
SUBSTITUTE HOUSE BILL 1614

State of Washington

65th Legislature

2017 Regular Session

By House Public Safety (originally sponsored by Representatives Goodman, Klippert, Orwall, Hayes, Pellicciotti, Holy, Griffey, Pettigrew, Muri, and Haler)

READ FIRST TIME 02/13/17.

1 AN ACT Relating to impaired driving; amending RCW 46.20.720,
2 46.61.506, 46.61.517, and 46.64.025; and reenacting and amending RCW
3 9.96.060, 10.31.100, and 46.61.5055.

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

5 **Sec. 1.** RCW 9.96.060 and 2014 c 176 s 1 and 2014 c 109 s 1 are
6 each reenacted and amended to read as follows:

7 (1) Every person convicted of a misdemeanor or gross misdemeanor
8 offense who has completed all of the terms of the sentence for the
9 misdemeanor or gross misdemeanor offense may apply to the sentencing
10 court for a vacation of the applicant's record of conviction for the
11 offense. If the court finds the applicant meets the tests prescribed
12 in subsection (2) of this section, the court may in its discretion
13 vacate the record of conviction by: (a)(i) Permitting the applicant
14 to withdraw the applicant's plea of guilty and to enter a plea of not
15 guilty; or (ii) if the applicant has been convicted after a plea of
16 not guilty, the court setting aside the verdict of guilty; and (b)
17 the court dismissing the information, indictment, complaint, or
18 citation against the applicant and vacating the judgment and
19 sentence.

1 (2) An applicant may not have the record of conviction for a
2 misdemeanor or gross misdemeanor offense vacated if any one of the
3 following is present:

4 (a) There are any criminal charges against the applicant pending
5 in any court of this state or another state, or in any federal court;

6 (b) The offense was a violent offense as defined in RCW 9.94A.030
7 or an attempt to commit a violent offense;

8 (c) The offense was a violation of RCW 46.61.502 (driving while
9 under the influence), 46.61.504 (actual physical control while under
10 the influence), 9.91.020 (operating a railroad, etc. while
11 intoxicated), or the offense is considered a "prior offense" under
12 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
13 violation within ten years of the date of arrest for the prior
14 offense or less than ten years has elapsed since the date of the
15 arrest for the prior offense;

16 (d) The offense was any misdemeanor or gross misdemeanor
17 violation, including attempt, of chapter 9.68 RCW (obscenity and
18 pornography), chapter 9.68A RCW (sexual exploitation of children), or
19 chapter 9A.44 RCW (sex offenses);

20 (e) The applicant was convicted of a misdemeanor or gross
21 misdemeanor offense as defined in RCW 10.99.020, or the court
22 determines after a review of the court file that the offense was
23 committed by one family member or household member against another,
24 or the court, after considering the damage to person or property that
25 resulted in the conviction, any prior convictions for crimes defined
26 in RCW 10.99.020, or for comparable offenses in another state or in
27 federal court, and the totality of the records under review by the
28 court regarding the conviction being considered for vacation,
29 determines that the offense involved domestic violence, and any one
30 of the following factors exist:

31 (i) The applicant has not provided written notification of the
32 vacation petition to the prosecuting attorney's office that
33 prosecuted the offense for which vacation is sought, or has not
34 provided that notification to the court;

35 (ii) The applicant has previously had a conviction for domestic
36 violence. For purposes of this subsection, however, if the current
37 application is for more than one conviction that arose out of a
38 single incident, none of those convictions counts as a previous
39 conviction;

1 (iii) The applicant has signed an affidavit under penalty of
2 perjury affirming that the applicant has not previously had a
3 conviction for a domestic violence offense, and a criminal history
4 check reveals that the applicant has had such a conviction; or

5 (iv) Less than five years have elapsed since the person completed
6 the terms of the original conditions of the sentence, including any
7 financial obligations and successful completion of any treatment
8 ordered as a condition of sentencing;

9 (f) For any offense other than those described in (e) of this
10 subsection, less than three years have passed since the person
11 completed the terms of the sentence, including any financial
12 obligations;

13 (g) The offender has been convicted of a new crime in this state,
14 another state, or federal court since the date of conviction;

15 (h) The applicant has ever had the record of another conviction
16 vacated; or

17 (i) The applicant is currently restrained, or has been restrained
18 within five years prior to the vacation application, by a domestic
19 violence protection order, a no-contact order, an antiharassment
20 order, or a civil restraining order which restrains one party from
21 contacting the other party.

