
HOUSE BILL 1874

State of Washington

65th Legislature

2017 Regular Session

By Representatives Lovick, Klippert, Pellicciotti, Goodman, Kilduff, Ryu, Gregerson, Senn, Kagi, Haler, Stanford, Bergquist, and Farrell

Read first time 02/01/17. Referred to Committee on Public Safety.

1 AN ACT Relating to blood and breath alcohol concentration of
2 persons operating or in physical control of a vehicle, vessel, or
3 aircraft; amending RCW 46.61.502, 38.38.760, 46.20.308, 46.20.308,
4 46.20.3101, 46.25.090, 46.61.504, 46.61.506, and 79A.60.040;
5 reenacting and amending RCW 46.61.5055; prescribing penalties;
6 providing an effective date; and providing an expiration date.

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

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

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

13 (a) And the person has, within two hours after driving, an
14 alcohol concentration of (~~0.08~~) 0.05 or higher as shown by analysis
15 of the person's breath or blood made under RCW 46.61.506; or

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

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

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

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

7 (3)(a) It is an affirmative defense to a violation of subsection
8 (1)(a) of this section, which the defendant must prove by a
9 preponderance of the evidence, that the defendant consumed a
10 sufficient quantity of alcohol after the time of driving and before
11 the administration of an analysis of the person's breath or blood to
12 cause the defendant's alcohol concentration to be (~~(0.08)~~) 0.05 or
13 more within two hours after driving. The court shall not admit
14 evidence of this defense unless the defendant notifies the
15 prosecution prior to the omnibus or pretrial hearing in the case of
16 the defendant's intent to assert the affirmative defense.

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

27 (4)(a) Analyses of blood or breath samples obtained more than two
28 hours after the alleged driving may be used as evidence that within
29 two hours of the alleged driving, a person had an alcohol
30 concentration of (~~(0.08)~~) 0.05 or more in violation of subsection
31 (1)(a) of this section, and in any case in which the analysis shows
32 an alcohol concentration above 0.00 may be used as evidence that a
33 person was under the influence of or affected by intoxicating liquor
34 or any drug in violation of subsection (1)(c) or (d) of this section.

35 (b) Analyses of blood samples obtained more than two hours after
36 the alleged driving may be used as evidence that within two hours of
37 the alleged driving, a person had a THC concentration of 5.00 or more
38 in 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 B 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 or more prior offenses within ten years
8 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 46.61.504(6).

17 **Sec. 2.** RCW 38.38.760 and 2009 c 378 s 24 are each amended to
18 read as follows:

19 (1) Any person subject to this code who:

20 (a) Operates or physically controls any vehicle, aircraft, or
21 vessel in a reckless or wanton manner or while impaired by a
22 substance described in RCW 38.38.762; or

23 (b) Operates or is in actual physical control of any vehicle,
24 aircraft, or vessel while drunk or when the alcohol concentration in
25 the person's blood or breath is equal to or exceeds the applicable
26 limit under subsection (2) of this section; or

27 (c) Operates or is in actual physical control of any vehicle,
28 aircraft, or vessel in a reckless or wanton manner
29 shall be punished as a court-martial may direct.

30 (2) For purposes of subsection (1) of this section, the blood
31 alcohol content limit with respect to alcohol concentration in a
32 person's blood is (~~(0.08)~~) 0.05 grams of alcohol per one hundred
33 milliliters of blood and with respect to alcohol concentration in a
34 person's breath is (~~(0.08)~~) 0.05 grams of alcohol per two hundred ten
35 liters of breath, as shown by chemical analysis.

36 (3) For purposes of this section, "blood alcohol content limit"
37 means the amount of alcohol concentration in a person's blood or
38 breath at which operation or control of a vehicle, aircraft, or
39 vessel is prohibited.

