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HOUSE BILL 2706

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Klippert, Goodman, Hayes, Wilson, Griffey, Orwall, Muri, Senn, Hargrove, Stanford, Smith, Fey, and Kilduff

Read first time 01/19/16. Referred to Committee on Public Safety.

1 AN ACT Relating to making a fourth driving under the influence  
2 offense a felony; amending RCW 46.61.502, 46.61.504, 46.61.5055,  
3 9.94A.515, and 46.61.5054; and prescribing penalties.

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

5 **Sec. 1.** RCW 46.61.502 and 2013 c 3 s 33 are each amended to read  
6 as follows:

7 (1) A person is guilty of driving while under the influence of  
8 intoxicating liquor, marijuana, or any drug if the person drives a  
9 vehicle within this state:

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

13 (b) The person has, within two hours after driving, a THC  
14 concentration of 5.00 or higher as shown by analysis of the person's  
15 blood made under RCW 46.61.506; or

16 (c) While the person is under the influence of or affected by  
17 intoxicating liquor, marijuana, or any drug; or

18 (d) While the person is under the combined influence of or  
19 affected by intoxicating liquor, marijuana, and any drug.

20 (2) The fact that a person charged with a violation of this  
21 section is or has been entitled to use a drug under the laws of this

1 state shall not constitute a defense against a charge of violating  
2 this section.

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

13 (b) It is an affirmative defense to a violation of subsection  
14 (1)(b) of this section, which the defendant must prove by a  
15 preponderance of the evidence, that the defendant consumed a  
16 sufficient quantity of marijuana after the time of driving and before  
17 the administration of an analysis of the person's blood to cause the  
18 defendant's THC concentration to be 5.00 or more within two hours  
19 after driving. The court shall not admit evidence of this defense  
20 unless the defendant notifies the prosecution prior to the omnibus or  
21 pretrial hearing in the case of the defendant's intent to assert the  
22 affirmative defense.

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

31 (b) Analyses of blood samples obtained more than two hours after  
32 the alleged driving may be used as evidence that within two hours of  
33 the alleged driving, a person had a THC concentration of 5.00 or more  
34 in violation of subsection (1)(b) of this section, and in any case in  
35 which the analysis shows a THC concentration above 0.00 may be used  
36 as evidence that a person was under the influence of or affected by  
37 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

3 (a) The person has (~~four~~) three or more prior offenses within  
4 ten years as defined in RCW 46.61.5055; or

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

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

8 (ii) Vehicular assault while under the influence of intoxicating  
9 liquor or any drug, RCW 46.61.522(1)(b);

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

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

13 **Sec. 2.** RCW 46.61.504 and 2015 2nd sp.s. c 3 s 24 are each  
14 amended to read as follows:

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

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

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

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

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

31 (2) The fact that a person charged with a violation of this  
32 section is or has been entitled to use a drug under the laws of this  
33 state does not constitute a defense against any charge of violating  
34 this section. No person may be convicted under this section and it is  
35 an affirmative defense to any action pursuant to RCW 46.20.308 to  
36 suspend, revoke, or deny the privilege to drive if, prior to being  
37 pursued by a law enforcement officer, the person has moved the  
38 vehicle safely off the roadway.

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

12           (b) It is an affirmative defense to a violation of subsection  
13 (1)(b) of this section, which the defendant must prove by a  
14 preponderance of the evidence, that the defendant consumed a  
15 sufficient quantity of marijuana after the time of being in actual  
16 physical control of the vehicle and before the administration of an  
17 analysis of the person's blood to cause the defendant's THC  
18 concentration to be 5.00 or more within two hours after being in  
19 control of the vehicle. The court shall not admit evidence of this  
20 defense unless the defendant notifies the prosecution prior to the  
21 omnibus or pretrial hearing in the case of the defendant's intent to  
22 assert the affirmative defense.

