(c)(3) is exempt from the fee required under this subsection.

(2) The percentage rates of gross operating revenue to be paid in any one year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose railroad companies are classified as class two. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law, shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in.

(3) This section does not apply to private nonprofit transportation providers, auto transportation companies, charter party carriers and excursion service carriers, solid waste collection companies, motor freight carriers, household goods carriers, commercial ferries, and low-level radioactive waste storage facilities.

**Sec. 20.** RCW 42.56.270 and 2014 c 192 s 6, 2014 c 174 s 5, and 2014 c 144 s 6 are each reenacted and amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating

or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery

of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information; ~~(and)~~

(21) Market share data submitted by a manufacturer under RCW 70.95N.190(4); ~~(and)~~

(22) Financial information supplied to the department of financial institutions or to a portal under RCW 21.20.883, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities; and

(23) Unaggregated or individualized information shared as part of notices of transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to section 6 of this act, and in the possession of the department of ecology or any entity with which the department of ecology has shared it.

NEW SECTION. Sec. 21. The senate energy, environment, and telecommunications committee and the house of representatives environment committee must hold at least one joint meeting on oil spill prevention and response activities for international transport of liquid bulk crude oil. The committees may invite representatives of affected parties from the United States and Canada to address cooperative prevention and emergency response activities between shared international and state borders; expected risks posed by transport of Canadian crude oil or liquid bulk crude oil throughout the Pacific Northwest region; and an update of the marine transport of liquid bulk crude oil through the Pacific Northwest region.

NEW SECTION. Sec. 22. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

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On page 1, line 1 of the title, after "safety;" strike the remainder of the title and insert "amending RCW 82.23B.010, 82.23B.020, 82.23B.030, 82.23B.040, 88.40.011, 90.56.010, 81.53.240, 38.52.070, 81.53.010, and 81.24.010; reenacting and amending RCW 88.46.010, 38.52.040, and 42.56.270; adding a new section to chapter 90.56 RCW; adding a new section to chapter 88.16 RCW; adding a new section to chapter 81.04 RCW; adding a new section to chapter 81.53 RCW; adding a new section to chapter 81.44 RCW; and creating new sections."

The President declared the question before the Senate to be the motion by Senator Ericksen that the committee striking amendment by the Committee on Ways & Means to Engrossed Substitute House Bill No. 1449 be not adopted.

The motion by Senator Ericksen carried and the committee striking amendment was not adopted by voice vote.

MOTION

Senator Ericksen moved that the following committee striking amendment by the Committee on Energy, Environment & Telecommunications be not adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) Subject to the availability of amounts appropriated for this specific purpose, the department of ecology shall provide grants to emergency responders to assist with oil spill and hazardous materials response and firefighting equipment and resources needed to meet the requirements of this act.

(2) For the purposes of determining grant allocations, the department of ecology, in consultation with emergency first responders, oil spill response cooperatives, representatives from the oil and rail industries, and businesses that are recipients of liquid bulk crude oil shall: (a) Conduct an evaluation of oil spill and hazardous materials response and firefighting equipment and resources currently available for oil spill and hazardous materials response activities throughout the state; (b) review the local emergency management coordinating efforts for oil spill and hazardous materials response; (c) determine the need for additional, new, or updated equipment and resources; and (d) identify areas or regions of the state that are in greatest need of resources and oil spill and hazardous materials response and firefighting equipment.

(3) The department of ecology, in consultation with emergency first responders, oil spill response cooperatives, representatives from the oil and rail industries, and businesses that are recipients of liquid bulk crude oil shall review grant applications to prioritize grant awards using the evaluation of availability of oil spill and hazardous materials response and firefighting equipment and resources as determined in subsection (2) of this section.

(a) The application review must include evaluation of equipment and resource requests, funding requirements, and coordination with existing equipment and resources in the area.

(b) Funding must be prioritized for applicants from areas where the need for firefighting and oil spill and hazardous materials response equipment is the greatest as determined in subsection (2) of this section.

(c) Grants must be coordinated to maximize currently existing equipment and resources that have been put in place by first responders and industry.

**Sec. 2.** RCW 82.23B.010 and 1992 c 73 s 6 are each amended to read as follows:

~~((Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Barrel" means a unit of measurement of volume equal to forty-two United States gallons of crude oil or petroleum product.

(2) "Bulk oil terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil from a tank car.

(3) "Crude oil" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline.

~~((3))~~ (4) "Department" means the department of revenue.

~~((4))~~ (5) "Marine terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products to or from a waterborne vessel or barge.

~~((5))~~ (6) "Navigable waters" means those waters of the state and their adjoining shorelines that are subject to the ebb and flow of the tide, including the Columbia and Snake rivers.

~~((6))~~ (7) "Person" has the meaning provided in RCW 82.04.030.

~~((7))~~ (8) "Petroleum product" means any liquid hydrocarbons at atmospheric temperature and pressure that are the product of the fractionation, distillation, or other refining or processing of crude oil, and that are used as, useable as, or may be refined as a fuel or fuel blendstock, including but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and fuels containing a blend of alcohol and petroleum.

~~((8))~~ (9) "Tank car" means a rail car, the body of which consists of a tank for transporting liquids.

(10) "Taxpayer" means the person owning crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal in this state ~~((from a waterborne vessel or barge))~~ and who is liable for the taxes imposed by this chapter.

~~((9))~~ (11) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of travelling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine.

**Sec. 3.** RCW 82.23B.020 and 2006 c 256 s 2 are each amended to read as follows:

(1) An oil spill response tax is imposed on the privilege of receiving: (a) Crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state; and (b) crude oil at a bulk oil terminal within this state from a tank car. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal from a tank car or waterborne vessel or barge at the rate of one cent per barrel of crude oil or petroleum product received.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of receiving: (a) Crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state; and (b) crude oil at a bulk oil terminal within this state from a tank car. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal from a tank car or waterborne vessel or barge at the rate of four cents per barrel of crude oil or petroleum product.

(3) The taxes imposed by this chapter ~~((shall))~~ must be collected by the marine or bulk oil terminal operator from the

taxpayer. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the (~~(imposition of the)~~) taxes imposed, or having collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she (~~(shall)~~), nevertheless, (~~(be)~~) is personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine or bulk oil terminal operator (~~(shall)~~) must relieve the owner from further liability for the taxes.

(4) Taxes collected under this chapter (~~(shall)~~) must be held in trust until paid to the department. Any person collecting the taxes who appropriates or converts the taxes collected (~~(shall be)~~) is guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. The taxes required by this chapter to be collected (~~(shall)~~) must be stated separately from other charges made by the marine or bulk oil terminal operator in any invoice or other statement of account provided to the taxpayer.

(5) If a taxpayer fails to pay the taxes imposed by this chapter to the person charged with collection of the taxes and the person charged with collection fails to pay the taxes to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the taxes.

(6) The taxes (~~(shall be)~~) are due from the marine or bulk oil terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the taxable activity occurs.

(7) The amount of taxes, until paid by the taxpayer to the marine or bulk oil terminal operator or to the department, (~~(shall)~~) constitute a debt from the taxpayer to the marine or bulk oil terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under this chapter (~~(, shall be)~~) is guilty of a misdemeanor as provided in chapter 9A.20 RCW.

(8) Upon prior approval of the department, the taxpayer may pay the taxes imposed by this chapter directly to the department. The department (~~(shall)~~) must give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department (~~(shall)~~) must provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator (~~(shall)~~) must relieve the marine or bulk oil terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9) All receipts from the tax imposed in subsection (1) of this section (~~(shall)~~) must be deposited into the state oil spill response account. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the oil spill prevention account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management (~~(shall)~~) must determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and (~~(shall)~~) may not be used to challenge the validity of any tax imposed under this chapter. The office of financial management (~~(shall)~~) must promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

(a) Tax was imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than nine million dollars; or

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than eight million dollars.

**Sec. 4.** RCW 82.23B.030 and 1992 c 73 s 9 are each amended to read as follows:

The taxes imposed under this chapter (~~(shall)~~) only apply to the first receipt of crude oil or petroleum products at a marine or bulk oil terminal in this state and not to the later transporting and subsequent receipt of the same oil or petroleum product, whether in the form originally received at a marine or bulk oil terminal in this state or after refining or other processing.

**Sec. 5.** RCW 82.23B.040 and 1992 c 73 s 10 are each amended to read as follows:

Credit (~~(shall)~~) must be allowed against the taxes imposed under this chapter for any crude oil or petroleum products received at a marine or bulk oil terminal and subsequently exported from or sold for export from the state.

**NEW SECTION. Sec. 6.** A new section is added to chapter 90.56 RCW to read as follows:

(1) A facility that receives crude oil from a railroad car must provide advance notice to the department that the facility will receive crude oil from a railroad car, as provided in this section. The advance notice must include the route taken to the facility within the state, if known, and the scheduled time, location, volume, and gravity of the oil, as measured by standards developed by the American petroleum institute. Each week, a facility that provides advance notice under this section must provide the required information regarding the scheduled arrival of railroad cars carrying crude oil to be received by the facility in the succeeding seven-day period. A facility is not required to provide advance notice when there is no receipt of crude oil from a railroad car scheduled for a seven-day period.

(2) The department may share information provided by a facility through the advance notice system established in this section with the state emergency management division and any county, city, tribal, port, or local government emergency response agency upon request.

(3) The department must publish information collected under this section on a quarterly basis on the department's internet web site. The information published by the department must be aggregated on a statewide basis and may include other information available to the department including, but not limited to, place of origin, modes of transport, number of railroad cars delivering crude oil, and number and volume of spills during transport and delivery. The department must publish routes to facilities within the state, but may not include specific information about volume or gravity of oil, as measured by the standards developed by the American petroleum institute transported to any particular facility along the routes.

(4) A facility providing advance notice under this section is not responsible for meeting advance notice time frame requirements under subsection (1) of this section in the event that the schedule of arrivals of railroad cars carrying crude oil changes during a seven-day period.