22 (3) Subject to RCW 9.96.070, every person convicted of
23 prostitution under RCW 9A.88.030 who committed the offense as a
24 result of being a victim of trafficking, RCW 9A.40.100, promoting
25 prostitution in the first degree, RCW 9A.88.070, promoting commercial
26 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
27 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
28 7101 et seq. may apply to the sentencing court for vacation of the
29 applicant's record of conviction for the prostitution offense. An
30 applicant may not have the record of conviction for prostitution
31 vacated if any one of the following is present:

32 (a) There are any criminal charges against the applicant pending
33 in any court of this state or another state, or in any federal court,
34 for any crime other than prostitution; or

35 (b) The offender has been convicted of another crime, except
36 prostitution, in this state, another state, or federal court since
37 the date of conviction.

38 (4) Every person convicted prior to January 1, 1975, of violating
39 any statute or rule regarding the regulation of fishing activities,
40 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,

1 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
2 who claimed to be exercising a treaty Indian fishing right, may apply
3 to the sentencing court for vacation of the applicant's record of the
4 misdemeanor, gross misdemeanor, or felony conviction for the offense.
5 If the person is deceased, a member of the person's family or an
6 official representative of the tribe of which the person was a member
7 may apply to the court on behalf of the deceased person.
8 Notwithstanding the requirements of RCW 9.94A.640, the court shall
9 vacate the record of conviction if:

10 (a) The applicant is a member of a tribe that may exercise treaty
11 Indian fishing rights at the location where the offense occurred; and

12 (b) The state has been enjoined from taking enforcement action of
13 the statute or rule to the extent that it interferes with a treaty
14 Indian fishing right as determined under *United States v. Washington*,
15 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
16 899 (D. Oregon 1969), and any posttrial orders of those courts, or
17 any other state supreme court or federal court decision.

18 (5) Once the court vacates a record of conviction under this
19 section, the person shall be released from all penalties and
20 disabilities resulting from the offense and the fact that the person
21 has been convicted of the offense shall not be included in the
22 person's criminal history for purposes of determining a sentence in
23 any subsequent conviction. For all purposes, including responding to
24 questions on employment or housing applications, a person whose
25 conviction has been vacated under this section may state that he or
26 she has never been convicted of that crime. Nothing in this section
27 affects or prevents the use of an offender's prior conviction in a
28 later criminal prosecution.

29 (6) All costs incurred by the court and probation services shall
30 be paid by the person making the motion to vacate the record unless a
31 determination is made pursuant to chapter 10.101 RCW that the person
32 making the motion is indigent, at the time the motion is brought.

33 (7) The clerk of the court in which the vacation order is entered
34 shall immediately transmit the order vacating the conviction to the
35 Washington state patrol identification section and to the local
36 police agency, if any, which holds criminal history information for
37 the person who is the subject of the conviction. The Washington state
38 patrol and any such local police agency shall immediately update
39 their records to reflect the vacation of the conviction, and shall
40 transmit the order vacating the conviction to the federal bureau of

1 investigation. A conviction that has been vacated under this section
2 may not be disseminated or disclosed by the state patrol or local law
3 enforcement agency to any person, except other criminal justice
4 enforcement agencies.

5 **Sec. 2.** RCW 10.31.100 and 2016 c 203 s 9 and 2016 c 113 s 1 are
6 each reenacted and amended to read as follows:

7 A police officer having probable cause to believe that a person
8 has committed or is committing a felony shall have the authority to
9 arrest the person without a warrant. A police officer may arrest a
10 person without a warrant for committing a misdemeanor or gross
11 misdemeanor only when the offense is committed in the presence of an
12 officer, except as provided in subsections (1) through (12) of this
13 section.

14 (1) Any police officer having probable cause to believe that a
15 person has committed or is committing a misdemeanor or gross
16 misdemeanor, involving physical harm or threats of harm to any person
17 or property or the unlawful taking of property or involving the use
18 or possession of cannabis, or involving the acquisition, possession,
19 or consumption of alcohol by a person under the age of twenty-one
20 years under RCW 66.44.270, or involving criminal trespass under RCW
21 9A.52.070 or 9A.52.080, shall have the authority to arrest the
22 person.

23 (2) A police officer shall arrest and take into custody, pending
24 release on bail, personal recognizance, or court order, a person
25 without a warrant when the officer has probable cause to believe
26 that:

27 (a) An order has been issued of which the person has knowledge
28 under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09,
29 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the
30 person has violated the terms of the order restraining the person
31 from acts or threats of violence, or restraining the person from
32 going onto the grounds of or entering a residence, workplace, school,
33 or day care, or prohibiting the person from knowingly coming within,
34 or knowingly remaining within, a specified distance of a location or,
35 in the case of an order issued under RCW 26.44.063, imposing any
36 other restrictions or conditions upon the person; or

37 (b) A foreign protection order, as defined in RCW 26.52.010, has
38 been issued of which the person under restraint has knowledge and the
39 person under restraint has violated a provision of the foreign