1 **Sec. 3.** RCW 46.20.308 and 2015 2nd sp.s. c 3 s 5 are each
2 amended to read as follows:

3 (1) Any person who operates a motor vehicle within this state is
4 deemed to have given consent, subject to the provisions of RCW
5 46.61.506, to a test or tests of his or her breath for the purpose of
6 determining the alcohol concentration in his or her breath if
7 arrested for any offense where, at the time of the arrest, the
8 arresting officer has reasonable grounds to believe the person had
9 been driving or was in actual physical control of a motor vehicle
10 while under the influence of intoxicating liquor or any drug or was
11 in violation of RCW 46.61.503.

12 (2) The test or tests of breath shall be administered at the
13 direction of a law enforcement officer having reasonable grounds to
14 believe the person to have been driving or in actual physical control
15 of a motor vehicle within this state while under the influence of
16 intoxicating liquor or any drug or the person to have been driving or
17 in actual physical control of a motor vehicle while having alcohol in
18 a concentration in violation of RCW 46.61.503 in his or her system
19 and being under the age of twenty-one. Prior to administering a
20 breath test pursuant to this section, the officer shall inform the
21 person of his or her right under this section to refuse the breath
22 test, and of his or her right to have additional tests administered
23 by any qualified person of his or her choosing as provided in RCW
24 46.61.506. The officer shall warn the driver, in substantially the
25 following language, that:

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

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

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

34 (i) The driver is age twenty-one or over and the test indicates
35 either that the alcohol concentration of the driver's breath is
36 ~~((0.08))~~ 0.05 or more; or

37 (ii) The driver is under age twenty-one and the test indicates
38 either that the alcohol concentration of the driver's breath is 0.02
39 or more; or

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

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

6 (3) If, following his or her arrest and receipt of warnings under
7 subsection (2) of this section, the person arrested exercises the
8 right, granted herein, by refusing upon the request of a law
9 enforcement officer to submit to a test or tests of his or her
10 breath, no test shall be given except as otherwise authorized by law.

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

21 (5) If, after arrest and after any other applicable conditions
22 and requirements of this section have been satisfied, a test or tests
23 of the person's blood or breath is administered and the test results
24 indicate that the alcohol concentration of the person's breath or
25 blood is (~~0.08~~) 0.05 or more, or the THC concentration of the
26 person's blood is 5.00 or more, if the person is age twenty-one or
27 over, or that the alcohol concentration of the person's breath or
28 blood is 0.02 or more, or the THC concentration of the person's blood
29 is above 0.00, if the person is under the age of twenty-one, or the
30 person refuses to submit to a test, the arresting officer or other
31 law enforcement officer at whose direction any test has been given,
32 or the department, where applicable, if the arrest results in a test
33 of the person's blood, shall:

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

38 (b) Serve notice in writing on the person on behalf of the
39 department of his or her right to a hearing, specifying the steps he

1 or she must take to obtain a hearing as provided by subsection (7) of
2 this section;

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

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

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

23 (ii) That after receipt of any applicable warnings required by
24 subsection (2) of this section the person refused to submit to a test
25 of his or her breath, or a test was administered and the results
26 indicated that the alcohol concentration of the person's breath or
27 blood was (~~0.08~~) 0.05 or more, or the THC concentration of the
28 person's blood was 5.00 or more, if the person is age twenty-one or
29 over, or that the alcohol concentration of the person's breath or
30 blood was 0.02 or more, or the THC concentration of the person's
31 blood was above 0.00, if the person is under the age of twenty-one;
32 and

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

35 (6) The department of licensing, upon the receipt of a sworn
36 report or report under a declaration authorized by RCW 9A.72.085
37 under subsection (5)(d) of this section, shall suspend, revoke, or
38 deny the person's license, permit, or privilege to drive or any
39 nonresident operating privilege, as provided in RCW 46.20.3101, such
40 suspension, revocation, or denial to be effective beginning sixty

1 days from the date of arrest or from the date notice has been given
2 in the event notice is given by the department following a blood
3 test, or when sustained at a hearing pursuant to subsection (7) of
4 this section, whichever occurs first.