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

32           (b) Analyses of blood samples obtained more than two hours after  
33 the alleged being in actual physical control of a vehicle may be used  
34 as evidence that within two hours of the alleged being in control of  
35 the vehicle, a person had a THC concentration of 5.00 or more in  
36 violation of subsection (1)(b) of this section, and in any case in  
37 which the analysis shows a THC concentration above 0.00 may be used  
38 as evidence that a person was under the influence of or affected by  
39 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

5 (a) The person has (~~four~~) three or more prior offenses within  
6 ten years as defined in RCW 46.61.5055; or

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

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

10 (ii) Vehicular assault while under the influence of intoxicating  
11 liquor or any drug, RCW 46.61.522(1)(b);

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

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

15 **Sec. 3.** RCW 46.61.5055 and 2015 2nd sp.s. c 3 s 9 are each  
16 amended to read as follows:

17 (1) **No prior offenses in seven years.** Except as provided in RCW  
18 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
19 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense  
20 within seven years shall be punished as follows:

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

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

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

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

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

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

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

35 (2) **One prior offense in seven years.** Except as provided in RCW  
36 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
37 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense  
38 within seven years shall be punished as follows:

39 (a) **Penalty for alcohol concentration less than 0.15.** In the case  
40 of a person whose alcohol concentration was less than 0.15, or for

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

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

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

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

34 (i) By imprisonment for not less than forty-five days nor more  
35 than three hundred sixty-four days and ninety days of electronic home  
36 monitoring. In lieu of the mandatory minimum term of ninety days  
37 electronic home monitoring, the court may order at least an  
38 additional six days in jail or, if available in that county or city,  
39 a six-month period of 24/7 sobriety program monitoring pursuant to  
40 RCW 36.28A.300 through 36.28A.390, and the court shall order an

1 expanded alcohol assessment and treatment, if deemed appropriate by  
2 the assessment. The offender shall pay for the cost of the electronic  
3 monitoring. The county or municipality where the penalty is being  
4 imposed shall determine the cost. The court may also require the  
5 offender's electronic home monitoring device include an alcohol  
6 detection breathalyzer or other separate alcohol monitoring device,  
7 and may restrict the amount of alcohol the offender may consume  
8 during the time the offender is on electronic home monitoring. Forty-  
9 five days of imprisonment and ninety days of electronic home  
10 monitoring may not be suspended unless the court finds that the  
11 imposition of this mandatory minimum sentence would impose a  
12 substantial risk to the offender's physical or mental well-being.  
13 Whenever the mandatory minimum sentence is suspended, the court shall  
14 state in writing the reason for granting the suspension and the facts  
15 upon which the suspension is based; and

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

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

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

30 (i) By imprisonment for not less than ninety days nor more than  
31 three hundred sixty-four days, if available in that county or city, a  
32 six-month period of 24/7 sobriety program monitoring pursuant to RCW  
33 36.28A.300 through 36.28A.390, and one hundred twenty days of  
34 electronic home monitoring. In lieu of the mandatory minimum term of  
35 one hundred twenty days of electronic home monitoring, the court may  
36 order at least an additional eight days in jail. The court shall  
37 order an expanded alcohol assessment and treatment, if deemed  
38 appropriate by the assessment. The offender shall pay for the cost of  
39 the electronic monitoring. The county or municipality where the  
40 penalty is being imposed shall determine the cost. The court may also

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (5) **Monitoring.**

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

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

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

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

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

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

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

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

17 (b) In any case in which the person has no prior offenses within  
18 seven years, and except as provided in RCW 46.61.502(6) or  
19 46.61.504(6), order an additional twenty-four hours of imprisonment  
20 and a fine of not less than one thousand dollars and not more than  
21 five thousand dollars. One thousand dollars of the fine may not be  
22 suspended unless the court finds the offender to be indigent;

23 (c) In any case in which the person has one prior offense within  
24 seven years, and except as provided in RCW 46.61.502(6) or  
25 46.61.504(6), order an additional five days of imprisonment and a  
26 fine of not less than two thousand dollars and not more than five  
27 thousand dollars. One thousand dollars of the fine may not be  
28 suspended unless the court finds the offender to be indigent;

29 (d) In any case in which the person has two (~~or three~~) prior  
30 offenses within seven years, and except as provided in RCW  
31 46.61.502(6) or 46.61.504(6), order an additional ten days of  
32 imprisonment and a fine of not less than three thousand dollars and  
33 not more than ten thousand dollars. One thousand dollars of the fine  
34 may not be suspended unless the court finds the offender to be  
35 indigent.

