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HOUSE BILL 1970

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State of Washington                      65th Legislature                      2017 Regular Session

By Representatives Klippert, Hayes, Muri, and Stanford

Read first time 02/06/17. 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, and 46.61.5054;  
3 reenacting and amending RCW 46.61.5055 and 9.94A.515; and prescribing  
4 penalties.

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

6            **Sec. 1.** RCW 46.61.502 and 2016 c 87 s 1 are each amended to read  
7 as follows:

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

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

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

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

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

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

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

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

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

33 (b) Analyses of blood samples obtained more than two hours after  
34 the alleged driving may be used as evidence that within two hours of  
35 the alleged driving, a person had a THC concentration of 5.00 or more  
36 in 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 B 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 46.61.504(6).

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

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

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

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

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

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

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

1 pursued by a law enforcement officer, the person has moved the  
2 vehicle safely off the roadway.

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 being in actual  
7 physical control of the vehicle and before the administration of an  
8 analysis of the person's breath or blood to cause the defendant's  
9 alcohol concentration to be 0.08 or more within two hours after being  
10 in such control. The court shall not admit evidence of this defense  
11 unless the defendant notifies the prosecution prior to the omnibus or  
12 pretrial hearing in the case of the defendant's intent to assert the  
13 affirmative defense.

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

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

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

1 as evidence that a person was under the influence of or affected by  
2 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

17 **Sec. 3.** RCW 46.61.5055 and 2016 1st sp.s. c 29 s 530 and 2016 c  
18 203 s 17 are each reenacted and amended to read as follows:

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

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

28 (i) By imprisonment for not less than one day nor more than three  
29 hundred sixty-four days. Twenty-four consecutive hours of the  
30 imprisonment may not be suspended unless the court finds that the  
31 imposition of this mandatory minimum sentence would impose a  
32 substantial risk to the offender's physical or mental well-being.  
33 Whenever the mandatory minimum sentence is suspended, the court shall  
34 state in writing the reason for granting the suspension and the facts  
35 upon which the suspension is based. In lieu of the mandatory minimum  
36 term of imprisonment required under this subsection (1)(a)(i), the  
37 court may order not less than fifteen days of electronic home  
38 monitoring or a ninety-day period of 24/7 sobriety program  
39 monitoring. The court may consider the offender's pretrial 24/7

1 sobriety program monitoring as fulfilling a portion of posttrial  
2 sentencing. The offender shall pay the cost of electronic home  
3 monitoring. The county or municipality in which the penalty is being  
4 imposed shall determine the cost. The court may also require the  
5 offender's electronic home monitoring device or other separate  
6 alcohol monitoring device to include an alcohol detection  
7 breathalyzer, and the court may restrict the amount of alcohol the  
8 offender may consume during the time the offender is on electronic  
9 home monitoring; and

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

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

19 (i) By imprisonment for not less than two days nor more than  
20 three hundred sixty-four days. Forty-eight consecutive hours of the  
21 imprisonment may not be suspended unless the court finds that the  
22 imposition of this mandatory minimum sentence would impose a  
23 substantial risk to the offender's physical or mental well-being.  
24 Whenever the mandatory minimum sentence is suspended, the court shall  
25 state in writing the reason for granting the suspension and the facts  
26 upon which the suspension is based. In lieu of the mandatory minimum  
27 term of imprisonment required under this subsection (1)(b)(i), the  
28 court may order not less than thirty days of electronic home  
29 monitoring or a one hundred twenty day period of 24/7 sobriety  
30 program monitoring. The court may consider the offender's pretrial  
31 24/7 sobriety program testing as fulfilling a portion of posttrial  
32 sentencing. The offender shall pay the cost of electronic home  
33 monitoring. The county or municipality in which the penalty is being  
34 imposed shall determine the cost. The court may also require the  
35 offender's electronic home monitoring device to include an alcohol  
36 detection breathalyzer or other separate alcohol monitoring device,  
37 and the court may restrict the amount of alcohol the offender may  
38 consume during the time the offender is on electronic home  
39 monitoring; and

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

4 (2) **One prior offense in seven years.** Except as provided in RCW  
5 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
6 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense  
7 within seven years shall be punished as follows:

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

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

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

38 (b) **Penalty for alcohol concentration at least 0.15.** In the case  
39 of a person whose alcohol concentration was at least 0.15, or for  
40 whom by reason of the person's refusal to take a test offered