5 (7) A person receiving notification under subsection (5)(b) of
6 this section may, within twenty days after the notice has been given,
7 request in writing a formal hearing before the department. The person
8 shall pay a fee of three hundred seventy-five dollars as part of the
9 request. If the request is mailed, it must be postmarked within
10 twenty days after receipt of the notification. Upon timely receipt of
11 such a request for a formal hearing, including receipt of the
12 required three hundred seventy-five dollar fee, the department shall
13 afford the person an opportunity for a hearing. The department may
14 waive the required three hundred seventy-five dollar fee if the
15 person is an indigent as defined in RCW 10.101.010. Except as
16 otherwise provided in this section, the hearing is subject to and
17 shall be scheduled and conducted in accordance with RCW 46.20.329 and
18 46.20.332. The hearing shall be conducted in the county of the
19 arrest, except that all or part of the hearing may, at the discretion
20 of the department, be conducted by telephone or other electronic
21 means. The hearing shall be held within sixty days following the
22 arrest or following the date notice has been given in the event
23 notice is given by the department following a blood test, unless
24 otherwise agreed to by the department and the person, in which case
25 the action by the department shall be stayed, and any valid temporary
26 license under subsection (5) of this section extended, if the person
27 is otherwise eligible for licensing. For the purposes of this
28 section, the scope of the hearing shall cover the issues of whether a
29 law enforcement officer had reasonable grounds to believe the person
30 had been driving or was in actual physical control of a motor vehicle
31 within this state while under the influence of intoxicating liquor or
32 any drug or had been driving or was in actual physical control of a
33 motor vehicle within this state while having alcohol in his or her
34 system in a concentration of 0.02 or more, or THC in his or her
35 system in a concentration above 0.00, if the person was under the age
36 of twenty-one, whether the person was placed under arrest, and (a)
37 whether the person refused to submit to the test or tests upon
38 request of the officer after having been informed that such refusal
39 would result in the revocation of the person's license, permit, or
40 privilege to drive, or (b) if a test or tests were administered,

1 whether the applicable requirements of this section were satisfied
2 before the administration of the test or tests, whether the person
3 submitted to the test or tests, or whether a test was administered
4 pursuant to a search warrant, a valid waiver of the warrant
5 requirement, when exigent circumstances exist, or under any other
6 authority of law as permitted under this section, and whether the
7 test or tests indicated that the alcohol concentration of the
8 person's breath or blood was (~~0.08~~) 0.05 or more, or the THC
9 concentration of the person's blood was 5.00 or more, if the person
10 was age twenty-one or over at the time of the arrest, or that the
11 alcohol concentration of the person's breath or blood was 0.02 or
12 more, or the THC concentration of the person's blood was above 0.00,
13 if the person was under the age of twenty-one at the time of the
14 arrest. Where a person is found to be in actual physical control of a
15 motor vehicle while under the influence of intoxicating liquor or any
16 drug or was under the age of twenty-one at the time of the arrest and
17 was in physical control of a motor vehicle while having alcohol in
18 his or her system in a concentration of 0.02 or THC concentration
19 above 0.00, the person may petition the hearing officer to apply the
20 affirmative defense found in RCW 46.61.504(3) and 46.61.503(2). The
21 driver has the burden to prove the affirmative defense by a
22 preponderance of the evidence. The sworn report or report under a
23 declaration authorized by RCW 9A.72.085 submitted by a law
24 enforcement officer is prima facie evidence that the officer had
25 reasonable grounds to believe the person had been driving or was in
26 actual physical control of a motor vehicle within this state while
27 under the influence of intoxicating liquor or drugs, or both, or the
28 person had been driving or was in actual physical control of a motor
29 vehicle within this state while having alcohol in his or her system
30 in a concentration of 0.02 or more, or THC in his or her system in a
31 concentration above 0.00, and was under the age of twenty-one and
32 that the officer complied with the requirements of this section.