1 protection order prohibiting the person under restraint from
2 contacting or communicating with another person, or excluding the
3 person under restraint from a residence, workplace, school, or day
4 care, or prohibiting the person from knowingly coming within, or
5 knowingly remaining within, a specified distance of a location, or a
6 violation of any provision for which the foreign protection order
7 specifically indicates that a violation will be a crime; or

8 (c) The person is eighteen years or older and within the
9 preceding four hours has assaulted a family or household member as
10 defined in RCW 10.99.020 and the officer believes: (i) A felonious
11 assault has occurred; (ii) an assault has occurred which has resulted
12 in bodily injury to the victim, whether the injury is observable by
13 the responding officer or not; or (iii) that any physical action has
14 occurred which was intended to cause another person reasonably to
15 fear imminent serious bodily injury or death. Bodily injury means
16 physical pain, illness, or an impairment of physical condition. When
17 the officer has probable cause to believe that family or household
18 members have assaulted each other, the officer is not required to
19 arrest both persons. The officer shall arrest the person whom the
20 officer believes to be the primary physical aggressor. In making this
21 determination, the officer shall make every reasonable effort to
22 consider: (A) The intent to protect victims of domestic violence
23 under RCW 10.99.010; (B) the comparative extent of injuries inflicted
24 or serious threats creating fear of physical injury; and (C) the
25 history of domestic violence of each person involved, including
26 whether the conduct was part of an ongoing pattern of abuse.

27 (3) A police officer shall, at the request of a parent or
28 guardian, arrest the sixteen or seventeen year old child of that
29 parent or guardian if the officer has probable cause to believe that
30 the child has assaulted a family or household member as defined in
31 RCW 10.99.020 in the preceding four hours. Nothing in this subsection
32 removes a police officer's existing authority provided in this
33 section to make an arrest.

34 (4) Any police officer having probable cause to believe that a
35 person has committed or is committing a violation of any of the
36 following traffic laws shall have the authority to arrest the person:

37 (a) RCW 46.52.010, relating to duty on striking an unattended car
38 or other property;

39 (b) RCW 46.52.020, relating to duty in case of injury to or death
40 of a person or damage to an attended vehicle;

1 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or
2 racing of vehicles;

3 (d) RCW 46.61.502 or 46.61.504, relating to persons under the
4 influence of intoxicating liquor or drugs;

5 (e) RCW 46.61.503 or 46.25.110, relating to persons having
6 alcohol or THC in their system;

7 (f) RCW 46.20.342, relating to driving a motor vehicle while
8 operator's license is suspended or revoked;

9 (g) RCW 46.61.5249, relating to operating a motor vehicle in a
10 negligent manner.

11 (5) A law enforcement officer investigating at the scene of a
12 motor vehicle accident may arrest the driver of a motor vehicle
13 involved in the accident if the officer has probable cause to believe
14 that the driver has committed in connection with the accident a
15 violation of any traffic law or regulation.

16 (6)(a) A law enforcement officer investigating at the scene of a
17 motor vessel accident may arrest the operator of a motor vessel
18 involved in the accident if the officer has probable cause to believe
19 that the operator has committed, in connection with the accident, a
20 criminal violation of chapter 79A.60 RCW.

21 (b) A law enforcement officer investigating at the scene of a
22 motor vessel accident may issue a citation for an infraction to the
23 operator of a motor vessel involved in the accident if the officer
24 has probable cause to believe that the operator has committed, in
25 connection with the accident, a violation of any boating safety law
26 of chapter 79A.60 RCW.

27 (7) Any police officer having probable cause to believe that a
28 person has committed or is committing a violation of RCW 79A.60.040
29 shall have the authority to arrest the person.

30 (8) An officer may act upon the request of a law enforcement
31 officer in whose presence a traffic infraction was committed, to
32 stop, detain, arrest, or issue a notice of traffic infraction to the
33 driver who is believed to have committed the infraction. The request
34 by the witnessing officer shall give an officer the authority to take
35 appropriate action under the laws of the state of Washington.

36 (9) Any police officer having probable cause to believe that a
37 person has committed or is committing any act of indecent exposure,
38 as defined in RCW 9A.88.010, may arrest the person.

39 (10) A police officer may arrest and take into custody, pending
40 release on bail, personal recognizance, or court order, a person

1 without a warrant when the officer has probable cause to believe that
2 an order has been issued of which the person has knowledge under
3 chapter 10.14 RCW and the person has violated the terms of that
4 order.

5 (11) Any police officer having probable cause to believe that a
6 person has, within twenty-four hours of the alleged violation,
7 committed a violation of RCW 9A.50.020 may arrest such person.