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

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

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

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

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

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

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

18 (a) **Penalty for alcohol concentration less than 0.15.** If the  
19 person's alcohol concentration was less than 0.15, or if for reasons  
20 other than the person's refusal to take a test offered under RCW  
21 46.20.308 there is no test result indicating the person's alcohol  
22 concentration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (11) **Conditions of probation.** (a) In addition to any  
30 nonsuspendable and nondeferrable jail sentence required by this  
31 section, whenever the court imposes up to three hundred sixty-four  
32 days in jail, the court shall also suspend but shall not defer a  
33 period of confinement for a period not exceeding five years. The  
34 court shall impose conditions of probation that include: (i) Not  
35 driving a motor vehicle within this state without a valid license to  
36 drive; (ii) not driving a motor vehicle within this state without  
37 proof of liability insurance or other financial responsibility for  
38 the future pursuant to RCW 46.30.020; (iii) not driving or being in  
39 physical control of a motor vehicle within this state while having an  
40 alcohol concentration of 0.08 or more or a THC concentration of 5.00

1 nanograms per milliliter of whole blood or higher, within two hours  
2 after driving; (iv) not refusing to submit to a test of his or her  
3 breath or blood to determine alcohol or drug concentration upon  
4 request of a law enforcement officer who has reasonable grounds to  
5 believe the person was driving or was in actual physical control of a  
6 motor vehicle within this state while under the influence of  
7 intoxicating liquor or drug; and (v) not driving a motor vehicle in  
8 this state without a functioning ignition interlock device as  
9 required by the department under RCW 46.20.720(3). The court may  
10 impose conditions of probation that include nonrepetition,  
11 installation of an ignition interlock device on the probationer's  
12 motor vehicle, alcohol or drug treatment, supervised probation, or  
13 other conditions that may be appropriate. The sentence may be imposed  
14 in whole or in part upon violation of a condition of probation during  
15 the suspension period.

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

20 (c) For each incident involving a violation of a mandatory  
21 condition of probation imposed under this subsection, the license,  
22 permit, or privilege to drive of the person shall be suspended by the  
23 court for thirty days or, if such license, permit, or privilege to  
24 drive already is suspended, revoked, or denied at the time the  
25 finding of probation violation is made, the suspension, revocation,  
26 or denial then in effect shall be extended by thirty days. The court  
27 shall notify the department of any suspension, revocation, or denial  
28 or any extension of a suspension, revocation, or denial imposed under  
29 this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (xv) A deferred prosecution under chapter 10.05 RCW granted in a  
36 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
37 ordinance, if the charge under which the deferred prosecution was  
38 granted was originally filed as a violation of RCW 46.61.502 or  
39 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
40 46.61.522;

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

7 (xvii) A deferred sentence imposed in a prosecution for a  
8 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an  
9 equivalent local ordinance, if the charge under which the deferred  
10 sentence was imposed was originally filed as a violation of RCW  
11 46.61.502 or 46.61.504, or an equivalent local ordinance, or a  
12 violation of RCW 46.61.520 or 46.61.522;

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

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

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

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

25 (15) All fines imposed by this section apply to adult offenders  
26 only.

27 **Sec. 4.** RCW 9.94A.515 and 2015 c 261 s 11 are each amended to  
28 read as follows:

29 TABLE 2

30 CRIMES INCLUDED WITHIN  
31 EACH SERIOUSNESS LEVEL

- 32 XVI Aggravated Murder 1 (RCW  
33 10.95.020)
- 34 XV Homicide by abuse (RCW 9A.32.055)  
35 Malicious explosion 1 (RCW  
36 70.74.280(1))
- 37 Murder 1 (RCW 9A.32.030)