(5) Consistent with the requirements of chapter 42.56 RCW, the department and any state, local, tribal, or public agency that receives information provided under this section may not disclose any such information to the public or to nongovernmental entities that is not aggregated and that contains proprietary, commercial, or financial information. The requirement for aggregating information does not apply when information is shared by the department with emergency response agencies as provided in subsection (2) of this section.

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(6) The department shall adopt rules to implement this section. The advance notice system required in this section must be consistent with the oil transfer reporting system adopted by the department pursuant to RCW 88.46.165.

**Sec. 7.** RCW 88.40.011 and 2007 c 347 s 4 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Barge" means a vessel that is not self-propelled.

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of three hundred or more gross tons.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department of ecology.

(7)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from any vessel with an oil carrying capacity over two hundred fifty barrels or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(8) "Fishing vessel" means a self-propelled commercial vessel of three hundred or more gross tons that is used for catching or processing fish.

(9) "Gross tons" means tonnage as determined by the United States coast guard under 33 C.F.R. section 138.30.

(10) "Hazardous substances" means any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section ~~((401(14)))~~ 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

(a) Wastes listed as F001 through F028 in Table 302.4; and

(b) Wastes listed as K001 through K136 in Table 302.4.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Oil" or "oils" means oil of any kind that is liquid at ~~((atmospheric temperature))~~ twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section ~~((401(14)))~~ 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(18) "Spill" means an unauthorized discharge of oil into the waters of the state.

(19) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(20) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

**Sec. 8.** RCW 88.46.010 and 2011 c 122 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering:

(a) The additional protection provided by the measures;

(b) The technological achievability of the measures; and

(c) The cost of the measures.

(2)(a) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration:

(i) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development; and

(ii) Processes that are currently in use.

(b) In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(6) "Department" means the department of ecology.

(7) "Director" means the director of the department of ecology.

(8) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(9)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(10) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility.

(13) "Oil" or "oils" means oil of any kind that is liquid at ~~((atmospheric temperature))~~ twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section ~~((401(14)))~~ 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who

owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(18) "Race Rocks light" means the nautical landmark located southwest of the city of Victoria, British Columbia.

(19) "Regional vessels of opportunity response group" means a group of nondedicated vessels participating in a vessels of opportunity response system to respond when needed and available to spills in a defined geographic area.

(20) "Severe weather conditions" means observed nautical conditions with sustained winds measured at forty knots and wave heights measured between twelve and eighteen feet.

(21) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(22) "Spill" means an unauthorized discharge of oil into the waters of the state.

(23) "Strait of Juan de Fuca" means waters off the northern coast of the Olympic Peninsula seaward of a line drawn from New Dungeness light in Clallam county to Discovery Island light on Vancouver Island, British Columbia, Canada.

(24) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(25) "Umbrella plan holder" means a nonprofit corporation established consistent with this chapter for the purposes of providing oil spill response and contingency plan coverage.

(26) "Vessel emergency" means a substantial threat of pollution originating from a covered vessel, including loss or serious degradation of propulsion, steering, means of navigation, primary electrical generating capability, and seakeeping capability.

(27) "Vessels of opportunity response system" means nondedicated boats and operators, including fishing and other vessels, that are under contract with and equipped by contingency plan holders to assist with oil spill response activities, including on-water oil recovery in the near shore environment and the placement of oil spill containment booms to protect sensitive habitats.

(28) "Volunteer coordination system" means an oil spill response system that, before a spill occurs, prepares for the coordination of volunteers to assist with appropriate oil spill response activities, which may include shoreline protection and cleanup, wildlife recovery, field observation, light construction, facility maintenance, donations management, clerical support, and other aspects of a spill response.

(29) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(30) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or



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offshore facility, the largest foreseeable spill in adverse weather conditions.

**Sec. 9.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Board" means the pollution control hearings board.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(6) "Committee" means the preassessment screening committee established under RCW 90.48.368.

(7) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(8) "Department" means the department of ecology.

(9) "Director" means the director of the department of ecology.

(10) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(11)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(12) "Fund" means the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

(13) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

(14) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the

purpose of handling or transferring oil in bulk to or from a tank vessel.

(15) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(16) "Necessary expenses" means the expenses incurred by the department and assisting state agencies for (a) investigating the source of the discharge; (b) investigating the extent of the environmental damage caused by the discharge; (c) conducting actions necessary to clean up the discharge; (d) conducting predamage and damage assessment studies; and (e) enforcing the provisions of this chapter and collecting for damages caused by a discharge.

(17) "Oil" or "oils" means oil of any kind that is liquid at ~~((atmospheric temperature))~~ twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section ~~((101(14)))~~ 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(18) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(19) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(20)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(21) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(22) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(23) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(24) "Spill" means an unauthorized discharge of oil or hazardous substances into the waters of the state.

(25) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(26) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries,

tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(27) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

**NEW SECTION. Sec. 10.** A new section is added to chapter 88.16 RCW to read as follows:

(1) The board of pilotage commissioners may adopt rules to implement this section. The rules may include tug escort requirements and other safety measures for oil tankers of greater than forty thousand deadweight tons, all articulated tug barges, and other towed waterborne vessels or barges within a two-mile radius of the Grays Harbor pilotage district as defined in RCW 88.16.050.

(2)(a) Prior to proposing a draft rule, the board of pilotage commissioners must consult with the department of ecology, the United States coast guard, the Grays Harbor safety committee, area tribes, public ports, local governments, and other appropriate entities. The board of pilotage commissioners may not adopt rules under this section unless a state agency or a local jurisdiction, for a facility within Grays Harbor that is required to have a contingency plan pursuant to chapter 90.56 RCW:

(i) Makes a final determination or issues a final permit after January 1, 2015, to site a new facility; or

(ii) Provides authority to an existing facility to process or receive crude oil for the first time.

(b) This subsection does not apply to a transmission pipeline or railroad facility.

(3) A rule adopted under this section must:

(a) Be designed to achieve best achievable protection as defined in RCW 88.46.010;

(b) Ensure that any escort tugs used have an aggregate shaft horsepower equivalent to at least five percent of the deadweight tons of the escorted oil tanker or articulated tug barge; and

(c) Ensure that escort tugs have sufficient mechanical capabilities to provide for safe escort.

(4) The provisions of this section do not apply to pilotage for enrolled tankers.

**NEW SECTION. Sec. 11.** A new section is added to chapter 81.04 RCW to read as follows:

(1) The commission must require a railroad company that transports crude oil in Washington to submit information to the commission relating to the railroad company's ability to pay damages in the event of a spill or accident involving the transport of crude oil by the railroad company in Washington. A railroad company must include the information in the annual report submitted to the commission pursuant to RCW 81.04.080.

(2) The commission may not use the information submitted by a railroad company under this section as a basis for engaging in economic regulation of a railroad company.

(3) The commission may not use the information submitted by a railroad company under this section as a basis for penalizing a railroad company.

(4) Nothing in this section may be construed as assigning liability to a railroad company or establishing liquidated damages for a spill or accident involving the transport of crude oil by a railroad company.

(5) The commission may adopt rules for implementing this section consistent with the requirements of RCW 81.04.080.

**Sec. 12.** RCW 81.53.240 and 1984 c 7 s 375 are each amended to read as follows:

(1) Except to the extent necessary to permit participation by first-class cities in the grade crossing protective fund, when an

election to participate is made as provided in RCW 81.53.261 through 81.53.291, or to the extent a first-class city requests to participate in the commission's crossing safety inspection program within the city, this chapter ((81.53-RCW)) is not operative within the limits of first-class cities, and does not apply to street railway lines operating on or across any street, alley, or other public place within the limits of any city, except that a streetcar line outside of cities of the first class shall not cross a railroad at grade without express authority from the commission. The commission may not change the location of a state highway without the approval of the secretary of transportation, or the location of any crossing thereon adopted or approved by the department of transportation, or grant a railroad authority to cross a state highway at grade without the consent of the secretary of transportation.

(2) Within thirty days of the effective date of this section, first-class cities must provide to the commission a list of all existing public crossings within the limits of a first-class city, including over and under-crossings, including the United States department of transportation number for the crossing. Within thirty days of modifying, closing, or opening a grade crossing within the limits of a first-class city, the city must notify the commission in writing of the action taken, identifying the crossing by the United States department of transportation number. All requirements in this subsection are subject to the availability of amounts appropriated for the specific purposes described.

**Sec. 13.** RCW 38.52.040 and 2011 1st sp.s. c 21 s 27, 2011 c 336 s 789, and 2011 c 79 s 9 are each reenacted and amended to read as follows:

(1) There is hereby created the emergency management council (hereinafter called the council), to consist of not more than seventeen members who shall be appointed by the adjutant general. The membership of the council shall include, but not be limited to, representatives of city and county governments, sheriffs and police chiefs, the Washington state patrol, the military department, the department of ecology, state and local fire chiefs, seismic safety experts, state and local emergency management directors, search and rescue volunteers, medical professions who have expertise in emergency medical care, building officials, and private industry. The representatives of private industry shall include persons knowledgeable in emergency and hazardous materials management. The councilmembers shall elect a chair from within the council membership. The members of the council shall serve without compensation, but may be reimbursed for their travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(2) The emergency management council shall advise the governor and the director on all matters pertaining to state and local emergency management. The council may appoint such ad hoc committees, subcommittees, and working groups as are required to develop specific recommendations for the improvement of emergency management practices, standards, policies, or procedures. The council shall ensure that the governor receives an annual assessment of statewide emergency preparedness including, but not limited to, specific progress on hazard mitigation and reduction efforts, implementation of seismic safety improvements, reduction of flood hazards, and coordination of hazardous materials planning and response activities. The council or a subcommittee thereof shall periodically convene in special session and serve during those sessions as the state emergency response commission required by P.L. 99-499, the emergency planning and community right-to-know act. When sitting in session as the state emergency

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response commission, the council shall confine its deliberations to those items specified in federal statutes and state administrative rules governing the coordination of hazardous materials policy. Subject to the availability of amounts appropriated for this specific purpose, the council must require local emergency planning organizations to submit hazardous materials plans and to update the plans on a five-year cycle for compliance review by the director. The council shall review administrative rules governing state and local emergency management practices and recommend necessary revisions to the director.