8 (12) A police officer having probable cause to believe that a
9 person illegally possesses or illegally has possessed a firearm or
10 other dangerous weapon on private or public elementary or secondary
11 school premises shall have the authority to arrest the person.

12 For purposes of this subsection, the term "firearm" has the
13 meaning defined in RCW 9.41.010 and the term "dangerous weapon" has
14 the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

15 (13) A law enforcement officer having probable cause to believe
16 that a person has committed a violation under RCW 77.15.160(4) may
17 issue a citation for an infraction to the person in connection with
18 the violation.

19 (14) A law enforcement officer having probable cause to believe
20 that a person has committed a criminal violation under RCW 77.15.809
21 or 77.15.811 may arrest the person in connection with the violation.

22 (15) Except as specifically provided in subsections (2), (4),
23 (5), and (8) of this section, nothing in this section extends or
24 otherwise affects the powers of arrest prescribed in Title 46 RCW.

25 (16) No police officer may be held criminally or civilly liable
26 for making an arrest pursuant to subsection (2) or (10) of this
27 section if the police officer acts in good faith and without malice.

28 (17)(a) Except as provided in (b) of this subsection, a police
29 officer shall arrest and keep in custody, until release by a judicial
30 officer on bail, personal recognizance, or court order, a person
31 without a warrant when the officer has probable cause to believe that
32 the person has violated RCW 46.61.502 or 46.61.504 or an equivalent
33 local ordinance and the police officer has knowledge that the person:
34 (i) Has a prior offense as defined in RCW 46.61.5055 within ten
35 years; or (ii) is charged with or is awaiting arraignment for an
36 offense that would qualify as a prior offense as defined in RCW
37 46.61.5055 if it were a conviction.

38 (b) A police officer is not required to keep in custody a person
39 under (a) of this subsection if the person requires immediate medical
40 attention and is admitted to a hospital.

1 (18) A juvenile detention facility shall book into detention any
2 person under age eighteen brought to that detention facility pursuant
3 to an arrest for assaulting a family or household member as defined
4 in RCW 10.99.020.

5 **Sec. 3.** RCW 46.20.720 and 2016 c 203 s 14 are each amended to
6 read as follows:

7 (1) **Ignition interlock restriction.** The department shall require
8 that a person may drive only a motor vehicle equipped with a
9 functioning ignition interlock device:

10 (a) **Pretrial release.** Upon receipt of notice from a court that an
11 ignition interlock device restriction has been imposed under RCW
12 10.21.055;

13 (b) **Ignition interlock driver's license.** As required for issuance
14 of an ignition interlock driver's license under RCW 46.20.385;

15 (c) **Deferred prosecution.** Upon receipt of notice from a court
16 that the person is participating in a deferred prosecution program
17 under RCW 10.05.020 for a violation of:

18 (i) RCW 46.61.502 or 46.61.504 or an equivalent local ordinance;
19 or

20 (ii) RCW 46.61.5249 or 46.61.500 or an equivalent local ordinance
21 if the person would be required under RCW 46.61.5249(4) or
22 46.61.500(3) (a) or (b) to install an ignition interlock device on
23 all vehicles operated by the person in the event of a conviction;

24 (d) **Post conviction.** After any applicable period of suspension,
25 revocation, or denial of driving privileges:

26 (i) Due to a conviction of a violation of RCW 46.61.502 or
27 46.61.504 or an equivalent local or out-of-state statute or
28 ordinance; or

29 (ii) Due to a conviction of a violation of RCW 46.61.5249 or
30 46.61.500 or an equivalent local ordinance if the person is required
31 under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an
32 ignition interlock device on all vehicles operated by the person; or

33 (e) **Court order.** Upon receipt of an order by a court having
34 jurisdiction that a person charged or convicted of any offense
35 involving the use, consumption, or possession of alcohol while
36 operating a motor vehicle may drive only a motor vehicle equipped
37 with a functioning ignition interlock. The court shall establish a
38 specific calibration setting at which the ignition interlock will
39 prevent the vehicle from being started. The court shall also

1 establish the period of time for which ignition interlock use will be
2 required.

3 (2) **Calibration.** Unless otherwise specified by the court for a
4 restriction imposed under subsection (1)(e) of this section, the
5 ignition interlock device shall be calibrated to prevent the motor
6 vehicle from being started when the breath sample provided has an
7 alcohol concentration of 0.025 or more.

8 (3) **Duration of restriction.** A restriction imposed under:

9 (a) Subsection (1)(a) of this section shall remain in effect
10 until:

11 (i) The court has authorized the removal of the device under RCW
12 10.21.055; or

13 (ii) The department has imposed a restriction under subsection
14 (1)(b), (c), or (d) of this section arising out of the same incident.