1 XIV Murder 2 (RCW 9A.32.050)  
2 Trafficking 1 (RCW 9A.40.100(1))  
3 XIII Malicious explosion 2 (RCW  
4 70.74.280(2))  
5 Malicious placement of an explosive 1  
6 (RCW 70.74.270(1))  
7 XII Assault 1 (RCW 9A.36.011)  
8 Assault of a Child 1 (RCW 9A.36.120)  
9 Malicious placement of an imitation  
10 device 1 (RCW 70.74.272(1)(a))  
11 Promoting Commercial Sexual Abuse  
12 of a Minor (RCW 9.68A.101)  
13 Rape 1 (RCW 9A.44.040)  
14 Rape of a Child 1 (RCW 9A.44.073)  
15 Trafficking 2 (RCW 9A.40.100(3))  
16 XI Manslaughter 1 (RCW 9A.32.060)  
17 Rape 2 (RCW 9A.44.050)  
18 Rape of a Child 2 (RCW 9A.44.076)  
19 Vehicular Homicide, by being under  
20 the influence of intoxicating liquor  
21 or any drug (RCW 46.61.520)  
22 X Child Molestation 1 (RCW 9A.44.083)  
23 Criminal Mistreatment 1 (RCW  
24 9A.42.020)  
25 Indecent Liberties (with forcible  
26 compulsion) (RCW  
27 9A.44.100(1)(a))  
28 Kidnapping 1 (RCW 9A.40.020)  
29 Leading Organized Crime (RCW  
30 9A.82.060(1)(a))  
31 Malicious explosion 3 (RCW  
32 70.74.280(3))  
33 Sexually Violent Predator Escape  
34 (RCW 9A.76.115)

1 IX Abandonment of Dependent Person 1  
2 (RCW 9A.42.060)  
3 Assault of a Child 2 (RCW 9A.36.130)  
4 Explosive devices prohibited (RCW  
5 70.74.180)  
6 Hit and Run—Death (RCW  
7 46.52.020(4)(a))  
8 Homicide by Watercraft, by being  
9 under the influence of intoxicating  
10 liquor or any drug (RCW  
11 79A.60.050)  
12 Inciting Criminal Profiteering (RCW  
13 9A.82.060(1)(b))  
14 Malicious placement of an explosive 2  
15 (RCW 70.74.270(2))  
16 Robbery 1 (RCW 9A.56.200)  
17 Sexual Exploitation (RCW 9.68A.040)  
18 VIII Arson 1 (RCW 9A.48.020)  
19 Commercial Sexual Abuse of a Minor  
20 (RCW 9.68A.100)  
21 Homicide by Watercraft, by the  
22 operation of any vessel in a  
23 reckless manner (RCW  
24 79A.60.050)  
25 Manslaughter 2 (RCW 9A.32.070)  
26 Promoting Prostitution 1 (RCW  
27 9A.88.070)  
28 Theft of Ammonia (RCW 69.55.010)  
29 Vehicular Homicide, by the operation  
30 of any vehicle in a reckless  
31 manner (RCW 46.61.520)  
32 VII Burglary 1 (RCW 9A.52.020)  
33 Child Molestation 2 (RCW 9A.44.086)  
34 Civil Disorder Training (RCW  
35 9A.48.120)

1 Dealing in depictions of minor engaged  
2 in sexually explicit conduct 1  
3 (RCW 9.68A.050(1))  
4 Drive-by Shooting (RCW 9A.36.045)  
5 Homicide by Watercraft, by disregard  
6 for the safety of others (RCW  
7 79A.60.050)  
8 Indecent Liberties (without forcible  
9 compulsion) (RCW 9A.44.100(1)  
10 (b) and (c))  
11 Introducing Contraband 1 (RCW  
12 9A.76.140)  
13 Malicious placement of an explosive 3  
14 (RCW 70.74.270(3))  
15 Negligently Causing Death By Use of a  
16 Signal Preemption Device (RCW  
17 46.37.675)  
18 Sending, bringing into state depictions  
19 of minor engaged in sexually  
20 explicit conduct 1 (RCW  
21 9.68A.060(1))  
22 Unlawful Possession of a Firearm in  
23 the first degree (RCW  
24 9.41.040(1))  
25 Use of a Machine Gun in Commission  
26 of a Felony (RCW 9.41.225)  
27 Vehicular Homicide, by disregard for  
28 the safety of others (RCW  
29 46.61.520)  
30 VI Bail Jumping with Murder 1 (RCW  
31 9A.76.170(3)(a))  
32 Bribery (RCW 9A.68.010)  
33 Incest 1 (RCW 9A.64.020(1))  
34 Intimidating a Judge (RCW 9A.72.160)  
35 Intimidating a Juror/Witness (RCW  
36 9A.72.110, 9A.72.130)