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

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

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

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

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

39 (i) By imprisonment for not less than ninety days nor more than  
40 three hundred sixty-four days, if available in that county or city, a



1 six-month period of 24/7 sobriety program monitoring pursuant to RCW  
2 36.28A.300 through 36.28A.390, and one hundred twenty days of  
3 electronic home monitoring. In lieu of the mandatory minimum term of  
4 one hundred twenty days of electronic home monitoring, the court may  
5 order at least an additional eight days in jail. The court shall  
6 order an expanded alcohol assessment and treatment, if deemed  
7 appropriate by the assessment. The offender shall pay for the cost of  
8 the electronic monitoring. The county or municipality where the  
9 penalty is being imposed shall determine the cost. The court may also  
10 require the offender's electronic home monitoring device include an  
11 alcohol detection breathalyzer or other separate alcohol monitoring  
12 device, and may restrict the amount of alcohol the offender may  
13 consume during the time the offender is on electronic home  
14 monitoring. Ninety days of imprisonment and one hundred twenty days  
15 of electronic home monitoring may not be suspended unless the court  
16 finds that the imposition of this mandatory minimum sentence would  
17 impose a substantial risk to the offender's physical or mental well-  
18 being. Whenever the mandatory minimum sentence is suspended, the  
19 court shall state in writing the reason for granting the suspension  
20 and the facts upon which the suspension is based; and

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

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

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

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

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

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

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

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

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

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

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

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

28 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall  
29 require any person convicted of a violation of RCW 46.61.502 or  
30 46.61.504 or an equivalent local ordinance to comply with the rules  
31 and requirements of the department regarding the installation and use  
32 of a functioning ignition interlock device installed on all motor  
33 vehicles operated by the person.

34 (b) **Monitoring devices.** If the court orders that a person refrain  
35 from consuming any alcohol, the court may order the person to submit  
36 to alcohol monitoring through an alcohol detection breathalyzer  
37 device, transdermal sensor device, or other technology designed to  
38 detect alcohol in a person's system. The person shall pay for the  
39 cost of the monitoring, unless the court specifies that the cost of  
40 monitoring will be paid with funds that are available from an

1 alternative source identified by the court. The county or  
2 municipality where the penalty is being imposed shall determine the  
3 cost.

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

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

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

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

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

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

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

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

35 (d) In any case in which the person has two or three prior  
36 offenses within seven years, and except as provided in RCW  
37 46.61.502(6) or 46.61.504(6), order an additional ten days of  
38 imprisonment and a fine of not less than three thousand dollars and  
39 not more than ten thousand dollars. One thousand dollars of the fine

1 may not be suspended unless the court finds the offender to be  
2 indigent.

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

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

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

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

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

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

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

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

29       (i) Where there has been no prior offense within seven years, be  
30 suspended or denied by the department for ninety days or until the  
31 person is evaluated by an alcoholism agency or probation department  
32 pursuant to RCW 46.20.311 and the person completes or is enrolled in  
33 a ninety-day period of 24/7 sobriety program monitoring. In no  
34 circumstances shall the license suspension be for fewer than two  
35 days;

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

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

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

3           (i) Where there has been no prior offense within seven years, be  
4 revoked or denied by the department for one year or until the person  
5 is evaluated by an alcoholism agency or probation department pursuant  
6 to RCW 46.20.311 and the person completes or is enrolled in a one  
7 hundred twenty day period of 24/7 sobriety program monitoring. In no  
8 circumstances shall the license revocation be for fewer than four  
9 days;

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

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

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

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

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

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

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

28          Upon receipt of a notice from the court under RCW 36.28A.390 that  
29 a participant has been removed from a 24/7 sobriety program, the  
30 department must resume any suspension, revocation, or denial that had  
31 been terminated early under this subsection due to participation in  
32 the program, granting credit on a day-for-day basis for any portion  
33 of a suspension, revocation, or denial already served under RCW  
34 46.20.3101 or this section arising out of the same incident.