(3)(a) The intrastate mutual aid committee is created and is a subcommittee of the emergency management council. The intrastate mutual aid committee consists of not more than five members who must be appointed by the council chair from council membership. The chair of the intrastate mutual aid committee is the military department representative appointed as a member of the council. Meetings of the intrastate mutual aid committee must be held at least annually.

(b) In support of the intrastate mutual aid system established in chapter 38.56 RCW, the intrastate mutual aid committee shall develop and update guidelines and procedures to facilitate implementation of the intrastate mutual aid system by member jurisdictions, including but not limited to the following: Projected or anticipated costs; checklists and forms for requesting and providing assistance; recordkeeping; reimbursement procedures; and other implementation issues. These guidelines and procedures are not subject to the rule-making requirements of chapter 34.05 RCW.

**Sec. 14.** RCW 38.52.070 and 1997 c 49 s 4 are each amended to read as follows:

(1) Each political subdivision of this state is hereby authorized and directed to establish a local organization or to be a member of a joint local organization for emergency management in accordance with the state comprehensive emergency management plan and program: PROVIDED, That a political subdivision proposing such establishment shall submit its plan and program for emergency management to the state director and secure his or her recommendations thereon, and verification of consistency with the state comprehensive emergency management plan, in order that the plan of the local organization for emergency management may be coordinated with the plan and program of the state. Local comprehensive emergency management plans must: (a) Specify the use of the incident command system for multiagency/multijurisdiction operations; and (b) include hazardous materials plans that are updated on a five-year cycle for compliance review by the director. No political subdivision may be required to include in its plan provisions for the emergency evacuation or relocation of residents in anticipation of nuclear attack. If the director's recommendations are adverse to the plan as submitted, and, if the local organization does not agree to the director's recommendations for modification to the proposal, the matter shall be referred to the council for final action. The director may authorize two or more political subdivisions to join in the establishment and operation of a joint local organization for emergency management as circumstances may warrant, in which case each political subdivision shall contribute to the cost of emergency management upon such fair and equitable basis as may be determined upon by the executive heads of the constituent subdivisions. If in any case the executive heads cannot agree upon the proper division of cost the matter shall be referred to the council for arbitration and its decision shall be final. When two or more political subdivisions join in the establishment and operation of a joint local organization for emergency

management each shall pay its share of the cost into a special pooled fund to be administered by the treasurer of the most populous subdivision, which fund shall be known as the . . . . . emergency management fund. Each local organization or joint local organization for emergency management shall have a director who shall be appointed by the executive head of the political subdivision, and who shall have direct responsibility for the organization, administration, and operation of such local organization for emergency management, subject to the direction and control of such executive officer or officers. In the case of a joint local organization for emergency management, the director shall be appointed by the joint action of the executive heads of the constituent political subdivisions. Each local organization or joint local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this chapter.

(2) In carrying out the provisions of this chapter each political subdivision, in which any disaster as described in RCW 38.52.020 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to, budget law limitations, requirements of competitive bidding and publication of notices, provisions pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds.

**Sec. 15.** RCW 81.53.010 and 2013 c 23 s 302 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

~~((The term))~~ (1) "Commission(=)" ~~((when used in this chapter,))~~ means the utilities and transportation commission of Washington.

~~((The term))~~ (2) "Highway(=)" ~~((when used in this chapter,))~~ includes all state and county roads, streets, alleys, avenues, boulevards, parkways, and other public places actually open and in use, or to be opened and used, for travel by the public.

~~((The term))~~ (3) "Railroad(=)" ~~((when used in this chapter,))~~ means every railroad, including interurban and suburban electric railroads, by whatsoever power operated, for the public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. The ~~((said))~~ term ~~((shall))~~ also includes every logging and other industrial railway owned or operated primarily for the purpose of carrying the property of its owners or operators or of a limited class of persons, with all tracks, spurs, and sidings used in connection therewith. The ~~((said))~~ term ~~((shall))~~ does not include street railways operating within the limits of any incorporated city or town.

~~((The term))~~ (4) "Railroad company(=)" ~~((when used in this chapter,))~~ includes every corporation, company, association, joint stock association, partnership, or person, its, their, or his or her lessees, trustees, or receivers appointed by any court whatsoever,

owning, operating, controlling, or managing any railroad(~~as that term is defined in this section~~).

~~((The term))~~ (5) "Over-crossing(~~(:)~~)" (~~((when used in this chapter,))~~) means any point or place where a highway crosses a railroad by passing above the same. "Over-crossing" also means any point or place where one railroad crosses another railroad not at grade.

~~((The term))~~ (6) "Under-crossing(~~(:)~~)" (~~((when used in this chapter,))~~) means any point or place where a highway crosses a railroad by passing under the same. "Under-crossing" also means any point or place where one railroad crosses another railroad not at grade.

~~((The term "over crossing" or "under crossing," shall also mean any point or place where one railroad crosses another railroad not at grade.~~

The term)) (7) "Grade crossing(~~(:)~~)" (~~((when used in this chapter,))~~) means any point or place where a railroad crosses a highway or a highway crosses a railroad or one railroad crosses another, at a common grade.

(8) "Private crossing" means any point or place where a railroad crosses a private road at grade or a private road crosses a railroad at grade, where the private road is not a highway.

NEW SECTION. Sec. 16. A new section is added to chapter 81.53 RCW to read as follows:

(1) To address the potential public safety hazards presented by private crossings in the state and by the transportation of hazardous materials in the state, including crude oil, the commission is authorized to adopt rules establishing criteria for inspection of private crossings and governing safety standards for private crossings along the railroad tracks over which crude oil is transported in the state, including, but not limited to, requirements for signage.

(2) Nothing in this section modifies existing agreements between the railroad company and the landowner governing cost allocation for upgrades to private crossing or liability for injuries or damages occurring at the private crossing.

(3) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described.

NEW SECTION. Sec. 17. (1)(a) The department of ecology must convene a panel consisting of representatives from: The oil and rail industries, businesses that are recipients of liquid bulk crude oil, Columbia river harbor safety committees, maritime fire safety associations, the United States coast guard, Columbia river public ports in Oregon and Washington, and Columbia river pilots.

(b) The panel convened under (a) of this subsection must evaluate and assess vessel traffic management and vessel traffic safety within the Columbia river.

(2) The panel shall convene no more than four times to assess and evaluate: (a) The need for tug escorts for oil tankers of greater than forty thousand deadweight tons, all articulated tug barges, and other towed waterborne vessels or barges; (b) best achievable protection; and (c) required tug capabilities to ensure safe escort of vessels on the Columbia river.

(3) By December 15, 2016, the department of ecology must provide to the appropriate committees of the legislature recommendations for vessel traffic management and vessel traffic safety on the Columbia river.

(4) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described.

NEW SECTION. Sec. 18. A new section is added to chapter 81.44 RCW to read as follows:

Commission employees certified by the federal railroad administration to perform hazardous materials inspections may

enter the property of any business that receives, ships, or offers for shipment hazardous materials by rail. Entry shall be at a reasonable time and in a reasonable manner. The purpose of entry is limited to performing inspections, investigations, or surveillance of equipment, records, and operations relating to the packaging, loading, unloading, or transportation of hazardous materials by rail, pursuant only to the state participation program outlined in 49 C.F.R. Part 212. The term "business" is all inclusive and is not limited to common carriers or public service companies.

**Sec. 19.** RCW 81.24.010 and 2007 c 234 s 21 are each amended to read as follows:

(1) Every company subject to regulation by the commission, except those listed in subsection (3) of this section, shall, on or before the date specified by the commission for filing annual reports under RCW 81.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars, except railroad companies which shall each pay to the commission a fee equal to one and one-half percent of its intrastate gross operating revenue. The commission may, by rule, set minimum gross fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section. Any railroad association that qualifies as a nonprofit charitable organization under the federal internal revenue code section 501(c)(3) is exempt from the fee required under this subsection.

(2) The commission must adopt rules for assessing a surcharge on railroad companies operating in Washington for the purpose of providing and retaining no more than eight certified railroad inspectors. The rules must provide that the surcharge proportionately distribute the costs among each railroad company operating within the state, based on gross intrastate operating revenue and volume of activity within the state.

(3) The percentage rates of gross operating revenue to be paid in any one year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose railroad companies are classified as class two. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law, shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in.

~~((3))~~ (4) This section does not apply to private nonprofit transportation providers, auto transportation companies, charter party carriers and excursion service carriers, solid waste collection companies, motor freight carriers, household goods carriers, commercial ferries, and low-level radioactive waste storage facilities.

**Sec. 20.** RCW 42.56.270 and 2014 c 192 s 6, 2014 c 174 s 5, and 2014 c 144 s 6 are each reenacted and amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750

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or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information; ~~((and))~~

(21) Market share data submitted by a manufacturer under RCW 70.95N.190(4); ~~((and))~~

(22) Financial information supplied to the department of financial institutions or to a portal under RCW 21.20.883, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities; and

(23) Unaggregated or individualized information shared as part of notices of transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to section 6 of this act, and in the

possession of the department of ecology or any entity with which the department of ecology has shared it.

**NEW SECTION. Sec. 21.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

On page 1, line 1 of the title, after "safety;" strike the remainder of the title and insert "amending RCW 82.23B.010, 82.23B.020, 82.23B.030, 82.23B.040, 88.40.011, 90.56.010, 81.53.240, 38.52.070, 81.53.010, and 81.24.010; reenacting and amending RCW 88.46.010, 38.52.040, and 42.56.270; adding a new section to chapter 90.56 RCW; adding a new section to chapter 88.16 RCW; adding a new section to chapter 81.04 RCW; adding a new section to chapter 81.53 RCW; adding a new section to chapter 81.44 RCW; and creating new sections."

The President declared the question before the Senate to be the motion by Senator Ericksen that the committee striking amendment by the Committee on Energy, Environment & Telecommunications to Engrossed Substitute House Bill No. 1449 be not adopted.