1 Malicious placement of an imitation  
2 device 2 (RCW 70.74.272(1)(b))  
3 Possession of Depictions of a Minor  
4 Engaged in Sexually Explicit  
5 Conduct 1 (RCW 9.68A.070(1))  
6 Rape of a Child 3 (RCW 9A.44.079)  
7 Theft of a Firearm (RCW 9A.56.300)  
8 Unlawful Storage of Ammonia (RCW  
9 69.55.020)  
10 V Abandonment of Dependent Person 2  
11 (RCW 9A.42.070)  
12 Advancing money or property for  
13 extortionate extension of credit  
14 (RCW 9A.82.030)  
15 Bail Jumping with class A Felony  
16 (RCW 9A.76.170(3)(b))  
17 Child Molestation 3 (RCW 9A.44.089)  
18 Criminal Mistreatment 2 (RCW  
19 9A.42.030)  
20 Custodial Sexual Misconduct 1 (RCW  
21 9A.44.160)  
22 Dealing in Depictions of Minor  
23 Engaged in Sexually Explicit  
24 Conduct 2 (RCW 9.68A.050(2))  
25 Domestic Violence Court Order  
26 Violation (RCW 10.99.040,  
27 10.99.050, 26.09.300, 26.10.220,  
28 26.26.138, 26.50.110, 26.52.070,  
29 or 74.34.145)  
30 ~~((Driving While Under the Influence~~  
31 ~~(RCW 46.61.502(6))))~~  
32 Extortion 1 (RCW 9A.56.120)  
33 Extortionate Extension of Credit (RCW  
34 9A.82.020)

1 Extortionate Means to Collect  
2 Extensions of Credit (RCW  
3 9A.82.040)  
4 Incest 2 (RCW 9A.64.020(2))  
5 Kidnapping 2 (RCW 9A.40.030)  
6 Perjury 1 (RCW 9A.72.020)  
7 Persistent prison misbehavior (RCW  
8 9.94.070)  
9 ~~((Physical Control of a Vehicle While  
10 Under the Influence (RCW  
11 46.61.504(6))))~~  
12 Possession of a Stolen Firearm (RCW  
13 9A.56.310)  
14 Rape 3 (RCW 9A.44.060)  
15 Rendering Criminal Assistance 1  
16 (RCW 9A.76.070)  
17 Sending, Bringing into State  
18 Depictions of Minor Engaged in  
19 Sexually Explicit Conduct 2  
20 (RCW 9.68A.060(2))  
21 Sexual Misconduct with a Minor 1  
22 (RCW 9A.44.093)  
23 Sexually Violating Human Remains  
24 (RCW 9A.44.105)  
25 Stalking (RCW 9A.46.110)  
26 Taking Motor Vehicle Without  
27 Permission 1 (RCW 9A.56.070)  
28 IV Arson 2 (RCW 9A.48.030)  
29 Assault 2 (RCW 9A.36.021)  
30 Assault 3 (of a Peace Officer with a  
31 Projectile Stun Gun) (RCW  
32 9A.36.031(1)(h))  
33 Assault by Watercraft (RCW  
34 79A.60.060)

1 Bribing a Witness/Bribe Received by  
2 Witness (RCW 9A.72.090,  
3 9A.72.100)  
4 Cheating 1 (RCW 9.46.1961)  
5 Commercial Bribery (RCW  
6 9A.68.060)  
7 Counterfeiting (RCW 9.16.035(4))  
8 Driving While Under the Influence  
9 (RCW 46.61.502(6))  
10 Endangerment with a Controlled  
11 Substance (RCW 9A.42.100)  
12 Escape 1 (RCW 9A.76.110)  
13 Hit and Run—Injury (RCW  
14 46.52.020(4)(b))  
15 Hit and Run with Vessel—Injury  
16 Accident (RCW 79A.60.200(3))  
17 Identity Theft 1 (RCW 9.35.020(2))  
18 Indecent Exposure to Person Under  
19 Age Fourteen (subsequent sex  
20 offense) (RCW 9A.88.010)  
21 Influencing Outcome of Sporting Event  
22 (RCW 9A.82.070)  
23 Malicious Harassment (RCW  
24 9A.36.080)  
25 Physical Control of a Vehicle While  
26 Under the Influence (RCW  
27 46.61.504(6))  
28 Possession of Depictions of a Minor  
29 Engaged in Sexually Explicit  
30 Conduct 2 (RCW 9.68A.070(2))  
31 Residential Burglary (RCW  
32 9A.52.025)  
33 Robbery 2 (RCW 9A.56.210)  
34 Theft of Livestock 1 (RCW 9A.56.080)  
35 Threats to Bomb (RCW 9.61.160)