15 (b) Subsection (1)(b) of this section remains in effect during
16 the validity of any ignition interlock driver's license that has been
17 issued to the person.

18 (c) Subsection (1)(c)(i) or (d)(i) of this section shall be for
19 no less than:

20 (i) For a person who has not previously been restricted under
21 this subsection, a period of one year;

22 (ii) For a person who has previously been restricted under (c)(i)
23 of this subsection, a period of five years;

24 (iii) For a person who has previously been restricted under
25 (c)(ii) of this subsection, a period of ten years.

26 The restriction of a person who is convicted of a violation of
27 RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and who
28 committed the offense while a passenger under the age of sixteen was
29 in the vehicle shall be extended for an additional six-month period
30 as required by RCW 46.61.5055(6)(a).

31 (d) Subsection (1)(c)(ii) or (d)(ii) of this section shall be for
32 a period of no less than six months.

33 (e) Subsection (1)(e) of this section shall remain in effect for
34 the period of time specified by the court.

35 The period of restriction under (c) and (d) of this subsection
36 based on incidents occurring on or after June 9, 2016, must be tolled
37 for any period in which the person does not have an ignition
38 interlock device installed on a vehicle owned or operated by the
39 person unless the person submits a declaration to the department by a
40 licensed physician, licensed osteopathic physician, licensed

1 physician assistant, licensed osteopathic physician assistant, or
2 licensed advanced registered nurse practitioner indicating that the
3 person is unable to operate an ignition interlock device due to a
4 medical condition.

5 (4) **Requirements for removal.** A restriction imposed under
6 subsection (1)(c) or (d) of this section shall remain in effect until
7 the department receives a declaration from the person's ignition
8 interlock device vendor, in a form provided or approved by the
9 department, certifying that there have been none of the following
10 incidents in the (~~four~~) one hundred eighty consecutive (~~months~~)
11 days prior to the date of release:

12 (a) Any attempt to start the vehicle with a breath alcohol
13 concentration of 0.04 or more unless a subsequent test performed
14 within ten minutes registers a breath alcohol concentration lower
15 than 0.04 and the digital image confirms the same person provided
16 both samples;

17 (b) Failure to take any random test unless a review of the
18 digital image confirms that the vehicle was not occupied by the
19 driver at the time of the missed test;

20 (c) Failure to pass any random retest with a breath alcohol
21 concentration of 0.025 or lower unless a subsequent test performed
22 within ten minutes registers a breath alcohol concentration lower
23 than 0.025, and the digital image confirms the same person provided
24 both samples; or

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

28 (5) **Day-for-day credit.** (a) The time period during which a person
29 has an ignition interlock device installed in order to meet the
30 requirements of subsection (1)(b) of this section shall apply on a
31 day-for-day basis toward satisfying the period of time the ignition
32 interlock device restriction is imposed under subsection (1)(c) or
33 (d) of this section arising out of the same incident.

34 (b) The department must also give the person a day-for-day credit
35 for any time period, beginning from the date of the incident, during
36 which the person kept an ignition interlock device installed on all
37 vehicles the person operates, other than those subject to the
38 employer exemption under subsection (6) of this section.

39 (c) If the day-for-day credit granted under this subsection
40 equals or exceeds the period of time the ignition interlock device

1 restriction is imposed under subsection (1)(c) or (d) of this section
2 arising out of the same incident, and the person has already met the
3 requirements for removal of the device under subsection (4) of this
4 section, the department may waive the requirement that a device be
5 installed or that the person again meet the requirements for removal.

6 (6) **Employer exemption.** (a) Except as provided in (b) of this
7 subsection, the installation of an ignition interlock device is not
8 necessary on vehicles owned, leased, or rented by a person's employer
9 and on those vehicles whose care and/or maintenance is the temporary
10 responsibility of the employer, and driven at the direction of a
11 person's employer as a requirement of employment during working
12 hours. The person must provide the department with a declaration
13 pursuant to RCW 9A.72.085 from his or her employer stating that the
14 person's employment requires the person to operate a vehicle owned by
15 the employer or other persons during working hours.

16 (b) The employer exemption does not apply when the employer's
17 vehicle is assigned exclusively to the restricted driver and used
18 solely for commuting to and from employment.

19 (7) **Ignition interlock device revolving account.** In addition to
20 any other costs associated with the use of an ignition interlock
21 device imposed on the person restricted under this section, the
22 person shall pay an additional fee of twenty dollars per month.
23 Payments must be made directly to the ignition interlock company. The
24 company shall remit the additional twenty dollar fee to the
25 department to be deposited into the ignition interlock device
26 revolving account. The department may waive the monthly fee if the
27 person is indigent under RCW 10.101.010.