The motion by Senator Ericksen carried and the committee striking amendment was not adopted by voice vote.

#### PARLIAMENTARY INQUIRY

Senator Rolfes: "Does that mean the bill before us right now is the bill that came, if this amendment were not adopted by the committee, is the bill before us the bill that was sent to the Senate from the House?"

#### REPLY BY THE PRESIDENT

President Owen: "It would be back to the position that it was when it came over from the House. That is correct."

#### MOTION

Senator Ericksen moved that the following striking amendment by Senator Ericksen be adopted:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) Subject to the availability of amounts appropriated for this specific purpose, the department of ecology shall provide grants to emergency responders to assist with oil spill and hazardous materials response and firefighting equipment and resources needed to meet the requirements of this act.

(2) For the purposes of determining grant allocations, the department of ecology, in consultation with emergency first responders, oil spill response cooperatives, representatives from the oil and rail industries, and businesses that are recipients of liquid bulk crude oil shall: (a) Conduct an evaluation of oil spill and hazardous materials response and firefighting equipment and resources currently available for oil spill and hazardous materials response activities throughout the state; (b) review the local emergency management coordinating efforts for oil spill and hazardous materials response; (c) determine the need for additional, new, or updated equipment and resources; and (d) identify areas or regions of the state that are in greatest need of resources and oil spill and hazardous materials response and firefighting equipment.

(3) The department of ecology, in consultation with emergency first responders, oil spill response cooperatives, representatives from the oil and rail industries, and businesses that are recipients of liquid bulk crude oil shall review grant

applications to prioritize grant awards using the evaluation of availability of oil spill and hazardous materials response and firefighting equipment and resources as determined in subsection (2) of this section.

(a) The application review must include evaluation of equipment and resource requests, funding requirements, and coordination with existing equipment and resources in the area.

(b) Funding must be prioritized for applicants from areas where the need for firefighting and oil spill and hazardous materials response equipment is the greatest as determined in subsection (2) of this section.

(c) Grants must be coordinated to maximize currently existing equipment and resources that have been put in place by first responders and industry.

**Sec. 2.** RCW 82.23B.010 and 1992 c 73 s 6 are each amended to read as follows:

~~((Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Barrel" means a unit of measurement of volume equal to forty-two United States gallons of crude oil or petroleum product.

(2) "Bulk oil terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil from a tank car.

(3) "Crude oil" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline.

~~((3))~~ (4) "Department" means the department of revenue.

~~((4))~~ (5) "Marine terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products to or from a waterborne vessel or barge.

~~((5))~~ (6) "Navigable waters" means those waters of the state and their adjoining shorelines that are subject to the ebb and flow of the tide, including the Columbia and Snake rivers.

~~((6))~~ (7) "Person" has the meaning provided in RCW 82.04.030.

~~((7))~~ (8) "Petroleum product" means any liquid hydrocarbons at atmospheric temperature and pressure that are the product of the fractionation, distillation, or other refining or processing of crude oil, and that are used as, useable as, or may be refined as a fuel or fuel blendstock, including but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and fuels containing a blend of alcohol and petroleum.

~~((8))~~ (9) "Tank car" means a rail car, the body of which consists of a tank for transporting liquids.

(10) "Taxpayer" means the person owning crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal in this state ~~((from a waterborne vessel or barge))~~ and who is liable for the taxes imposed by this chapter.

~~((9))~~ (11) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of travelling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine.

**Sec. 3.** RCW 82.23B.020 and 2006 c 256 s 2 are each amended to read as follows:

(1) An oil spill response tax is imposed on the privilege of receiving: (a) Crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state; and (b) crude oil at a bulk oil terminal within this state from a tank car. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal from a tank car

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or waterborne vessel or barge at the rate of one cent per barrel of crude oil or petroleum product received.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of receiving: (a) Crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state; and (b) crude oil at a bulk oil terminal within this state from a tank car. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine or bulk oil terminal from a tank car or waterborne vessel or barge at the rate of four cents per barrel of crude oil or petroleum product.

(3) The taxes imposed by this chapter ~~((shall))~~ must be collected by the marine or bulk oil terminal operator from the taxpayer. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the ~~((imposition of the))~~ taxes imposed, or having collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she ~~((shall))~~, nevertheless, ~~((be))~~ is personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine or bulk oil terminal operator ~~((shall))~~ must relieve the owner from further liability for the taxes.

(4) Taxes collected under this chapter ~~((shall))~~ must be held in trust until paid to the department. Any person collecting the taxes who appropriates or converts the taxes collected ~~((shall be))~~ is guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. The taxes required by this chapter to be collected ~~((shall))~~ must be stated separately from other charges made by the marine or bulk oil terminal operator in any invoice or other statement of account provided to the taxpayer.

(5) If a taxpayer fails to pay the taxes imposed by this chapter to the person charged with collection of the taxes and the person charged with collection fails to pay the taxes to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the taxes.

(6) The taxes ~~((shall be))~~ are due from the marine or bulk oil terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the taxable activity occurs.

(7) The amount of taxes, until paid by the taxpayer to the marine or bulk oil terminal operator or to the department, ~~((shall))~~ constitute a debt from the taxpayer to the marine or bulk oil terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under this chapter ~~((shall be))~~ is guilty of a misdemeanor as provided in chapter 9A.20 RCW.

(8) Upon prior approval of the department, the taxpayer may pay the taxes imposed by this chapter directly to the department. The department ~~((shall))~~ must give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department ~~((shall))~~ must provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator ~~((shall))~~ must relieve the marine or bulk oil terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9) All receipts from the tax imposed in subsection (1) of this section ~~((shall))~~ must be deposited into the state oil spill response account. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the oil spill prevention account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management ~~((shall))~~ must determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and ~~((shall))~~ may not be used to challenge the validity of any tax imposed under this chapter. The office of financial management ~~((shall))~~ must promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

(a) Tax was imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than nine million dollars; or

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than eight million dollars.

**Sec. 4.** RCW 82.23B.030 and 1992 c 73 s 9 are each amended to read as follows:

The taxes imposed under this chapter ~~((shall))~~ only apply to the first receipt of crude oil or petroleum products at a marine or bulk oil terminal in this state and not to the later transporting and subsequent receipt of the same oil or petroleum product, whether in the form originally received at a marine or bulk oil terminal in this state or after refining or other processing.

**Sec. 5.** RCW 82.23B.040 and 1992 c 73 s 10 are each amended to read as follows:

Credit ~~((shall))~~ must be allowed against the taxes imposed under this chapter for any crude oil or petroleum products received at a marine or bulk oil terminal and subsequently exported from or sold for export from the state.

**NEW SECTION. Sec. 6.** A new section is added to chapter 90.56 RCW to read as follows:

(1) A facility that receives crude oil from a railroad car must provide advance notice to the department that the facility will receive crude oil from a railroad car, as provided in this section. The advance notice must include the route taken to the facility within the state, if known, and the scheduled time, location, volume, region per bill of lading, and gravity of the oil, as measured by standards developed by the American petroleum institute. Each week, a facility that provides advance notice under this section must provide the required information regarding the scheduled arrival of railroad cars carrying crude oil to be received by the facility in the succeeding seven-day period. A facility is not required to provide advance notice when there is no receipt of crude oil from a railroad car scheduled for a seven-day period.

(2) The department may share information provided by a facility through the advance notice system established in this section with the state emergency management division and any county, city, tribal, port, or local government emergency response agency upon request.

(3) The department must publish information collected under this section on a quarterly basis on the department's internet web site. The information published by the department must be aggregated on a statewide basis and may include other information available to the department including, but not limited to, place of origin, modes of transport, number of railroad cars delivering crude oil, and number and volume of spills during transport and delivery. The department must publish routes to

facilities within the state, but may not include specific information about volume or gravity of oil, as measured by the standards developed by the American petroleum institute transported to any particular facility along the routes.

(4) A facility providing advance notice under this section is not responsible for meeting advance notice time frame requirements under subsection (1) of this section in the event that the schedule of arrivals of railroad cars carrying crude oil changes during a seven-day period.

(5) Consistent with the requirements of chapter 42.56 RCW, the department and any state, local, tribal, or public agency that receives information provided under this section may not disclose any such information to the public or to nongovernmental entities that is not aggregated and that contains proprietary, commercial, or financial information. The requirement for aggregating information does not apply when information is shared by the department with emergency response agencies as provided in subsection (2) of this section.

(6) The department shall adopt rules to implement this section. The advance notice system required in this section must be consistent with the oil transfer reporting system adopted by the department pursuant to RCW 88.46.165.

**Sec. 7.** RCW 88.40.011 and 2007 c 347 s 4 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Barge" means a vessel that is not self-propelled.

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of three hundred or more gross tons.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department of ecology.

(7)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from any vessel with an oil carrying capacity over two hundred fifty barrels or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(8) "Fishing vessel" means a self-propelled commercial vessel of three hundred or more gross tons that is used for catching or processing fish.

(9) "Gross tons" means tonnage as determined by the United States coast guard under 33 C.F.R. section 138.30.

(10) "Hazardous substances" means any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section ((401(14))) 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

(a) Wastes listed as F001 through F028 in Table 302.4; and

(b) Wastes listed as K001 through K136 in Table 302.4.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Oil" or "oils" means oil of any kind that is liquid at ~~((atmospheric temperature))~~ twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section ((401(14))) 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(18) "Spill" means an unauthorized discharge of oil into the waters of the state.

(19) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(20) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

**Sec. 8.** RCW 88.46.010 and 2011 c 122 s 1 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering:



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(a) The additional protection provided by the measures;  
 (b) The technological achievability of the measures; and  
 (c) The cost of the measures.

(2)(a) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration:

(i) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development; and

(ii) Processes that are currently in use.

(b) In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(6) "Department" means the department of ecology.

(7) "Director" means the director of the department of ecology.

(8) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(9)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(10) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility.

(13) "Oil" or "oils" means oil of any kind that is liquid at ~~((atmospheric temperature))~~ twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section ~~((401(14)))~~ 102(a) of the federal

comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(18) "Race Rocks light" means the nautical landmark located southwest of the city of Victoria, British Columbia.