1 Trafficking in Stolen Property 1 (RCW  
2 9A.82.050)

3 Unlawful factoring of a credit card or  
4 payment card transaction (RCW  
5 9A.56.290(4)(b))

6 Unlawful transaction of health  
7 coverage as a health care service  
8 contractor (RCW 48.44.016(3))

9 Unlawful transaction of health  
10 coverage as a health maintenance  
11 organization (RCW 48.46.033(3))

12 Unlawful transaction of insurance  
13 business (RCW 48.15.023(3))

14 Unlicensed practice as an insurance  
15 professional (RCW 48.17.063(2))

16 Use of Proceeds of Criminal  
17 Profiteering (RCW 9A.82.080 (1)  
18 and (2))

19 Vehicle Prowling 2 (third or  
20 subsequent offense) (RCW  
21 9A.52.100(3))

22 Vehicular Assault, by being under the  
23 influence of intoxicating liquor or  
24 any drug, or by the operation or  
25 driving of a vehicle in a reckless  
26 manner (RCW 46.61.522)

27 Viewing of Depictions of a Minor  
28 Engaged in Sexually Explicit  
29 Conduct 1 (RCW 9.68A.075(1))

30 Willful Failure to Return from  
31 Furlough (RCW 72.66.060)

32 III Animal Cruelty 1 (Sexual Conduct or  
33 Contact) (RCW 16.52.205(3))

34 Assault 3 (Except Assault 3 of a Peace  
35 Officer With a Projectile Stun  
36 Gun) (RCW 9A.36.031 except  
37 subsection (1)(h))

1 Assault of a Child 3 (RCW 9A.36.140)  
2 Bail Jumping with class B or C Felony  
3 (RCW 9A.76.170(3)(c))  
4 Burglary 2 (RCW 9A.52.030)  
5 Communication with a Minor for  
6 Immoral Purposes (RCW  
7 9.68A.090)  
8 Criminal Gang Intimidation (RCW  
9 9A.46.120)  
10 Custodial Assault (RCW 9A.36.100)  
11 Cyberstalking (subsequent conviction  
12 or threat of death) (RCW  
13 9.61.260(3))  
14 Escape 2 (RCW 9A.76.120)  
15 Extortion 2 (RCW 9A.56.130)  
16 Harassment (RCW 9A.46.020)  
17 Intimidating a Public Servant (RCW  
18 9A.76.180)  
19 Introducing Contraband 2 (RCW  
20 9A.76.150)  
21 Malicious Injury to Railroad Property  
22 (RCW 81.60.070)  
23 Mortgage Fraud (RCW 19.144.080)  
24 Negligently Causing Substantial  
25 Bodily Harm By Use of a Signal  
26 Preemption Device (RCW  
27 46.37.674)  
28 Organized Retail Theft 1 (RCW  
29 9A.56.350(2))  
30 Perjury 2 (RCW 9A.72.030)  
31 Possession of Incendiary Device (RCW  
32 9.40.120)  
33 Possession of Machine Gun or Short-  
34 Barreled Shotgun or Rifle (RCW  
35 9.41.190)