28 (8) **Foreign jurisdiction.** For a person restricted under this
29 section who is residing outside of the state of Washington, the
30 department may accept verification of installation of an ignition
31 interlock device by an ignition interlock company authorized to do
32 business in the jurisdiction in which the person resides, provided
33 the device meets any applicable requirements of that jurisdiction.
34 The department may waive the monthly fee required by subsection (7)
35 of this section if collection of the fee would be impractical in the
36 case of a person residing in another jurisdiction.

37 **Sec. 4.** RCW 46.61.5055 and 2016 sp.s. c 29 s 530 and 2016 c 203
38 s 17 are each reenacted and amended to read as follows:

1 (1) **No prior offenses in seven years.** Except as provided in RCW
2 46.61.502(6) or 46.61.504(6), a person who is convicted of a
3 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
4 within seven years shall be punished as follows:

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

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

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

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

1 (i) By imprisonment for not less than two days nor more than
2 three hundred sixty-four days. Forty-eight consecutive hours of the
3 imprisonment may not be suspended unless the court finds that the
4 imposition of this mandatory minimum sentence would impose a
5 substantial risk to the offender's physical or mental well-being.
6 Whenever the mandatory minimum sentence is suspended, the court shall
7 state in writing the reason for granting the suspension and the facts
8 upon which the suspension is based. In lieu of the mandatory minimum
9 term of imprisonment required under this subsection (1)(b)(i), the
10 court may order not less than thirty days of electronic home
11 monitoring or a one hundred twenty day period of 24/7 sobriety
12 program monitoring. The court may consider the offender's pretrial
13 24/7 sobriety program testing as fulfilling a portion of posttrial
14 sentencing. The offender shall pay the cost of electronic home
15 monitoring. The county or municipality in which the penalty is being
16 imposed shall determine the cost. The court may also require the
17 offender's electronic home monitoring device to include an alcohol
18 detection breathalyzer or other separate alcohol monitoring device,
19 and the court may restrict the amount of alcohol the offender may
20 consume during the time the offender is on electronic home
21 monitoring; and

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

25 (2) **One prior offense in seven years.** Except as provided in RCW
26 46.61.502(6) or 46.61.504(6), a person who is convicted of a
27 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
28 within seven years shall be punished as follows:

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

34 (i) By imprisonment for not less than thirty days nor more than
35 three hundred sixty-four days and sixty days of electronic home
36 monitoring. In lieu of the mandatory ~~((minimum))~~ term of ~~((sixty
37 days))~~ imprisonment and electronic home monitoring under this
38 subsection (2)(a)(i), the court may order ~~((at least an additional
39 four days in jail or, if available in that county or city, a six-
40 month))~~ one hundred twenty days of electronic home monitoring or a

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

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

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

28 (i) By imprisonment for not less than forty-five days nor more
29 than three hundred sixty-four days and ninety days of electronic home
30 monitoring. In lieu of the mandatory minimum term of (~~ninety days~~)
31 imprisonment and electronic home monitoring under this subsection
32 (2)(b)(i), the court may order (~~at least an additional six days in~~
33 ~~jail or, if available in that county or city,~~) six months of
34 electronic home monitoring or a six-month period of 24/7 sobriety
35 program monitoring pursuant to RCW 36.28A.300 through 36.28A.390(~~(, and)~~). The court may consider the offender's pretrial 24/7 sobriety
36 program monitoring as fulfilling a portion of posttrial sentencing.
37 The court shall order an expanded alcohol assessment and treatment,
38 if deemed appropriate by the assessment. The offender shall pay for
39 the cost of the electronic monitoring. The county or municipality
40

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

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

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

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

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

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

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

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

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

39 (ii) By a fine of not less than one thousand five hundred dollars
40 nor more than five thousand dollars. One thousand five hundred

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

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

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

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

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

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

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

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

16 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall
17 require any person convicted of a violation of RCW 46.61.502 or
18 46.61.504 or an equivalent local ordinance to comply with the rules
19 and requirements of the department regarding the installation and use
20 of a functioning ignition interlock device installed on all motor
21 vehicles operated by the person.

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

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

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

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

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

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

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

11 (b) In any case in which the person has no prior offenses within
12 seven years, and except as provided in RCW 46.61.502(6) or
13 46.61.504(6), order an additional twenty-four hours of imprisonment
14 and a fine of not less than one thousand dollars and not more than
15 five thousand dollars. One thousand dollars of the fine may not be
16 suspended unless the court finds the offender to be indigent;

17 (c) In any case in which the person has one prior offense within
18 seven years, and except as provided in RCW 46.61.502(6) or
19 46.61.504(6), order an additional five days of imprisonment and a
20 fine of not less than two thousand dollars and not more than five
21 thousand dollars. One thousand dollars of the fine may not be
22 suspended unless the court finds the offender to be indigent;