(19) "Regional vessels of opportunity response group" means a group of nondedicated vessels participating in a vessels of opportunity response system to respond when needed and available to spills in a defined geographic area.

(20) "Severe weather conditions" means observed nautical conditions with sustained winds measured at forty knots and wave heights measured between twelve and eighteen feet.

(21) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(22) "Spill" means an unauthorized discharge of oil into the waters of the state.

(23) "Strait of Juan de Fuca" means waters off the northern coast of the Olympic Peninsula seaward of a line drawn from New Dungeness light in Clallam county to Discovery Island light on Vancouver Island, British Columbia, Canada.

(24) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(25) "Umbrella plan holder" means a nonprofit corporation established consistent with this chapter for the purposes of providing oil spill response and contingency plan coverage.

(26) "Vessel emergency" means a substantial threat of pollution originating from a covered vessel, including loss or serious degradation of propulsion, steering, means of navigation, primary electrical generating capability, and seakeeping capability.

(27) "Vessels of opportunity response system" means nondedicated boats and operators, including fishing and other vessels, that are under contract with and equipped by contingency plan holders to assist with oil spill response activities, including on-water oil recovery in the near shore environment and the placement of oil spill containment booms to protect sensitive habitats.

(28) "Volunteer coordination system" means an oil spill response system that, before a spill occurs, prepares for the

coordination of volunteers to assist with appropriate oil spill response activities, which may include shoreline protection and cleanup, wildlife recovery, field observation, light construction, facility maintenance, donations management, clerical support, and other aspects of a spill response.

(29) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(30) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

**Sec. 9.** RCW 90.56.010 and 2007 c 347 s 6 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Board" means the pollution control hearings board.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(6) "Committee" means the preassessment screening committee established under RCW 90.48.368.

(7) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(8) "Department" means the department of ecology.

(9) "Director" means the director of the department of ecology.

(10) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(11)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; (iii) motor vehicle motor fuel outlet; (iv) facility that is operated as part of an exempt agricultural activity as provided

in RCW 82.04.330; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(12) "Fund" means the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

(13) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

(14) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(15) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(16) "Necessary expenses" means the expenses incurred by the department and assisting state agencies for (a) investigating the source of the discharge; (b) investigating the extent of the environmental damage caused by the discharge; (c) conducting actions necessary to clean up the discharge; (d) conducting predamage and damage assessment studies; and (e) enforcing the provisions of this chapter and collecting for damages caused by a discharge.

(17) "Oil" or "oils" means oil of any kind that is liquid at ~~((atmospheric temperature))~~ twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section ~~((401(44)))~~ 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(18) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(19) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(20)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(21) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(22) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(23) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

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(24) "Spill" means an unauthorized discharge of oil or hazardous substances into the waters of the state.

(25) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(26) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(27) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

**NEW SECTION. Sec. 10.** A new section is added to chapter 88.16 RCW to read as follows:

(1) The board of pilotage commissioners may adopt rules to implement this section. The rules may include tug escort requirements and other safety measures for oil tankers of greater than forty thousand deadweight tons, all articulated tug barges, and other towed waterborne vessels or barges within a two-mile radius of the Grays Harbor pilotage district as defined in RCW 88.16.050.

(2)(a) Prior to proposing a draft rule, the board of pilotage commissioners must consult with the department of ecology, the United States coast guard, the Grays Harbor safety committee, area tribes, public ports, local governments, and other appropriate entities. The board of pilotage commissioners may not adopt rules under this section unless a state agency or a local jurisdiction, for a facility within Grays Harbor that is required to have a contingency plan pursuant to chapter 90.56 RCW:

(i) Makes a final determination or issues a final permit after January 1, 2015, to site a new facility; or

(ii) Provides authority to an existing facility to process or receive crude oil for the first time.

(b) This subsection does not apply to a transmission pipeline or railroad facility.

(3) A rule adopted under this section must:

(a) Be designed to achieve best achievable protection as defined in RCW 88.46.010;

(b) Ensure that any escort tugs used have an aggregate shaft horsepower equivalent to at least five percent of the deadweight tons of the escorted oil tanker or articulated tug barge; and

(c) Ensure that escort tugs have sufficient mechanical capabilities to provide for safe escort.

(4) The provisions adopted under this section may not include rules affecting pilotage. This section does not affect any existing authority to establish pilotage requirements.

**NEW SECTION. Sec. 11.** A new section is added to chapter 81.04 RCW to read as follows:

(1) The commission must require a railroad company that transports crude oil in Washington to submit information to the commission relating to the railroad company's ability to pay damages in the event of a spill or accident involving the transport of crude oil by the railroad company in Washington. A railroad company must include the information in the annual report submitted to the commission pursuant to RCW 81.04.080.

(2) The commission may not use the information submitted by a railroad company under this section as a basis for engaging in economic regulation of a railroad company.

(3) The commission may not use the information submitted by a railroad company under this section as a basis for penalizing a railroad company.

(4) Nothing in this section may be construed as assigning liability to a railroad company or establishing liquidated damages for a spill or accident involving the transport of crude oil by a railroad company.

(5) The commission may adopt rules for implementing this section consistent with the requirements of RCW 81.04.080.

**Sec. 12.** RCW 81.53.240 and 1984 c 7 s 375 are each amended to read as follows:

(1) Except to the extent necessary to permit participation by first-class cities in the grade crossing protective fund, when an election to participate is made as provided in RCW 81.53.261 through 81.53.291, or to the extent a first-class city requests to participate in the commission's crossing safety inspection program within the city, this chapter ((81.53-RCW)) is not operative within the limits of first-class cities, and does not apply to street railway lines operating on or across any street, alley, or other public place within the limits of any city, except that a streetcar line outside of cities of the first class shall not cross a railroad at grade without express authority from the commission. The commission may not change the location of a state highway without the approval of the secretary of transportation, or the location of any crossing thereon adopted or approved by the department of transportation, or grant a railroad authority to cross a state highway at grade without the consent of the secretary of transportation.

(2) Within thirty days of the effective date of this section, first-class cities must provide to the commission a list of all existing public crossings within the limits of a first-class city, including over and under-crossings, including the United States department of transportation number for the crossing. Within thirty days of modifying, closing, or opening a grade crossing within the limits of a first-class city, the city must notify the commission in writing of the action taken, identifying the crossing by the United States department of transportation number. All requirements in this subsection are subject to the availability of amounts appropriated for the specific purposes described.

**Sec. 13.** RCW 38.52.040 and 2011 1st sp.s. c 21 s 27, 2011 c 336 s 789, and 2011 c 79 s 9 are each reenacted and amended to read as follows:

(1) There is hereby created the emergency management council (hereinafter called the council), to consist of not more than seventeen members who shall be appointed by the adjutant general. The membership of the council shall include, but not be limited to, representatives of city and county governments, sheriffs and police chiefs, the Washington state patrol, the military department, the department of ecology, state and local fire chiefs, seismic safety experts, state and local emergency management directors, search and rescue volunteers, medical professions who have expertise in emergency medical care, building officials, and private industry. The representatives of private industry shall include persons knowledgeable in emergency and hazardous materials management. The councilmembers shall elect a chair from within the council membership. The members of the council shall serve without compensation, but may be reimbursed for their travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(2) The emergency management council shall advise the governor and the director on all matters pertaining to state and local emergency management. The council may appoint such ad

hoc committees, subcommittees, and working groups as are required to develop specific recommendations for the improvement of emergency management practices, standards, policies, or procedures. The council shall ensure that the governor receives an annual assessment of statewide emergency preparedness including, but not limited to, specific progress on hazard mitigation and reduction efforts, implementation of seismic safety improvements, reduction of flood hazards, and coordination of hazardous materials planning and response activities. The council or a subcommittee thereof shall periodically convene in special session and serve during those sessions as the state emergency response commission required by P.L. 99-499, the emergency planning and community right-to-know act. When sitting in session as the state emergency response commission, the council shall confine its deliberations to those items specified in federal statutes and state administrative rules governing the coordination of hazardous materials policy. Subject to the availability of amounts appropriated for this specific purpose, the council must require local emergency planning organizations to submit hazardous materials plans and to update the plans on a five-year cycle for compliance review by the director. The council shall review administrative rules governing state and local emergency management practices and recommend necessary revisions to the director.

(3)(a) The intrastate mutual aid committee is created and is a subcommittee of the emergency management council. The intrastate mutual aid committee consists of not more than five members who must be appointed by the council chair from council membership. The chair of the intrastate mutual aid committee is the military department representative appointed as a member of the council. Meetings of the intrastate mutual aid committee must be held at least annually.

(b) In support of the intrastate mutual aid system established in chapter 38.56 RCW, the intrastate mutual aid committee shall develop and update guidelines and procedures to facilitate implementation of the intrastate mutual aid system by member jurisdictions, including but not limited to the following: Projected or anticipated costs; checklists and forms for requesting and providing assistance; recordkeeping; reimbursement procedures; and other implementation issues. These guidelines and procedures are not subject to the rule-making requirements of chapter 34.05 RCW.