1 Promoting Prostitution 2 (RCW  
2 9A.88.080)  
3 Retail Theft with Special  
4 Circumstances 1 (RCW  
5 9A.56.360(2))  
6 Securities Act violation (RCW  
7 21.20.400)  
8 Tampering with a Witness (RCW  
9 9A.72.120)  
10 Telephone Harassment (subsequent  
11 conviction or threat of death)  
12 (RCW 9.61.230(2))  
13 Theft of Livestock 2 (RCW 9A.56.083)  
14 Theft with the Intent to Resell 1 (RCW  
15 9A.56.340(2))  
16 Trafficking in Stolen Property 2 (RCW  
17 9A.82.055)  
18 Unlawful Hunting of Big Game 1  
19 (RCW 77.15.410(3)(b))  
20 Unlawful Imprisonment (RCW  
21 9A.40.040)  
22 Unlawful Misbranding of Food Fish or  
23 Shellfish 1 (RCW 69.04.938(3))  
24 Unlawful possession of firearm in the  
25 second degree (RCW 9.41.040(2))  
26 Unlawful Taking of Endangered Fish  
27 or Wildlife 1 (RCW  
28 77.15.120(3)(b))  
29 Unlawful Trafficking in Fish, Shellfish,  
30 or Wildlife 1 (RCW  
31 77.15.260(3)(b))  
32 Unlawful Use of a Nondesigned  
33 Vessel (RCW 77.15.530(4))

1 Vehicular Assault, by the operation or  
2 driving of a vehicle with disregard  
3 for the safety of others (RCW  
4 46.61.522)

5 Willful Failure to Return from Work  
6 Release (RCW 72.65.070)

7 II Commercial Fishing Without a License  
8 1 (RCW 77.15.500(3)(b))

9 Computer Trespass 1 (RCW  
10 9A.52.110)

11 Counterfeiting (RCW 9.16.035(3))

12 Engaging in Fish Dealing Activity  
13 Unlicensed 1 (RCW 77.15.620(3))

14 Escape from Community Custody  
15 (RCW 72.09.310)

16 Failure to Register as a Sex Offender  
17 (second or subsequent offense)  
18 (RCW 9A.44.130 prior to June 10,  
19 2010, and RCW 9A.44.132)

20 Health Care False Claims (RCW  
21 48.80.030)

22 Identity Theft 2 (RCW 9.35.020(3))

23 Improperly Obtaining Financial  
24 Information (RCW 9.35.010)

25 Malicious Mischief 1 (RCW  
26 9A.48.070)

27 Organized Retail Theft 2 (RCW  
28 9A.56.350(3))

29 Possession of Stolen Property 1 (RCW  
30 9A.56.150)

31 Possession of a Stolen Vehicle (RCW  
32 9A.56.068)

33 Retail Theft with Special  
34 Circumstances 2 (RCW  
35 9A.56.360(3))

1 Scrap Processing, Recycling, or  
2 Supplying Without a License  
3 (second or subsequent offense)  
4 (RCW 19.290.100)

5 Theft 1 (RCW 9A.56.030)

6 Theft of a Motor Vehicle (RCW  
7 9A.56.065)

8 Theft of Rental, Leased, ~~((or))~~ Lease-  
9 purchased, or Loaned Property  
10 (valued at ~~((one))~~ five thousand  
11 ~~((five hundred))~~ dollars or more)  
12 (RCW 9A.56.096(5)(a))