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

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

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

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

38 (c) Whether the driver was driving in the opposite direction of
39 the normal flow of traffic on a multiple lane highway, as defined by

1 RCW 46.04.350, with a posted speed limit of forty-five miles per hour
2 or greater; and

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

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

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

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

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

24 (ii) Where there has been one prior offense within seven years,
25 be revoked or denied by the department for two years or until the
26 person is evaluated by an alcoholism agency or probation department
27 pursuant to RCW 46.20.311 and the person completes or is enrolled in
28 a six-month period of 24/7 sobriety program monitoring. In no
29 circumstances shall the license suspension be for less than one year;
30 or

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

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

35 (i) Where there has been no prior offense within seven years, be
36 revoked or denied by the department for one year or until the person
37 is evaluated by an alcoholism agency or probation department pursuant
38 to RCW 46.20.311 and the person completes or is enrolled in a one
39 hundred twenty day period of 24/7 sobriety program monitoring. In no

1 circumstances shall the license revocation be for fewer than four
2 days;

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

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

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

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

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

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

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

21 Upon receipt of a notice from the court under RCW 36.28A.390 that
22 a participant has been removed from a 24/7 sobriety program, the
23 department must resume any suspension, revocation, or denial that had
24 been terminated early under this subsection due to participation in
25 the program, granting credit on a day-for-day basis for any portion
26 of a suspension, revocation, or denial already served under RCW
27 46.20.3101 or this section arising out of the same incident.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (i) A conviction for a violation of RCW 46.61.502 or an
2 equivalent local ordinance;
- 3 (ii) A conviction for a violation of RCW 46.61.504 or an
4 equivalent local ordinance;
- 5 (iii) A conviction for a violation of RCW 46.25.110 or an
6 equivalent local ordinance;
- 7 (iv) A conviction for a violation of RCW 79A.60.040(2) or an
8 equivalent local ordinance;
- 9 (v) A conviction for a violation of RCW 79A.60.040(1) or an
10 equivalent local ordinance committed in a reckless manner if the
11 conviction is the result of a charge that was originally filed as a
12 violation of RCW 79A.60.040(2) or an equivalent local ordinance;
- 13 (vi) A conviction for a violation of RCW 47.68.220 or an
14 equivalent local ordinance committed while under the influence of
15 intoxicating liquor or any drug;
- 16 (vii) A conviction for a violation of RCW 47.68.220 or an
17 equivalent local ordinance committed in a careless or reckless manner
18 if the conviction is the result of a charge that was originally filed
19 as a violation of RCW 47.68.220 or an equivalent local ordinance
20 while under the influence of intoxicating liquor or any drug;
- 21 (viii) A conviction for a violation of RCW 46.09.470(2) or an
22 equivalent local ordinance;
- 23 (ix) A conviction for a violation of RCW 46.10.490(2) or an
24 equivalent local ordinance;
- 25 (x) A conviction for a violation of RCW 46.61.520 committed while
26 under the influence of intoxicating liquor or any drug, or a
27 conviction for a violation of RCW 46.61.520 committed in a reckless
28 manner or with the disregard for the safety of others if the
29 conviction is the result of a charge that was originally filed as a
30 violation of RCW 46.61.520 committed while under the influence of
31 intoxicating liquor or any drug;
- 32 (xi) A conviction for a violation of RCW 46.61.522 committed
33 while under the influence of intoxicating liquor or any drug, or a
34 conviction for a violation of RCW 46.61.522 committed in a reckless
35 manner or with the disregard for the safety of others if the
36 conviction is the result of a charge that was originally filed as a
37 violation of RCW 46.61.522 committed while under the influence of
38 intoxicating liquor or any drug;
- 39 (xii) A conviction for a violation of RCW 46.61.5249, 46.61.500,
40 or 9A.36.050 or an equivalent local ordinance, if the conviction is

1 the result of a charge that was originally filed as a violation of
2 RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of
3 RCW 46.61.520 or 46.61.522;

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

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

10 (xv) A deferred prosecution under chapter 10.05 RCW granted in a
11 prosecution for a violation of RCW 46.61.5249, or an equivalent local
12 ordinance, if the charge under which the deferred prosecution was
13 granted was originally filed as a violation of RCW 46.61.502 or
14 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
15 46.61.522;

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

22 (xvii) A deferred sentence imposed in a prosecution for a
23 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
24 equivalent local ordinance, if the charge under which the deferred
25 sentence was imposed was originally filed as a violation of RCW
26 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
27 violation of RCW 46.61.520 or 46.61.522;

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

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

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

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

1 (15) All fines imposed by this section apply to adult offenders
2 only.