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

1 and order to the department and to the person. Upon receipt of the  
2 notice from the court, the department shall not revoke, suspend, or  
3 deny the license, permit, or nonresident privilege of the person for  
4 that offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

19 (xv) A deferred prosecution under chapter 10.05 RCW granted in a  
20 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
21 ordinance, if the charge under which the deferred prosecution was  
22 granted was originally filed as a violation of RCW 46.61.502 or  
23 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
24 46.61.522;

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

31 (xvii) A deferred sentence imposed in a prosecution for a  
32 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an  
33 equivalent local ordinance, if the charge under which the deferred  
34 sentence was imposed was originally filed as a violation of RCW  
35 46.61.502 or 46.61.504, or an equivalent local ordinance, or a  
36 violation of RCW 46.61.520 or 46.61.522;

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

1 (b) "Treatment" means substance use disorder treatment approved  
2 by the department of social and health services;

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

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

9 (15) All fines imposed by this section apply to adult offenders  
10 only.

11 **Sec. 4.** RCW 9.94A.515 and 2016 c 213 s 5, 2016 c 164 s 13, and  
12 2016 c 6 s 1 are each reenacted and amended to read as follows:

13 TABLE 2

14 CRIMES INCLUDED WITHIN EACH  
15 SERIOUSNESS LEVEL

16 XVI Aggravated Murder 1 (RCW 10.95.020)

17 XV Homicide by abuse (RCW 9A.32.055)

18 Malicious explosion 1 (RCW  
19 70.74.280(1))

20 Murder 1 (RCW 9A.32.030)

21 XIV Murder 2 (RCW 9A.32.050)

22 Trafficking 1 (RCW 9A.40.100(1))

23 XIII Malicious explosion 2 (RCW  
24 70.74.280(2))

25 Malicious placement of an explosive 1  
26 (RCW 70.74.270(1))

27 XII Assault 1 (RCW 9A.36.011)

28 Assault of a Child 1 (RCW 9A.36.120)

29 Malicious placement of an imitation  
30 device 1 (RCW 70.74.272(1)(a))

31 Promoting Commercial Sexual Abuse of  
32 a Minor (RCW 9.68A.101)

33 Rape 1 (RCW 9A.44.040)

34 Rape of a Child 1 (RCW 9A.44.073)

35 Trafficking 2 (RCW 9A.40.100(3))

1 XI Manslaughter 1 (RCW 9A.32.060)  
2 Rape 2 (RCW 9A.44.050)  
3 Rape of a Child 2 (RCW 9A.44.076)  
4 Vehicular Homicide, by being under the  
5 influence of intoxicating liquor or  
6 any drug (RCW 46.61.520)  
7 Vehicular Homicide, by the operation of  
8 any vehicle in a reckless manner  
9 (RCW 46.61.520)  
10 X Child Molestation 1 (RCW 9A.44.083)  
11 Criminal Mistreatment 1 (RCW  
12 9A.42.020)  
13 Indecent Liberties (with forcible  
14 compulsion) (RCW  
15 9A.44.100(1)(a))  
16 Kidnapping 1 (RCW 9A.40.020)  
17 Leading Organized Crime (RCW  
18 9A.82.060(1)(a))  
19 Malicious explosion 3 (RCW  
20 70.74.280(3))  
21 Sexually Violent Predator Escape (RCW  
22 9A.76.115)  
23 IX Abandonment of Dependent Person 1  
24 (RCW 9A.42.060)  
25 Assault of a Child 2 (RCW 9A.36.130)  
26 Explosive devices prohibited (RCW  
27 70.74.180)  
28 Hit and Run—Death (RCW  
29 46.52.020(4)(a))  
30 Homicide by Watercraft, by being under  
31 the influence of intoxicating liquor  
32 or any drug (RCW 79A.60.050)  
33 Inciting Criminal Profiteering (RCW  
34 9A.82.060(1)(b))