13 Theft with the Intent to Resell 2 (RCW  
14 9A.56.340(3))

15 Trafficking in Insurance Claims (RCW  
16 48.30A.015)

17 Unlawful factoring of a credit card or  
18 payment card transaction (RCW  
19 9A.56.290(4)(a))

20 Unlawful Participation of Non-Indians  
21 in Indian Fishery (RCW  
22 77.15.570(2))

23 Unlawful Practice of Law (RCW  
24 2.48.180)

25 Unlawful Purchase or Use of a License  
26 (RCW 77.15.650(3)(b))

27 Unlawful Trafficking in Fish, Shellfish,  
28 or Wildlife 2 (RCW  
29 77.15.260(3)(a))

30 Unlicensed Practice of a Profession or  
31 Business (RCW 18.130.190(7))

32 Voyeurism (RCW 9A.44.115)

33 I Attempting to Elude a Pursuing Police  
34 Vehicle (RCW 46.61.024)

35 False Verification for Welfare (RCW  
36 74.08.055)

1 Forgery (RCW 9A.60.020)  
2 Fraudulent Creation or Revocation of a  
3 Mental Health Advance Directive  
4 (RCW 9A.60.060)  
5 Malicious Mischief 2 (RCW  
6 9A.48.080)  
7 Mineral Trespass (RCW 78.44.330)  
8 Possession of Stolen Property 2 (RCW  
9 9A.56.160)  
10 Reckless Burning 1 (RCW 9A.48.040)  
11 Spotlighting Big Game 1 (RCW  
12 77.15.450(3)(b))  
13 Suspension of Department Privileges 1  
14 (RCW 77.15.670(3)(b))  
15 Taking Motor Vehicle Without  
16 Permission 2 (RCW 9A.56.075)  
17 Theft 2 (RCW 9A.56.040)  
18 Theft of Rental, Leased, ~~((one))~~ Lease-  
19 purchased, or Loaned Property  
20 (valued at ~~((two))~~ seven hundred  
21 fifty dollars or more but less than  
22 ~~((one))~~ five thousand ~~((five~~  
23 ~~hundred))~~ dollars) (RCW  
24 9A.56.096(5)(b))  
25 Transaction of insurance business  
26 beyond the scope of licensure  
27 (RCW 48.17.063)  
28 Unlawful Fish and Shellfish Catch  
29 Accounting (RCW  
30 77.15.630(3)(b))  
31 Unlawful Issuance of Checks or Drafts  
32 (RCW 9A.56.060)  
33 Unlawful Possession of Fictitious  
34 Identification (RCW 9A.56.320)  
35 Unlawful Possession of Instruments of  
36 Financial Fraud (RCW 9A.56.320)

1 Unlawful Possession of Payment  
2 Instruments (RCW 9A.56.320)  
3 Unlawful Possession of a Personal  
4 Identification Device (RCW  
5 9A.56.320)  
6 Unlawful Production of Payment  
7 Instruments (RCW 9A.56.320)  
8 Unlawful Releasing, Planting,  
9 Possessing, or Placing Deleterious  
10 Exotic Wildlife (RCW  
11 77.15.250(2)(b))  
12 Unlawful Trafficking in Food Stamps  
13 (RCW 9.91.142)  
14 Unlawful Use of Food Stamps (RCW  
15 9.91.144)  
16 Unlawful Use of Net to Take Fish 1  
17 (RCW 77.15.580(3)(b))  
18 Unlawful Use of Prohibited Aquatic  
19 Animal Species (RCW  
20 77.15.253(3))  
21 Vehicle Prowl 1 (RCW 9A.52.095)  
22 Violating Commercial Fishing Area or  
23 Time 1 (RCW 77.15.550(3)(b))

24 **Sec. 5.** RCW 46.61.5054 and 2015 c 265 s 32 are each amended to  
25 read as follows:

26 (1)(a) In addition to penalties set forth in RCW 46.61.5051  
27 through 46.61.5053 until September 1, 1995, and RCW 46.61.5055  
28 thereafter, a two hundred fifty dollar fee shall be assessed to a  
29 person who is either convicted, sentenced to a lesser charge, or  
30 given deferred prosecution, as a result of an arrest for violating  
31 RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for  
32 the purpose of funding the Washington state toxicology laboratory and  
33 the Washington state patrol for grants and activities to increase the  
34 conviction rate and decrease the incidence of persons driving under  
35 the influence of alcohol or drugs.

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

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

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

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

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

35 (a) DUI courts; and

36 (b) Jurisdictions implementing the victim impact panel registries  
37 under RCW 46.61.5152 and 10.01.230.

38 (4) Fifty dollars of the fee assessed under subsection (1) of  
39 this section must be distributed to the highway safety fund to be  
40 used solely for funding Washington traffic safety commission grants

1 to organizations within counties targeted for programs to reduce  
2 driving under the influence of alcohol or drugs.

3 (5) If the court has suspended payment of part of the fee  
4 pursuant to subsection (1)(b) of this section, amounts collected  
5 shall be distributed proportionately.

6 ~~((+5+))~~ (6) This section applies to any offense committed on or  
7 after July 1, 1993, and only to adult offenders.

--- END ---