3 **Sec. 5.** RCW 46.61.506 and 2016 c 203 s 8 are each amended to
4 read as follows:

5 (1) Upon the trial of any civil or criminal action or proceeding
6 arising out of acts alleged to have been committed by any person
7 while driving or in actual physical control of a vehicle while under
8 the influence of intoxicating liquor or any drug, if the person's
9 alcohol concentration is less than 0.08 or the person's THC
10 concentration is less than 5.00, it is evidence that may be
11 considered with other competent evidence in determining whether the
12 person was under the influence of intoxicating liquor or any drug.

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

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

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

22 (3) Analysis of the person's blood or breath to be considered
23 valid under the provisions of this section or RCW 46.61.502 or
24 46.61.504 shall have been performed according to methods approved by
25 the state toxicologist and by an individual possessing a valid permit
26 issued by the state toxicologist for this purpose. The state
27 toxicologist is directed to approve satisfactory techniques or
28 methods, to supervise the examination of individuals to ascertain
29 their qualifications and competence to conduct such analyses, and to
30 issue permits which shall be subject to termination or revocation at
31 the discretion of the state toxicologist.

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

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

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

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

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

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

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

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

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

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

28 (c) Nothing in this section shall be deemed to prevent the
29 subject of the test from challenging the reliability or accuracy of
30 the test, the reliability or functioning of the instrument, or any
31 maintenance procedures. Such challenges, however, shall not preclude
32 the admissibility of the test once the prosecution or department has
33 made a prima facie showing of the requirements contained in (a) of
34 this subsection. Instead, such challenges may be considered by the
35 trier of fact in determining what weight to give to the test result.

36 (5) When a blood test is administered under the provisions of RCW
37 46.20.308, the withdrawal of blood for the purpose of determining its
38 alcoholic or drug content may be performed only by a physician
39 licensed under chapter 18.71 RCW; an osteopathic physician licensed
40 under chapter 18.57 RCW; a registered nurse, licensed practical

1 nurse, or advanced registered nurse practitioner licensed under
2 chapter 18.79 RCW; a physician assistant licensed under chapter
3 18.71A RCW; an osteopathic physician assistant licensed under chapter
4 18.57A RCW; (~~an advanced emergency medical technician or paramedic~~
5 ~~licensed under chapter 18.73 RCW~~) a physician's trained advanced
6 emergency medical technician and paramedic certified under chapter
7 18.71 RCW; until July 1, 2016, a health care assistant certified
8 under chapter 18.135 RCW; or a medical assistant-certified or medical
9 assistant-phlebotomist certified under chapter 18.360 RCW. Proof of
10 qualification to draw blood may be established through the department
11 of health's provider credential search. (~~This~~) When withdrawal of
12 blood for the purpose of determining its alcoholic or drug content is
13 performed outside Washington state, the withdrawal may be performed
14 by any health care provider lawfully authorized to perform a
15 withdrawal for that purpose in the state in which the withdrawal
16 takes place. These limitations shall not apply to the taking of
17 breath specimens.

18 (6) The person tested may have a licensed or certified health
19 care provider listed in subsection (5) of this section, or a
20 qualified technician, chemist, or other qualified person of his or
21 her own choosing administer one or more tests in addition to any
22 administered at the direction of a law enforcement officer. The test
23 will be admissible if the person establishes the general
24 acceptability of the testing technique or method. The failure or
25 inability to obtain an additional test by a person shall not preclude
26 the admission of evidence relating to the test or tests taken at the
27 direction of a law enforcement officer.

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

32 **Sec. 6.** RCW 46.61.517 and 2001 c 142 s 1 are each amended to
33 read as follows:

34 The refusal of a person to submit to a test of the alcohol or
35 drug concentration in the person's (~~blood or~~) breath under RCW
36 46.20.308 is admissible into evidence at a subsequent criminal trial.
37 The refusal of a person to submit to a test of the person's blood is
38 admissible into evidence at a subsequent criminal trial when a search

1 warrant, or an exception to the search warrant, authorized the
2 seizure.

3 **Sec. 7.** RCW 46.64.025 and 2016 c 203 s 4 are each amended to
4 read as follows:

5 Whenever any person served with a traffic citation or provided
6 notice of a traffic-related criminal complaint willfully fails to
7 appear at a requested hearing for a moving violation or fails to
8 comply with the terms of a notice of traffic citation for a moving
9 violation or a traffic-related criminal complaint, the court in which
10 the defendant failed to appear shall promptly give notice of such
11 fact to the department of licensing. Whenever thereafter the case in
12 which the defendant failed to appear is adjudicated, the court
13 hearing the case shall promptly file with the department a
14 certificate showing that the case has been adjudicated. For the
15 purposes of this section, "moving violation" is defined by rule
16 pursuant to RCW 46.20.2891.

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