**Sec. 14.** RCW 38.52.070 and 1997 c 49 s 4 are each amended to read as follows:

(1) Each political subdivision of this state is hereby authorized and directed to establish a local organization or to be a member of a joint local organization for emergency management in accordance with the state comprehensive emergency management plan and program: PROVIDED, That a political subdivision proposing such establishment shall submit its plan and program for emergency management to the state director and secure his or her recommendations thereon, and verification of consistency with the state comprehensive emergency management plan, in order that the plan of the local organization for emergency management may be coordinated with the plan and program of the state. Local comprehensive emergency management plans must: (a) Specify the use of the incident command system for multiagency/multijurisdiction operations; and (b) include hazardous materials plans that are updated on a five-year cycle for compliance review by the director. No political subdivision may be required to include in its plan provisions for the emergency evacuation or relocation of residents in anticipation of nuclear attack. If the director's recommendations are adverse to the plan as submitted, and, if the local organization does not agree to the director's

recommendations for modification to the proposal, the matter shall be referred to the council for final action. The director may authorize two or more political subdivisions to join in the establishment and operation of a joint local organization for emergency management as circumstances may warrant, in which case each political subdivision shall contribute to the cost of emergency management upon such fair and equitable basis as may be determined upon by the executive heads of the constituent subdivisions. If in any case the executive heads cannot agree upon the proper division of cost the matter shall be referred to the council for arbitration and its decision shall be final. When two or more political subdivisions join in the establishment and operation of a joint local organization for emergency management each shall pay its share of the cost into a special pooled fund to be administered by the treasurer of the most populous subdivision, which fund shall be known as the . . . . . emergency management fund. Each local organization or joint local organization for emergency management shall have a director who shall be appointed by the executive head of the political subdivision, and who shall have direct responsibility for the organization, administration, and operation of such local organization for emergency management, subject to the direction and control of such executive officer or officers. In the case of a joint local organization for emergency management, the director shall be appointed by the joint action of the executive heads of the constituent political subdivisions. Each local organization or joint local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this chapter.

(2) In carrying out the provisions of this chapter each political subdivision, in which any disaster as described in RCW 38.52.020 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to, budget law limitations, requirements of competitive bidding and publication of notices, provisions pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds.

**Sec. 15.** RCW 81.53.010 and 2013 c 23 s 302 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

~~((The term))~~ (1) "Commission((:))" ~~((when used in this chapter,))~~ means the utilities and transportation commission of Washington.

~~((The term))~~ (2) "Highway((:))" ~~((when used in this chapter,))~~ includes all state and county roads, streets, alleys, avenues, boulevards, parkways, and other public places actually open and in use, or to be opened and used, for travel by the public.

~~((The term))~~ (3) "Railroad((:))" ~~((when used in this chapter,))~~ means every railroad, including interurban and suburban electric railroads, by whatsoever power operated, for the public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations, and terminal facilities of every kind, used, operated,

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controlled, managed, or owned by or in connection therewith. The ~~((said))~~ term ~~((shall))~~ also includes every logging and other industrial railway owned or operated primarily for the purpose of carrying the property of its owners or operators or of a limited class of persons, with all tracks, spurs, and sidings used in connection therewith. The ~~((said))~~ term ~~((shall))~~ does not include street railways operating within the limits of any incorporated city or town.

~~((The term))~~ (4) "Railroad company~~((;))~~" ~~((when used in this chapter,))~~ includes every corporation, company, association, joint stock association, partnership, or person, its, their, or his or her lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any railroad~~((as that term is defined in this section)).~~

~~((The term))~~ (5) "Over-crossing~~((;))~~" ~~((when used in this chapter,))~~ means any point or place where a highway crosses a railroad by passing above the same. "Over-crossing" also means any point or place where one railroad crosses another railroad not at grade.

~~((The term))~~ (6) "Under-crossing~~((;))~~" ~~((when used in this chapter,))~~ means any point or place where a highway crosses a railroad by passing under the same. "Under-crossing" also means any point or place where one railroad crosses another railroad not at grade.

~~((The term "over crossing" or "under crossing," shall also mean any point or place where one railroad crosses another railroad not at grade.~~

~~The term)~~ (7) "Grade crossing~~((;))~~" ~~((when used in this chapter,))~~ means any point or place where a railroad crosses a highway or a highway crosses a railroad or one railroad crosses another, at a common grade.

(8) "Private crossing" means any point or place where a railroad crosses a private road at grade or a private road crosses a railroad at grade, where the private road is not a highway.

**NEW SECTION. Sec. 16.** A new section is added to chapter 81.53 RCW to read as follows:

(1) To address the potential public safety hazards presented by private crossings in the state and by the transportation of hazardous materials in the state, including crude oil, the commission is authorized to adopt rules establishing criteria for inspection of private crossings and governing safety standards for private crossings along the railroad tracks over which crude oil is transported in the state, including, but not limited to, requirements for signage.

(2) Nothing in this section modifies existing agreements between the railroad company and the landowner governing cost allocation for upgrades to private crossing or liability for injuries or damages occurring at the private crossing.

(3) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described.

**NEW SECTION. Sec. 17.** (1) The department of ecology must complete an evaluation and assessment of vessel traffic management and vessel traffic safety within and near the mouth of the Columbia river. A draft evaluation and assessment must be completed and submitted to the legislature consistent with RCW 43.01.036 by December 15, 2017. A final evaluation and assessment must be completed by June 30, 2018. In conducting this evaluation, the department of ecology must consult with the United States coast guard, the Oregon board of maritime pilots, Columbia river harbor safety committee, the Columbia river bar pilots, the Columbia river pilots, area tribes, public ports in Oregon and Washington, local governments, and other appropriate entities.

(2) The evaluation and assessment completed under subsection (1) of this section must include, but is not limited to, an assessment and evaluation of: (a) The need for tug escorts for oil tankers, articulated tug barges, and other towed waterborne vessels or barges; (b) best achievable protection; and (c) required tug capabilities to ensure safe escort of vessels on the waters that are the subject of focus for each water body evaluated under subsection (1) of this section.

(3) The assessment and evaluations submitted to the legislature under subsection (1) of this section must include recommendations for vessel traffic management and vessel traffic safety on the Columbia river, including recommendations for tug escort requirements for vessels transporting oil as bulk cargo.

(4) All requirements in this section are subject to the availability of amounts appropriated for the specific purposes described.

**NEW SECTION. Sec. 18.** A new section is added to chapter 81.44 RCW to read as follows:

Commission employees certified by the federal railroad administration to perform hazardous materials inspections may enter the property of any business that receives, ships, or offers for shipment hazardous materials by rail. Entry shall be at a reasonable time and in a reasonable manner. The purpose of entry is limited to performing inspections, investigations, or surveillance of equipment, records, and operations relating to the packaging, loading, unloading, or transportation of hazardous materials by rail, pursuant only to the state participation program outlined in 49 C.F.R. Part 212. The term "business" is all inclusive and is not limited to common carriers or public service companies.

**Sec. 19.** RCW 81.24.010 and 2007 c 234 s 21 are each amended to read as follows:

(1) Every company subject to regulation by the commission, except those listed in subsection (3) of this section, shall, on or before the date specified by the commission for filing annual reports under RCW 81.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars, except railroad companies which shall each pay to the commission a fee ~~((equal))~~ up to ((one)) two and one-half percent of its intrastate gross operating revenue for the purpose of administering the rail safety program. The commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section. Any railroad association that qualifies as a nonprofit charitable organization under the federal internal revenue code section 501(c)(3) is exempt from the fee required under this subsection.

(2) The percentage rates of gross operating revenue to be paid in any one year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose railroad companies are classified as class two. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law, shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in.

(3) This section does not apply to private nonprofit transportation providers, auto transportation companies, charter party carriers and excursion service carriers, solid waste

collection companies, motor freight carriers, household goods carriers, commercial ferries, and low-level radioactive waste storage facilities.

**Sec. 20.** RCW 42.56.270 and 2014 c 192 s 6, 2014 c 174 s 5, and 2014 c 144 s 6 are each reenacted and amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for

purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information; ~~(and)~~

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(21) Market share data submitted by a manufacturer under RCW 70.95N.190(4); ~~((and))~~

(22) Financial information supplied to the department of financial institutions or to a portal under RCW 21.20.883, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities; and

(23) Unaggregated or individualized information shared as part of notices of transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to section 6 of this act, and in the possession of the department of ecology or any entity with which the department of ecology has shared it.

NEW SECTION. Sec. 21. The senate energy, environment, and telecommunications committee and the house of representatives environment committee must hold at least one joint meeting on oil spill prevention and response activities for international transport of liquid bulk crude oil. The committees may invite representatives of affected parties from the United States and Canada to address cooperative prevention and emergency response activities between shared international and state borders; expected risks posed by transport of Canadian crude oil or liquid bulk crude oil throughout the Pacific Northwest region; and an update of the marine transport of liquid bulk crude oil through the Pacific Northwest region.

NEW SECTION. Sec. 22. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

MOTION

Senator Ranker moved that the following amendment by Senator Ranker to the striking amendment be adopted.

Beginning on page 5, line 36 of the amendment, strike all of section 6 and insert the following:

"NEW SECTION. Sec. 6. A new section is added to chapter 90.56 RCW to read as follows:

(1)(a) A facility that receives crude oil from a railroad car must provide advance notice to the department that the facility will receive crude oil from a railroad car, as provided in this section. The advance notice must include the route taken to the facility within the state, if known, and the scheduled time, location, volume, place of origin of the crude oil, type, and gravity of crude oil as measured by standards developed by the American petroleum institute. Each week, a facility that provides advance notice under this section must provide the required information regarding the scheduled arrival of railroad cars carrying crude oil to be received by the facility in the succeeding seven-day period. A facility is not required to provide advance notice when there is no receipt of crude oil from a railroad car scheduled for a seven-day period.

(b) Twice per year, pipelines must report to the department the following information about the crude oil transported by the pipeline through the state: The volume of crude oil, the type of crude oil, and the types of diluting agents used in the crude oil. This report must be submitted each year by July 31st for the period January 1st through June 30th and by January 31st for the period July 1st through December 31st.

(2) The department may share information provided by a facility through the advance notice system established in this section with the state emergency management division and any

county, city, tribal, port, or local government emergency response agency upon request.

(3) The department must publish information collected under this section on a quarterly basis on the department's internet web site. With respect to the information reported under subsection (1)(a) of this section, the information published by the department must be aggregated on a statewide basis by route through the state, by week, and by type of crude oil. The report may also include other information available to the department including, but not limited to, place of origin of the crude oil, modes of transport, number of railroad cars delivering crude oil, and number and volume of spills during transport and delivery.

(4)(a) A facility providing advance notice under this section is not responsible for meeting advance notice time frame requirements under subsection (1) of this section in the event that the schedule of arrivals of railroad cars carrying crude oil changes during a seven-day period.