33 A hearing officer shall conduct the hearing, may issue subpoenas
34 for the attendance of witnesses and the production of documents, and
35 shall administer oaths to witnesses. The hearing officer shall not
36 issue a subpoena for the attendance of a witness at the request of
37 the person unless the request is accompanied by the fee required by
38 RCW 5.56.010 for a witness in district court. The sworn report or
39 report under a declaration authorized by RCW 9A.72.085 of the law
40 enforcement officer and any other evidence accompanying the report

1 shall be admissible without further evidentiary foundation and the
2 certifications authorized by the criminal rules for courts of limited
3 jurisdiction shall be admissible without further evidentiary
4 foundation. The person may be represented by counsel, may question
5 witnesses, may present evidence, and may testify. The department
6 shall order that the suspension, revocation, or denial either be
7 rescinded or sustained.

8 (8) If the suspension, revocation, or denial is sustained after
9 such a hearing, the person whose license, privilege, or permit is
10 suspended, revoked, or denied has the right to file a petition in the
11 superior court of the county of arrest to review the final order of
12 revocation by the department in the same manner as an appeal from a
13 decision of a court of limited jurisdiction. Notice of appeal must be
14 filed within thirty days after the date the final order is served or
15 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
16 1.1, or other statutes or rules referencing de novo review, the
17 appeal shall be limited to a review of the record of the
18 administrative hearing. The appellant must pay the costs associated
19 with obtaining the record of the hearing before the hearing officer.
20 The filing of the appeal does not stay the effective date of the
21 suspension, revocation, or denial. A petition filed under this
22 subsection must include the petitioner's grounds for requesting
23 review. Upon granting petitioner's request for review, the court
24 shall review the department's final order of suspension, revocation,
25 or denial as expeditiously as possible. The review must be limited to
26 a determination of whether the department has committed any errors of
27 law. The superior court shall accept those factual determinations
28 supported by substantial evidence in the record: (a) That were
29 expressly made by the department; or (b) that may reasonably be
30 inferred from the final order of the department. The superior court
31 may reverse, affirm, or modify the decision of the department or
32 remand the case back to the department for further proceedings. The
33 decision of the superior court must be in writing and filed in the
34 clerk's office with the other papers in the case. The court shall
35 state the reasons for the decision. If judicial relief is sought for
36 a stay or other temporary remedy from the department's action, the
37 court shall not grant such relief unless the court finds that the
38 appellant is likely to prevail in the appeal and that without a stay
39 the appellant will suffer irreparable injury. If the court stays the

1 suspension, revocation, or denial it may impose conditions on such
2 stay.

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

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

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

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

7 **Sec. 4.** RCW 46.20.308 and 2016 c 203 s 15 are each amended to
8 read as follows:

9 (1) Any person who operates a motor vehicle within this state is
10 deemed to have given consent, subject to the provisions of RCW
11 46.61.506, to a test or tests of his or her breath for the purpose of
12 determining the alcohol concentration in his or her breath if
13 arrested for any offense where, at the time of the arrest, the
14 arresting officer has reasonable grounds to believe the person had
15 been driving or was in actual physical control of a motor vehicle
16 while under the influence of intoxicating liquor or any drug or was
17 in violation of RCW 46.61.503.

18 (2) The test or tests of breath shall be administered at the
19 direction of a law enforcement officer having reasonable grounds to
20 believe the person to have been driving or in actual physical control
21 of a motor vehicle within this state while under the influence of
22 intoxicating liquor or any drug or the person to have been driving or
23 in actual physical control of a motor vehicle while having alcohol in
24 a concentration in violation of RCW 46.61.503 in his or her system
25 and being under the age of twenty-one. Prior to administering a
26 breath test pursuant to this section, the officer shall inform the
27 person of his or her right under this section to refuse the breath
28 test, and of his or her right to have additional tests administered
29 by any qualified person of his or her choosing as provided in RCW
30 46.61.506. The officer shall warn the driver, in substantially the
31 following language, that:

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

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

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

1 (i) The driver is age twenty-one or over and the test indicates
2 either that the alcohol concentration of the driver's breath is
3 ((~~0.08~~)) 0.05 or more; or

4 (ii) The driver is under age twenty-one and the test indicates
5 either that the alcohol concentration of the driver's breath is 0.02
6 or more; or

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

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

12 (3) If, following his or her arrest and receipt of warnings under
13 subsection (2) of this section, the person arrested exercises the
14 right, granted herein, by refusing upon the request of a law
15 enforcement officer to submit to a test or tests of his or her
16 breath, no test shall be given except as otherwise authorized by law.

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

27 (5) If, after arrest and after any other applicable conditions
28 and requirements of this section have been satisfied, a test or tests
29 of the person's blood or breath is administered and the test results
30 indicate that the alcohol concentration of the person's breath or
31 blood is ((~~0.08~~)) 0.05 or more, or the THC concentration of the
32 person's blood is 5.00 or more, if the person is age twenty-one or
33 over, or that the alcohol concentration of the person's breath or
34 blood is 0.02 or more, or the THC concentration of the person's blood
35 is above 0.00, if the person is under the age of twenty-one, or the
36 person refuses to submit to a test, the arresting officer or other
37 law enforcement officer at whose direction any test has been given,
38 or the department, where applicable, if the arrest results in a test
39 of the person's blood, shall:

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

5 (b) Serve notice in writing on the person on behalf of the
6 department of his or her right to a hearing, specifying the steps he
7 or she must take to obtain a hearing as provided by subsection (7) of
8 this section;

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

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

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

29 (ii) That after receipt of any applicable warnings required by
30 subsection (2) of this section the person refused to submit to a test
31 of his or her breath, or a test was administered and the results
32 indicated that the alcohol concentration of the person's breath or
33 blood was (~~0.08~~) 0.05 or more, or the THC concentration of the
34 person's blood was 5.00 or more, if the person is age twenty-one or
35 over, or that the alcohol concentration of the person's breath or
36 blood was 0.02 or more, or the THC concentration of the person's
37 blood was above 0.00, if the person is under the age of twenty-one;
38 and

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

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

11 (7) A person receiving notification under subsection (5)(b) of
12 this section may, within seven days after the notice has been given,
13 request in writing a formal hearing before the department. The person
14 shall pay a fee of three hundred seventy-five dollars as part of the
15 request. If the request is mailed, it must be postmarked within seven
16 days after receipt of the notification. Upon timely receipt of such a
17 request for a formal hearing, including receipt of the required three
18 hundred seventy-five dollar fee, the department shall afford the
19 person an opportunity for a hearing. The department may waive the
20 required three hundred seventy-five dollar fee if the person is an
21 indigent as defined in RCW 10.101.010. Except as otherwise provided
22 in this section, the hearing is subject to and shall be scheduled and
23 conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing
24 shall be conducted in the county of the arrest, except that all or
25 part of the hearing may, at the discretion of the department, be
26 conducted by telephone or other electronic means. The hearing shall
27 be held within thirty days, excluding Saturdays, Sundays, and legal
28 holidays, following the date of timely receipt of such request for a
29 formal hearing before the department or thirty days, excluding
30 Saturdays, Sundays, and legal holidays following the date notice has
31 been given in the event notice is given by the department following a
32 blood test, unless otherwise agreed to by the department and the
33 person, in which case the action by the department shall be stayed,
34 and any valid temporary license under subsection (5) of this section
35 extended, if the person is otherwise eligible for licensing. Unless
36 otherwise agreed to by the department and the person, the department
37 must give five days notice of the hearing to the person. For the
38 purposes of this section, the scope of the hearing shall cover the
39 issues of whether a law enforcement officer had reasonable grounds to
40 believe the person had been driving or was in actual physical control