1 Malicious placement of an explosive 2  
2 (RCW 70.74.270(2))  
3 Robbery 1 (RCW 9A.56.200)  
4 Sexual Exploitation (RCW 9.68A.040)  
5 VIII Arson 1 (RCW 9A.48.020)  
6 Commercial Sexual Abuse of a Minor  
7 (RCW 9.68A.100)  
8 Homicide by Watercraft, by the  
9 operation of any vessel in a reckless  
10 manner (RCW 79A.60.050)  
11 Manslaughter 2 (RCW 9A.32.070)  
12 Promoting Prostitution 1 (RCW  
13 9A.88.070)  
14 Theft of Ammonia (RCW 69.55.010)  
15 VII Air bag diagnostic systems (causing  
16 bodily injury or death) (RCW  
17 46.37.660(2)(b))  
18 Air bag replacement requirements  
19 (causing bodily injury or death)  
20 (RCW 46.37.660(1)(b))  
21 Burglary 1 (RCW 9A.52.020)  
22 Child Molestation 2 (RCW 9A.44.086)  
23 Civil Disorder Training (RCW  
24 9A.48.120)  
25 Manufacture or import counterfeit,  
26 nonfunctional, damaged, or  
27 previously deployed air bag  
28 (causing bodily injury or death)  
29 (RCW 46.37.650(1)(b))  
30 Sale, install, (~~or~~) or reinstall  
31 counterfeit, nonfunctional,  
32 damaged, or previously deployed  
33 airbag (RCW 46.37.650(2)(b))  
34 Dealing in depictions of minor engaged  
35 in sexually explicit conduct 1  
36 (RCW 9.68A.050(1))

1 Drive-by Shooting (RCW 9A.36.045)  
2 Homicide by Watercraft, by disregard  
3 for the safety of others (RCW  
4 79A.60.050)  
5 Indecent Liberties (without forcible  
6 compulsion) (RCW 9A.44.100(1)  
7 (b) and (c))  
8 Introducing Contraband 1 (RCW  
9 9A.76.140)  
10 Malicious placement of an explosive 3  
11 (RCW 70.74.270(3))  
12 Negligently Causing Death By Use of a  
13 Signal Preemption Device (RCW  
14 46.37.675)  
15 Sending, bringing into state depictions  
16 of minor engaged in sexually  
17 explicit conduct 1 (RCW  
18 9.68A.060(1))  
19 Unlawful Possession of a Firearm in the  
20 first degree (RCW 9.41.040(1))  
21 Use of a Machine Gun in Commission  
22 of a Felony (RCW 9.41.225)  
23 Vehicular Homicide, by disregard for  
24 the safety of others (RCW  
25 46.61.520)  
26 VI Bail Jumping with Murder 1 (RCW  
27 9A.76.170(3)(a))  
28 Bribery (RCW 9A.68.010)  
29 Incest 1 (RCW 9A.64.020(1))  
30 Intimidating a Judge (RCW 9A.72.160)  
31 Intimidating a Juror/Witness (RCW  
32 9A.72.110, 9A.72.130)  
33 Malicious placement of an imitation  
34 device 2 (RCW 70.74.272(1)(b))

1 Possession of Depictions of a Minor  
2 Engaged in Sexually Explicit  
3 Conduct 1 (RCW 9.68A.070(1))  
4 Rape of a Child 3 (RCW 9A.44.079)  
5 Theft of a Firearm (RCW 9A.56.300)  
6 Unlawful Storage of Ammonia (RCW  
7 69.55.020)  
8 V Abandonment of Dependent Person 2  
9 (RCW 9A.42.070)  
10 Advancing money or property for  
11 extortionate extension of credit  
12 (RCW 9A.82.030)  
13 Air bag diagnostic systems (RCW  
14 46.37.660(2)(c))  
15 Air bag replacement requirements  
16 (RCW 46.37.660(1)(c))  
17 Bail Jumping with class A Felony  
18 (RCW 9A.76.170(3)(b))  
19 Child Molestation 3 (RCW 9A.44.089)  
20 Manufacture or import counterfeit,  
21 nonfunctional, damaged, or  
22 previously deployed air bag (RCW  
23 46.37.650(1)(c))  
24 Sale, install, ~~((for))~~ or reinstall  
25 counterfeit, nonfunctional,  
26 damaged, or previously deployed  
27 airbag (RCW 46.37.650(2)(c))  
28 Criminal Mistreatment 2 (RCW  
29 9A.42.030)  
30 Custodial Sexual Misconduct 1 (RCW  
31 9A.44.160)  
32 Dealing in Depictions of Minor  
33 Engaged in Sexually Explicit  
34 Conduct 2 (RCW 9.68A.050(2))