(b) Twice per year, a facility must submit a report to the department that corrects inaccuracies in the advance notices submitted under subsection (1) of this section. The facility is not required to correct in the report any insubstantial discrepancies between actual and scheduled train arrival times. The report must be submitted each year by July 31st for the period January 1st through June 30th and by January 31st for the period July 1st through December 31st.

(5) Consistent with the requirements of chapter 42.56 RCW, the department and any state, local, tribal, or public agency that receives information provided under this section may not disclose any such information to the public or to nongovernmental entities that is not aggregated and that contains proprietary, commercial, or financial information. The requirement for aggregating information does not apply when information is shared by the department with emergency response agencies as provided in subsection (2) of this section.

(6) The department shall adopt rules to implement this section. The advance notice system required in this section must be consistent with the oil transfer reporting system adopted by the department pursuant to RCW 88.46.165."

Senators Ranker and McCoy spoke in favor of adoption of the amendment to the striking amendment.

Senator Ericksen spoke against adoption of the amendment to the striking amendment.

Senator Ranker demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

Senator Rolfes spoke in favor of adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Ranker on page 5, line 36 to the striking amendment to Engrossed Substitute House Bill No. 1449.

ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Ranker on page 5, line 36 to the striking amendment and the amendment was not adopted by the following vote: Yeas, 23; Nays, 26; Absent, 0; Excused, 0.

Voting yea: Senators Billig, Chase, Cleveland, Conway, Darneille, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hobbs, Jayapal, Keiser, Kohl-Welles, Liias, McAuliffe, McCoy, Mullet, Nelson, Pedersen, Ranker and Rolfes

Voting nay: Senators Angel, Bailey, Baumgartner, Becker, Benton, Braun, Brown, Dammeier, Dansel, Ericksen, Fain, Hewitt, Hill, Honeyford, King, Litzow, Miloschia, O'Ban, Padden, Parlette, Pearson, Rivers, Roach, Schoesler, Sheldon and Warnick

#### MOTION

Senator Rolfes moved that the following amendment by Senator Rolfes to the striking amendment be adopted.

On page 17, after line 17 of the amendment, insert the following:

"**Sec. 11.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to read as follows:

(1) ~~(Any oil tanker, whether enrolled or registered, of greater than one hundred and twenty five thousand deadweight tons shall be prohibited from proceeding beyond a point east of a line extending from Discovery Island light south to New Dungeness light.~~

~~(2) An oil tanker, whether enrolled or registered, of forty to one hundred and twenty five thousand deadweight tons may proceed beyond the points enumerated in subsection (1) if such tanker possesses all of the following standard safety features:~~

~~(a) Shaft horsepower in the ratio of one horsepower to each two and one half deadweight tons; and~~

~~(b) Twin screws; and~~

~~(c) Double bottoms, underneath all oil and liquid cargo compartments; and~~

~~(d) Two radars in working order and operating, one of which must be collision avoidance radar; and~~

~~(e) Such other navigational position location systems as may be prescribed from time to time by the board of pilotage commissioners:~~

~~PROVIDED, That, if such forty to one hundred and twenty five thousand deadweight ton tanker is in ballast or is under escort of a tug or tugs with an aggregate shaft horsepower equivalent to five percent of the deadweight tons of that tanker, subsection (2) of this section shall not apply: PROVIDED FURTHER, That additional tug shaft horsepower equivalencies may be required under certain conditions as established by rule and regulation of the Washington utilities and transportation commission pursuant to chapter 34.05 RCW: PROVIDED FURTHER, That) (a) Except as provided in subsection (2) of this section, an oil tanker of greater than forty thousand deadweight tons may operate in the waters east of a line extending from Discovery Island light south to New Dungeness light and all points in the Puget Sound area, to the extent that these waters are within the territorial boundaries of Washington, only if the oil tanker is under the escort of a tug or tugs in compliance with the requirements of subsection (3) of this section.~~

~~(b) The state board of pilotage commissioners, in consultation with the department of ecology and relying on the results of vessel traffic risk assessments, shall adopt rules by June 30, 2017, to implement this subsection (1)(b). These rules may include tug escort requirements and other safety measures for oil tankers of greater than forty thousand deadweight tons, all articulated tug barges, and other towed waterborne vessels or barges. The geographic scope of the rules must be limited to the narrow channels of the San Juan Islands archipelago, including Rosario Strait, Haro Strait, Boundary Pass, and connected waterways. In order to adopt a rule under this section, the board of pilotage commissioners must determine that the results of a vessel traffic risk assessment provides evidence that the rules are necessary in order to achieve best achievable protection as defined in RCW 88.46.010.~~

(2)(a) If an oil tanker, articulated tug barge, or other towed waterborne vessel or barge is in ballast, the tug escort requirements of subsection (1)(a) of this section and any tug escort rules adopted pursuant to subsection (1)(b) of this section do not apply.

(b) If an oil tanker is a single-hulled oil tanker of greater than five thousand gross tons, the requirements of subsection (1)(a) of this section do not apply and the oil tanker must instead comply with 33 C.F.R. Part 168, as of the effective date of this section.

(3) Oil tankers of greater than forty thousand deadweight tons, all articulated tug barges, and other towed waterborne vessels or barges must ensure that any escort tugs they use have an aggregate shaft horsepower equivalent to at least five percent of the deadweight tons of the escorted oil tanker or articulated tug barge. The state board of pilotage commissioners may adopt rules to ensure that escort tugs have sufficient mechanical capabilities to provide for safe escort. Rules adopted on this subject must be designed to achieve best achievable protection as defined under RCW 88.46.010.

(4) A tanker assigned a deadweight of less than or equal to forty thousand deadweight tons at the time of construction or reconstruction as reported in Lloyd's Register of Ships is not subject to the provisions of RCW 88.16.170 through 88.16.190.

(5) The provisions adopted under this section may not include rules affecting pilotage. This section does not affect any existing authority to establish pilotage requirements.

(6) For the purposes of this section:

(a) "Articulated tug barge" means a tank barge and a towing vessel joined by hinged or articulated fixed mechanical equipment affixed or connecting to the stern of the tank barge.

(b) "Oil tanker" means a self-propelled deep draft tank vessel designed to transport oil in bulk. "Oil tanker" does not include an articulated tug barge tank vessel.

(c) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of traveling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine."

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 29, line 26 of the title amendment, after "90.56.010," insert "88.16.190,"

Senators Rolfes and Nelson spoke in favor of adoption of the amendment to the striking amendment.

Senator Ericksen spoke against adoption of the amendment to the striking amendment.

Senator Nelson demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

Senator McCoy and Ranker spoke in favor of adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Rolfes on page 17, after line 17 to the striking amendment to Engrossed Substitute House Bill No. 1449.

#### ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Rolfes on page 17, after line 17 to the striking amendment and the amendment was not adopted by the following vote: Yeas, 23; Nays, 26; Absent, 0; Excused, 0.



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Voting yea: Senators Billig, Chase, Cleveland, Conway, Darneille, Fraser, Frockt, Habib, Hargrove, Hasegawa, Hatfield, Hobbs, Jayapal, Keiser, Kohl-Welles, Liias, McAuliffe, McCoy, Mullet, Nelson, Pedersen, Ranker and Rolfes

Voting nay: Senators Angel, Bailey, Baumgartner, Becker, Benton, Braun, Brown, Dammeier, Dansel, Ericksen, Fain, Hewitt, Hill, Honeyford, King, Litzow, Miloscia, O'Ban, Padden, Parlette, Pearson, Rivers, Roach, Schoesler, Sheldon and Warnick

#### MOTION

Senator Hewitt moved that the following amendment by Senator Hewitt and others to the striking amendment be adopted:

On page 25, line 10 of the amendment, after "program" insert "However, class three railroads that do not haul crude oil shall pay a fee equal to one and one-half percent of its intrastate gross operating revenue"

Senator Hewitt spoke in favor of adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Hewitt and others on page 25, line 10 to the striking amendment to Engrossed Substitute House Bill No. 1449.

The motion by Senator Hewitt carried and the amendment to the striking amendment was adopted by voice vote.

#### MOTION

Senator Conway moved that the following amendment by Senator Conway and others to the striking amendment be adopted:

On page 29, after line 19 of the amendment, insert the following:

**NEW SECTION. Sec. 22.** A new section is added to chapter 81.40 RCW to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the utilities and transportation commission created in chapter 80.01 RCW.

(2) "Hazardous material" means a substance or material the federal secretary of transportation has determined to be capable of posing a significant risk to health, safety, and property when transported in commerce.

(3) "Hazardous material train" means any train:

(a) Carrying twenty or more car loads of a class 2 flammable gas or class 3 flammable liquid as defined by the United States department of transportation in 49 C.F.R. Part 173 as of the effective date of this section; or

(b) Containing one or more car loads of spent nuclear fuel or high level nuclear waste.

(4) "Qualified crew member" means a railroad operating craft employee who has been trained and meets the requirements and qualifications as determined by the federal railroad administration for a railroad operating service employee.

(5) "Railroad carrier" means a carrier of persons or property upon vehicles, other than streetcars, operated upon stationary rails, the route of which is principally outside incorporated cities and towns. "Railroad carrier" includes the officers and agents of the railroad carrier.

**NEW SECTION. Sec. 23.** A new section is added to chapter 81.40 RCW to read as follows:

Except as provided in section 24 of this act, the following minimum crew requirements apply:

(1) Railroad carriers shall operate all hazardous material trains over its road with crews consisting of no less than three qualified crew members. One qualified train crew member shall be assigned to a position located on the rear of the train and within rolling equipment, situated to safely observe and monitor the train's contents and movement.

(2) Railroad carriers shall operate any hazardous material trains consisting of fifty-one or more car loads of any combination of hazardous materials over its road with crews consisting of no less than four qualified crew members. Two qualified crew members shall be assigned to a position on the rear of the train and within rolling equipment, situated to safely observe and monitor the train's contents and movement.

**NEW SECTION. Sec. 24.** A new section is added to chapter 81.40 RCW to read as follows:

(1) Trains transporting hazardous material shipments a distance of five miles or less may operate the train with the required crew members positioned on the lead locomotive.