1 of a motor vehicle within this state while under the influence of
2 intoxicating liquor or any drug or had been driving or was in actual
3 physical control of a motor vehicle within this state while having
4 alcohol in his or her system in a concentration of 0.02 or more, or
5 THC in his or her system in a concentration above 0.00, if the person
6 was under the age of twenty-one, whether the person was placed under
7 arrest, and (a) whether the person refused to submit to the test or
8 tests upon request of the officer after having been informed that
9 such refusal would result in the revocation of the person's license,
10 permit, or privilege to drive, or (b) if a test or tests were
11 administered, whether the applicable requirements of this section
12 were satisfied before the administration of the test or tests,
13 whether the person submitted to the test or tests, or whether a test
14 was administered pursuant to a search warrant, a valid waiver of the
15 warrant requirement, when exigent circumstances exist, or under any
16 other authority of law as permitted under this section, and whether
17 the test or tests indicated that the alcohol concentration of the
18 person's breath or blood was (~~0.08~~) 0.05 or more, or the THC
19 concentration of the person's blood was 5.00 or more, if the person
20 was age twenty-one or over at the time of the arrest, or that the
21 alcohol concentration of the person's breath or blood was 0.02 or
22 more, or the THC concentration of the person's blood was above 0.00,
23 if the person was under the age of twenty-one at the time of the
24 arrest. Where a person is found to be in actual physical control of a
25 motor vehicle while under the influence of intoxicating liquor or any
26 drug or was under the age of twenty-one at the time of the arrest and
27 was in physical control of a motor vehicle while having alcohol in
28 his or her system in a concentration of 0.02 or THC concentration
29 above 0.00, the person may petition the hearing officer to apply the
30 affirmative defense found in RCW 46.61.504(3) and 46.61.503(2). The
31 driver has the burden to prove the affirmative defense by a
32 preponderance of the evidence. The sworn report or report under a
33 declaration authorized by RCW 9A.72.085 submitted by a law
34 enforcement officer is prima facie evidence that the officer had
35 reasonable grounds to believe the person had been driving or was in
36 actual physical control of a motor vehicle within this state while
37 under the influence of intoxicating liquor or drugs, or both, or the
38 person had been driving or was in actual physical control of a motor
39 vehicle within this state while having alcohol in his or her system
40 in a concentration of 0.02 or more, or THC in his or her system in a

1 concentration above 0.00, and was under the age of twenty-one and
2 that the officer complied with the requirements of this section.

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

18 (8) If the suspension, revocation, or denial is sustained after
19 such a hearing, the person whose license, privilege, or permit is
20 suspended, revoked, or denied has the right to file a petition in the
21 superior court of the county of arrest to review the final order of
22 revocation by the department in the same manner as an appeal from a
23 decision of a court of limited jurisdiction. Notice of appeal must be
24 filed within thirty days after the date the final order is served or
25 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
26 1.1, or other statutes or rules referencing de novo review, the
27 appeal shall be limited to a review of the record of the
28 administrative hearing. The appellant must pay the costs associated
29 with obtaining the record of the hearing before the hearing officer.
30 The filing of the appeal does not stay the effective date of the
31 suspension, revocation, or denial. A petition filed under this
32 subsection must include the petitioner's grounds for requesting
33 review. Upon granting petitioner's request for review, the court
34 shall review the department's final order of suspension, revocation,
35 or denial as expeditiously as possible. The review must be limited to
36 a determination of whether the department has committed any errors of
37 law. The superior court shall accept those factual determinations
38 supported by substantial evidence in the record: (a) That were
39 expressly made by the department; or (b) that may reasonably be
40 inferred from the final order of the department. The superior court

1 may reverse, affirm, or modify the decision of the department or
2 remand the case back to the department for further proceedings. The
3 decision of the superior court must be in writing and filed in the
4 clerk's office with the other papers in the case. The court shall
5 state the reasons for the decision. If judicial relief is sought for
6 a stay or other temporary remedy from the department's action, the
7 court shall not grant such relief unless the court finds that the
8 appellant is likely to prevail in the appeal and that without a stay
9 the appellant will suffer irreparable injury. If the court stays the
10 suspension, revocation, or denial it may impose conditions on such
11 stay.