1 Domestic Violence Court Order  
2 Violation (RCW 10.99.040,  
3 10.99.050, 26.09.300, 26.10.220,  
4 26.26.138, 26.50.110, 26.52.070, or  
5 74.34.145)  
6 ~~((Driving While Under the Influence~~  
7 ~~(RCW 46.61.502(6))))~~  
8 Extortion 1 (RCW 9A.56.120)  
9 Extortionate Extension of Credit (RCW  
10 9A.82.020)  
11 Extortionate Means to Collect  
12 Extensions of Credit (RCW  
13 9A.82.040)  
14 Incest 2 (RCW 9A.64.020(2))  
15 Kidnapping 2 (RCW 9A.40.030)  
16 Perjury 1 (RCW 9A.72.020)  
17 Persistent prison misbehavior (RCW  
18 9.94.070)  
19 ~~((Physical Control of a Vehicle While~~  
20 ~~Under the Influence (RCW~~  
21 ~~46.61.504(6))))~~  
22 Possession of a Stolen Firearm (RCW  
23 9A.56.310)  
24 Rape 3 (RCW 9A.44.060)  
25 Rendering Criminal Assistance 1 (RCW  
26 9A.76.070)  
27 Sending, Bringing into State Depictions  
28 of Minor Engaged in Sexually  
29 Explicit Conduct 2 (RCW  
30 9.68A.060(2))  
31 Sexual Misconduct with a Minor 1  
32 (RCW 9A.44.093)  
33 Sexually Violating Human Remains  
34 (RCW 9A.44.105)  
35 Stalking (RCW 9A.46.110)

1 Taking Motor Vehicle Without  
2 Permission 1 (RCW 9A.56.070)  
3 IV Arson 2 (RCW 9A.48.030)  
4 Assault 2 (RCW 9A.36.021)  
5 Assault 3 (of a Peace Officer with a  
6 Projectile Stun Gun) (RCW  
7 9A.36.031(1)(h))  
8 Assault by Watercraft (RCW  
9 79A.60.060)  
10 Bribing a Witness/Bribe Received by  
11 Witness (RCW 9A.72.090,  
12 9A.72.100)  
13 Cheating 1 (RCW 9.46.1961)  
14 Commercial Bribery (RCW 9A.68.060)  
15 Counterfeiting (RCW 9.16.035(4))  
16 Driving While Under the Influence  
17 (RCW 46.61.502(6))  
18 Endangerment with a Controlled  
19 Substance (RCW 9A.42.100)  
20 Escape 1 (RCW 9A.76.110)  
21 Hit and Run—Injury (RCW  
22 46.52.020(4)(b))  
23 Hit and Run with Vessel—Injury  
24 Accident (RCW 79A.60.200(3))  
25 Identity Theft 1 (RCW 9.35.020(2))  
26 Indecent Exposure to Person Under Age  
27 Fourteen (subsequent sex offense)  
28 (RCW 9A.88.010)  
29 Influencing Outcome of Sporting Event  
30 (RCW 9A.82.070)  
31 Malicious Harassment (RCW  
32 9A.36.080)  
33 Physical Control of a Vehicle While  
34 Under the Influence (RCW  
35 46.61.504(6))



1 Possession of Depictions of a Minor  
2 Engaged in Sexually Explicit  
3 Conduct 2 (RCW 9.68A.070(2))  
4 Residential Burglary (RCW 9A.52.025)  
5 Robbery 2 (RCW 9A.56.210)  
6 Theft of Livestock 1 (RCW 9A.56.080)  
7 Threats to Bomb (RCW 9.61.160)  
8 Trafficking in Stolen Property 1 (RCW  
9 9A.82.050)  
10 Unlawful factoring of a credit card or  
11 payment card transaction (RCW  
12 9A.56.290(4)(b))  
13 Unlawful transaction of health coverage  
14 as a health care service contractor  
15 (RCW 48.44.016(3))  
16 Unlawful transaction of health coverage  
17 as a health maintenance  
18 organization (RCW 48.46.033(3))  
19 Unlawful transaction of insurance  
20 business (RCW 48.15.023(3))  
21 Unlicensed practice as an insurance  
22 professional (RCW 48.17.063(2))  
23 Use of Proceeds of Criminal  
24 Profiteering (RCW 9A.82.080 (1)  
25 and (2))  
26 Vehicle Prowling 2 (third or subsequent  
27 offense) (RCW 9A.52.100(3))  
28 Vehicular Assault, by being under the  
29 influence of intoxicating liquor or  
30 any drug, or by the operation or  
31 driving of a vehicle in a reckless  
32 manner (RCW 46.61.522)  
33 Viewing of Depictions of a Minor  
34 Engaged in Sexually Explicit  
35 Conduct 1 (RCW 9.68A.075(1))