(2)(a) Class II and class III carriers transporting fewer than twenty loaded hazardous material cars on trains operating on their road while at a speed of twenty-five miles per hour or less are exempt from the additional train crew requirements specified in section 23 of this act.

(b) The commission may grant exemptions to the minimum crew size requirements to class III railroad carriers that are not transporting hazardous materials on their road.

(3)(a) The commission may order class I or II railroad carriers to exceed the minimum crew size and operate specific trains, routes, or switching assignments on their road with additional numbers of qualified crew members if it is determined that such an increase in crew size is necessary to protect the safety, health, and welfare of the public and railroad employees, to prevent harm to the environment, and to address local safety and security hazards.

(b) In issuing such an order the commission may consider relevant factors including but not limited to the volatility of the commodities being transported, vulnerabilities, risk exposure to localities along the train route, security risks including sabotage or terrorism threat levels, a railroad carriers prior history of accidents, compliance violations, and track and equipment maintenance issues.

**NEW SECTION. Sec. 25.** A new section is added to chapter 81.40 RCW to read as follows:

(1) Each train or engine run in violation of section 23 of this act constitutes a separate offense. However, section 23 of this act does not apply in the case of disability of one or more members of any train crew while out on the road between division terminals, or assigned to wrecking trains.

(2) Any person, corporation, company, or officer of the court operating any railroad, or part of any railroad or railway within the state of Washington, and engaged as a common carrier, in the transportation of freight or passengers, who violates any of the provisions of section 23 of this act shall be fined not less than one thousand dollars and not more than one hundred thousand dollars for each offense.

(3) It is the duty of the commission to enforce this section.

**NEW SECTION. Sec. 26.** The following acts or parts of acts are each repealed:

(1)RCW 81.40.010 (Full train crews—Passenger—Safety review—Penalty—Enforcement) and 2003 c 53 s 386, 1992 c 102 s 1, & 1961 c 14 s 81.40.010; and

(2)RCW 81.40.035 (Freight train crews) and 1967 c 2 s 2."

Remember the remaining section consecutively and correct any internal references accordingly.

On page 29, line 31 of the title amendment, after "81.44 RCW;" strike "and creating new sections." and insert "adding new sections to chapter 81.40 RCW; creating new sections; and repealing RCW 81.40.010 and 81.40.035."

Senator Conway spoke in favor of adoption of the amendment to the striking amendment.

Senator Ericksen spoke against adoption of the amendment to the striking amendment.

#### POINT OF ORDER

Senator Conway: "I object to reference to the other body and especially incorrect objections to what happened in the other body. Thank you."

#### REPLY BY THE PRESIDENT

President Owen: "That's why the President was tapping his gavel because it is improper to reference the actions of the other body at this time."

Senators Hasegawa and McCoy spoke in favor of adoption of the amendment to the striking amendment.

Senator Schoesler spoke against adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Conway and others on page 29, after line 19 to the striking amendment to Engrossed Substitute House Bill No. 1449.

The motion by Senator Conway failed and the amendment to the striking amendment was not adopted by a rising vote.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Ericksen as amended to Engrossed Substitute House Bill No. 1449.

The motion by Senator Ericksen carried and the striking amendment as amended was adopted by voice vote.

#### MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 1 of the title, after "safety;" strike the remainder of the title and insert "amending RCW 82.23B.010, 82.23B.020, 82.23B.030, 82.23B.040, 88.40.011, 90.56.010, 81.53.240, 38.52.070, 81.53.010, and 81.24.010; reenacting and amending RCW 88.46.010, 38.52.040, and 42.56.270; adding a new section to chapter 90.56 RCW; adding a new section to chapter 88.16 RCW; adding a new section to chapter 81.04 RCW; adding a new section to chapter 81.53 RCW; adding a new section to chapter 81.44 RCW; and creating new sections."

#### MOTION

On motion of Senator Ericksen, the rules were suspended, Engrossed Substitute House Bill No. 1449 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Ericksen, Hargrove, Baumgartner, Schoesler and Sheldon spoke in favor of passage of the bill.

Senators McCoy, Rolfes, Nelson, Conway, Kohl-Welles, Chase and Darneille spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1449 as amended by the Senate.

#### ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1449 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 28; Nays, 21; Absent, 0; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Benton, Braun, Brown, Dammeier, Dandel, Ericksen, Fain, Hargrove, Hatfield, Hewitt, Hill, Honeyford, King, Litzow, Miloscia, O'Ban, Padden, Parlette, Pearson, Rivers, Roach, Schoesler, Sheldon and Warnick

Voting nay: Senators Billig, Chase, Cleveland, Conway, Darneille, Fraser, Frocht, Habib, Hasegawa, Hobbs, Jayapal, Keiser, Kohl-Welles, Liias, McAuliffe, McCoy, Mullet, Nelson, Pedersen, Ranker and Rolfes

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1449 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

#### PERSONAL PRIVILEGE

Senator Padden: "Mr. President, you know that today is April 15. It is the day that our taxes are due to the federal government and it's a day we should remember is not tax freedom day. Tax freedom day does not come 'til April 24. Americans will pay 3.3 trillion in federal taxes, 1.5 trillion in state and local taxes for a total tax bill of more than 4.8 trillion dollars or thirty one percent of the nation's income. Americans will collectively spend more on taxes in 2015 than they will on food, clothing and housing combined. That's right. More on taxes in food, clothes and housing. In fact, the average amount on state and local taxes is just under five thousand dollars; where housing, food and clothing are a little over four thousand dollars. Our state is forty-first out of the fifty states as to when tax freedom day comes. So, our burden is heavier than other states. Our tax freedom day is not April 29. My hat's off to the overburdened tax payers and I hope at some point we can think of them and give them some relief. Thank you Mr. President."

#### PERSONAL PRIVILEGE

Senator Chase: "Thank you Mr. President. I rise to share the good gentleman's concern and I also think that we need to have due diligence and respect for the lowest earning people who pay the highest taxes in this state. They are paying, the lowest one-fifth of our workers, are paying seventeen percent of their personal income in taxes. So I think we need to show them great respect. Thank you Mr. President."

Pursuant to Rule 18, the Senate once again resumed consideration of Substitute House Bill No. 1800 which had been deferred earlier in the day pending the special order of business.

#### MOTION

Senator Angel moved that the following amendment by Senators Angel and Rolfes be adopted:

On page 2, line 3 of the amendment, after "dependency." insert "If a child is removed from the home, it is a rebuttable presumption that the child's grandparents are persons who may act as caregivers."

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## WITHDRAWAL OF AMENDMENT

Senator Angel moved that the amendment by Senators Angel and Rolfes on page 2, line 3 to the committee striking amendment be withdrawn.

Senator Roach moved to adopt the amendment by Senators Angel and Rolfes on page 2, line 3 to the committee striking amendment.

Senator Roach spoke in favor of adoption of the amendment to the committee striking amendment.

Senator O'Ban spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators and Rolfes on page 2, line 3 to the committee striking amendment to Substitute House Bill No. 1800.

The motion by Senator Roach failed and the amendment to the committee striking amendment was not adopted by voice vote.

## MOTION

Senator Roach moved that the following amendment by Senator Roach and others to the committee striking amendment be adopted:

On page 3, line 17 of the amendment, after "(ix)" insert "Whether preference has been given to placement with the child's biological family, including grandparents, if such placement is in the child's best interests;

(x)"

Reletter the remaining subsections consecutively and correct any internal references accordingly.

Senators Angel, Chase and O'Ban spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Roach and others on page 3, line 17 to the committee striking amendment to Substitute House Bill No. 1800.

The motion by Senator Roach carried and the amendment to the committee striking amendment was adopted by voice vote.

## MOTION

Senator Chase moved that the following amendment by Senators Roach and Chase to the committee striking amendment be adopted:

On page 4, after line 39 of the amendment, insert the following:

"(6) Any person submitting a report to the court in relation to an initial review hearing or subsequent review hearing shall do so under the penalty of perjury."

## WITHDRAWAL OF AMENDMENT

On motion of Senator Chase, the amendment by Senators Roach and Chase on page 4, line 39 to the committee striking amendment to Substitute House Bill No. 1800 was withdrawn.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services, Mental Health and Housing as amended.

The motion by Senator O'Ban carried and the committee striking amendment as amended was adopted by voice vote.

## MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 2 of the title, after "rights," strike the remainder of the title and insert "amending RCW 13.34.070; and reenacting and amending RCW 13.34.138."

## MOTION

On motion of Senator O'Ban, the rules were suspended, Substitute House Bill No. 1800 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators O'Ban and Hargrove spoke in favor of passage of the bill.

Senators Darneille, Billig, Ranker and Jayapal spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1800 as amended by the Senate.

## ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1800 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 28; Nays, 20; Absent, 1; Excused, 0.

Voting yea: Senators Angel, Bailey, Baumgartner, Becker, Braun, Brown, Cleveland, Dammeier, Dansel, Erickson, Fain, Habib, Hargrove, Hewitt, Hill, Honeyford, King, Litzow, Miloscia, O'Ban, Padden, Parlette, Pearson, Pedersen, Rivers, Schoesler, Sheldon and Warnick

Voting nay: Senators Benton, Billig, Chase, Conway, Darneille, Fraser, Frockt, Hasegawa, Hatfield, Hobbs, Jayapal, Keiser, Kohl-Welles, Liias, McAuliffe, McCoy, Mullet, Nelson, Ranker and Rolfes

Absent: Senator Roach

SUBSTITUTE HOUSE BILL NO. 1800 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

Senator Fraser announced a photograph of the Senate Democratic Caucus members would be taken upon going at ease after the opening of the next's day's session.

Senator Fain requested that senators return their concurrence folders to staff this evening to allow the senate to move through them quickly during the next day's session.

## MOTION

At 6:39 p.m., on motion of Senator Fain, the Senate adjourned until 10:00 o'clock a.m. Thursday, April 16, 2015.

BRAD OWEN, President of the Senate

HUNTER G. GOODMAN, Secretary of the Senate





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