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

36 (b) A suspension, revocation, or denial imposed under this
37 section, other than as a result of a breath test refusal, shall be
38 stayed if the person is accepted for deferred prosecution as provided
39 in chapter 10.05 RCW for the incident upon which the suspension,
40 revocation, or denial is based. If the deferred prosecution is

1 terminated, the stay shall be lifted and the suspension, revocation,
2 or denial reinstated. If the deferred prosecution is completed, the
3 stay shall be lifted and the suspension, revocation, or denial
4 canceled.

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

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

16 **Sec. 5.** RCW 46.20.3101 and 2016 c 203 s 18 are each amended to
17 read as follows:

18 Pursuant to RCW 46.20.308, the department shall suspend, revoke,
19 or deny the arrested person's license, permit, or privilege to drive
20 as follows:

21 (1) In the case of a person who has refused a test or tests:

22 (a) For a first refusal within seven years, where there has not
23 been a previous incident within seven years that resulted in
24 administrative action under this section, revocation or denial for
25 one year;

26 (b) For a second or subsequent refusal within seven years, or for
27 a first refusal where there has been one or more previous incidents
28 within seven years that have resulted in administrative action under
29 this section, revocation or denial for two years or until the person
30 reaches age twenty-one, whichever is longer.

31 (2) In the case of an incident where a person has submitted to or
32 been administered a test or tests indicating that the alcohol
33 concentration of the person's breath or blood was (~~(0.08)~~) 0.05 or
34 more, or that the THC concentration of the person's blood was 5.00 or
35 more:

36 (a) For a first incident within seven years, where there has not
37 been a previous incident within seven years that resulted in
38 administrative action under this section, suspension for ninety days,

1 unless the person successfully completes or is enrolled in a pretrial
2 24/7 sobriety program;

3 (b) For a second or subsequent incident within seven years,
4 revocation or denial for two years.

5 (3) In the case of an incident where a person under age twenty-
6 one has submitted to or been administered a test or tests indicating
7 that the alcohol concentration of the person's breath or blood was
8 0.02 or more, or that the THC concentration of the person's blood was
9 above 0.00:

10 (a) For a first incident within seven years, suspension or denial
11 for ninety days;

12 (b) For a second or subsequent incident within seven years,
13 revocation or denial for one year or until the person reaches age
14 twenty-one, whichever is longer.

15 (4) The department shall grant credit on a day-for-day basis for
16 any portion of a suspension, revocation, or denial already served
17 under this section for a suspension, revocation, or denial imposed
18 under RCW 46.61.5055 arising out of the same incident.

19 **Sec. 6.** RCW 46.25.090 and 2013 2nd sp.s. c 35 s 10 are each
20 amended to read as follows:

21 (1) A person is disqualified from driving a commercial motor
22 vehicle for a period of not less than one year if a report has been
23 received by the department pursuant to RCW 46.20.308 or 46.25.120, or
24 if the person has been convicted of a first violation, within this or
25 any other jurisdiction, of:

26 (a) Driving a motor vehicle under the influence of alcohol or any
27 drug;

28 (b) Driving a commercial motor vehicle while the alcohol
29 concentration in the person's system is 0.04 or more or any
30 measurable amount of THC concentration, or driving a noncommercial
31 motor vehicle while the alcohol concentration in the person's system
32 is (~~0.08~~) 0.05 or more, or is 0.02 or more if the person is under
33 age twenty-one, or with a THC concentration of 5.00 nanograms per
34 milliliter of whole blood or more, or a THC concentration above 0.00
35 if the person is under the age of twenty-one, as determined by any
36 testing methods approved by law in this state or any other state or
37 jurisdiction;