1 Willful Failure to Return from Furlough  
2 (RCW 72.66.060)

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

5 Assault 3 (Except Assault 3 of a Peace  
6 Officer With a Projectile Stun Gun)  
7 (RCW 9A.36.031 except subsection  
8 (1)(h))

9 Assault of a Child 3 (RCW 9A.36.140)

10 Bail Jumping with class B or C Felony  
11 (RCW 9A.76.170(3)(c))

12 Burglary 2 (RCW 9A.52.030)

13 Communication with a Minor for  
14 Immoral Purposes (RCW  
15 9.68A.090)

16 Criminal Gang Intimidation (RCW  
17 9A.46.120)

18 Custodial Assault (RCW 9A.36.100)

19 Cyberstalking (subsequent conviction or  
20 threat of death) (RCW 9.61.260(3))

21 Escape 2 (RCW 9A.76.120)

22 Extortion 2 (RCW 9A.56.130)

23 Harassment (RCW 9A.46.020)

24 Intimidating a Public Servant (RCW  
25 9A.76.180)

26 Introducing Contraband 2 (RCW  
27 9A.76.150)

28 Malicious Injury to Railroad Property  
29 (RCW 81.60.070)

30 Mortgage Fraud (RCW 19.144.080)

31 Negligently Causing Substantial Bodily  
32 Harm By Use of a Signal  
33 Preemption Device (RCW  
34 46.37.674)

1 Organized Retail Theft 1 (RCW  
2 9A.56.350(2))  
3 Perjury 2 (RCW 9A.72.030)  
4 Possession of Incendiary Device (RCW  
5 9.40.120)  
6 Possession of Machine Gun or Short-  
7 Barreled Shotgun or Rifle (RCW  
8 9.41.190)  
9 Promoting Prostitution 2 (RCW  
10 9A.88.080)  
11 Retail Theft with Special Circumstances  
12 1 (RCW 9A.56.360(2))  
13 Securities Act violation (RCW  
14 21.20.400)  
15 Tampering with a Witness (RCW  
16 9A.72.120)  
17 Telephone Harassment (subsequent  
18 conviction or threat of death) (RCW  
19 9.61.230(2))  
20 Theft of Livestock 2 (RCW 9A.56.083)  
21 Theft with the Intent to Resell 1 (RCW  
22 9A.56.340(2))  
23 Trafficking in Stolen Property 2 (RCW  
24 9A.82.055)  
25 Unlawful Hunting of Big Game 1 (RCW  
26 77.15.410(3)(b))  
27 Unlawful Imprisonment (RCW  
28 9A.40.040)  
29 Unlawful Misbranding of Food Fish or  
30 Shellfish 1 (RCW 69.04.938(3))  
31 Unlawful possession of firearm in the  
32 second degree (RCW 9.41.040(2))  
33 Unlawful Taking of Endangered Fish or  
34 Wildlife 1 (RCW 77.15.120(3)(b))

1 Unlawful Trafficking in Fish, Shellfish,  
2 or Wildlife 1 (RCW  
3 77.15.260(3)(b))  
4 Unlawful Use of a Nondesignated  
5 Vessel (RCW 77.15.530(4))  
6 Vehicular Assault, by the operation or  
7 driving of a vehicle with disregard  
8 for the safety of others (RCW  
9 46.61.522)  
10 Willful Failure to Return from Work  
11 Release (RCW 72.65.070)  
12 II Commercial Fishing Without a License  
13 1 (RCW 77.15.500(3)(b))  
14 Computer Trespass 1 (RCW 9A.90.040)  
15 Counterfeiting (RCW 9.16.035(3))  
16 Electronic Data Service Interference  
17 (RCW 9A.90.060)  
18 Electronic Data Tampering 1 (RCW  
19 9A.90.080)  
20 Electronic Data Theft (RCW 9A.90.100)  
21 Engaging in Fish Dealing Activity  
22 Unlicensed 1 (RCW 77.15.620(3))  
23 Escape from Community Custody  
24 (RCW 72.09.310)  
25 Failure to Register as a Sex Offender  
26 (second or subsequent offense)  
27 (RCW 9A.44.130 prior to June 10,  
28 2010, and RCW 9A.44.132)  
29 Health Care False Claims (RCW  
30 48.80.030)  
31 Identity Theft 2 (RCW 9.35.020(3))  
32 Improperly Obtaining Financial  
33 Information (RCW 9.35.010)  
34 Malicious Mischief 1 (RCW 9A.48.070)  
35 Organized Retail Theft 2 (RCW  
36 9A.56.350(3))

1 Possession of Stolen Property 1 (RCW  
2 9A.56.150)  
3 Possession of a Stolen Vehicle (RCW  
4 9A.56.068)  
5 Retail Theft with Special Circumstances  
6 2 (RCW 9A.56.360(3))  
7 Scrap Processing, Recycling, or  
8 Supplying Without a License  
9 (second or subsequent offense)  
10 (RCW 19.290.100)  
11 Theft 1 (RCW 9A.56.030)  
12 Theft of a Motor Vehicle (RCW  
13 9A.56.065)  
14 Theft of Rental, Leased, Lease-  
15 purchased, or Loaned Property  
16 (valued at five thousand dollars or  
17 more) (RCW 9A.56.096(5)(a))  
18 Theft with the Intent to Resell 2 (RCW  
19 9A.56.340(3))  
20 Trafficking in Insurance Claims (RCW  
21 48.30A.015)  
22 Unlawful factoring of a credit card or  
23 payment card transaction (RCW  
24 9A.56.290(4)(a))  
25 Unlawful Participation of Non-Indians  
26 in Indian Fishery (RCW  
27 77.15.570(2))  
28 Unlawful Practice of Law (RCW  
29 2.48.180)  
30 Unlawful Purchase or Use of a License  
31 (RCW 77.15.650(3)(b))  
32 Unlawful Trafficking in Fish, Shellfish,  
33 or Wildlife 2 (RCW  
34 77.15.260(3)(a))  
35 Unlicensed Practice of a Profession or  
36 Business (RCW 18.130.190(7))

1 Voyeurism (RCW 9A.44.115)  
2 I Attempting to Elude a Pursuing Police  
3 Vehicle (RCW 46.61.024)  
4 False Verification for Welfare (RCW  
5 74.08.055)  
6 Forgery (RCW 9A.60.020)  
7 Fraudulent Creation or Revocation of a  
8 Mental Health Advance Directive  
9 (RCW 9A.60.060)  
10 Malicious Mischief 2 (RCW 9A.48.080)  
11 Mineral Trespass (RCW 78.44.330)  
12 Possession of Stolen Property 2 (RCW  
13 9A.56.160)  
14 Reckless Burning 1 (RCW 9A.48.040)  
15 Spotlighting Big Game 1 (RCW  
16 77.15.450(3)(b))  
17 Suspension of Department Privileges 1  
18 (RCW 77.15.670(3)(b))  
19 Taking Motor Vehicle Without  
20 Permission 2 (RCW 9A.56.075)  
21 Theft 2 (RCW 9A.56.040)  
22 Theft of Rental, Leased, Lease-  
23 purchased, or Loaned Property  
24 (valued at seven hundred fifty  
25 dollars or more but less than five  
26 thousand dollars) (RCW  
27 9A.56.096(5)(b))  
28 Transaction of insurance business  
29 beyond the scope of licensure  
30 (RCW 48.17.063)  
31 Unlawful Fish and Shellfish Catch  
32 Accounting (RCW 77.15.630(3)(b))  
33 Unlawful Issuance of Checks or Drafts  
34 (RCW 9A.56.060)  
35 Unlawful Possession of Fictitious  
36 Identification (RCW 9A.56.320)

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

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

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

1 conviction rate and decrease the incidence of persons driving under  
2 the influence of alcohol or drugs.

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

6 (2) The fee assessed under subsection (1) of this section shall  
7 be collected by the clerk of the court and, subject to subsection  
8 (~~((4))~~) (5) of this section, one hundred seventy-five dollars of the  
9 fee must be distributed as follows:

10 (a) Forty percent shall be subject to distribution under RCW  
11 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

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

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

37 (a) DUI courts; and

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



1       (4) Fifty dollars of the fee assessed under subsection (1) of  
2 this section must be distributed to the highway safety fund to be  
3 used solely for funding Washington traffic safety commission grants  
4 to organizations within counties targeted for programs to reduce  
5 driving under the influence of alcohol or drugs.

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

9       (~~(5)~~) (6) This section applies to any offense committed on or  
10 after July 1, 1993, and only to adult offenders.

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