38 (c) Leaving the scene of an accident involving a motor vehicle
39 driven by the person;

- 1 (d) Using a motor vehicle in the commission of a felony;
- 2 (e) Refusing to submit to a test or tests to determine the
3 driver's alcohol concentration or the presence of any drug while
4 driving a motor vehicle;
- 5 (f) Driving a commercial motor vehicle when, as a result of prior
6 violations committed while operating a commercial motor vehicle, the
7 driver's commercial driver's license is revoked, suspended, or
8 canceled, or the driver is disqualified from operating a commercial
9 motor vehicle;
- 10 (g) Causing a fatality through the negligent operation of a
11 commercial motor vehicle, including but not limited to the crimes of
12 vehicular homicide and negligent homicide.

13 If any of the violations set forth in this subsection occurred
14 while transporting hazardous material, the person is disqualified for
15 a period of not less than three years.

16 (2) A person is disqualified for life if it has been determined
17 that the person has committed or has been convicted of two or more
18 violations of any of the offenses specified in subsection (1) of this
19 section, or any combination of those offenses, arising from two or
20 more separate incidents.

21 (3) The department may adopt rules, in accordance with federal
22 regulations, establishing guidelines, including conditions, under
23 which a disqualification for life under subsection (2) of this
24 section may be reduced to a period of not less than ten years.

25 (4) A person is disqualified from driving a commercial motor
26 vehicle for life who uses a motor vehicle in the commission of a
27 felony involving the manufacture, distribution, or dispensing of a
28 controlled substance, as defined by chapter 69.50 RCW, or possession
29 with intent to manufacture, distribute, or dispense a controlled
30 substance, as defined by chapter 69.50 RCW.

31 (5)(a) A person is disqualified from driving a commercial motor
32 vehicle for a period of:

33 (i) Not less than sixty days if:

34 (A) Convicted of or found to have committed a second serious
35 traffic violation while driving a commercial motor vehicle; or

36 (B) Convicted of reckless driving, where there has been a prior
37 serious traffic violation; or

38 (ii) Not less than one hundred twenty days if:

1 (A) Convicted of or found to have committed a third or subsequent
2 serious traffic violation while driving a commercial motor vehicle;
3 or

4 (B) Convicted of reckless driving, where there has been two or
5 more prior serious traffic violations.

6 (b) The disqualification period under (a)(ii) of this subsection
7 must be in addition to any other previous period of disqualification.

8 (c) For purposes of determining prior serious traffic violations
9 under this subsection, each conviction of or finding that a driver
10 has committed a serious traffic violation while driving a commercial
11 motor vehicle or noncommercial motor vehicle, arising from a separate
12 incident occurring within a three-year period, must be counted.

13 (6) A person is disqualified from driving a commercial motor
14 vehicle for a period of:

15 (a) Not less than one hundred eighty days nor more than one year
16 if convicted of or found to have committed a first violation of an
17 out-of-service order while driving a commercial vehicle;

18 (b) Not less than two years nor more than five years if, during a
19 ten-year period, the person is convicted of or is found to have
20 committed two violations of out-of-service orders while driving a
21 commercial motor vehicle in separate incidents;

22 (c) Not less than three years nor more than five years if, during
23 a ten-year period, the person is convicted of or is found to have
24 committed three or more violations of out-of-service orders while
25 driving commercial motor vehicles in separate incidents;

26 (d) Not less than one hundred eighty days nor more than two years
27 if the person is convicted of or is found to have committed a first
28 violation of an out-of-service order while transporting hazardous
29 materials, or while operating motor vehicles designed to transport
30 sixteen or more passengers, including the driver. A person is
31 disqualified for a period of not less than three years nor more than
32 five years if, during a ten-year period, the person is convicted of
33 or is found to have committed subsequent violations of out-of-service
34 orders, in separate incidents, while transporting hazardous
35 materials, or while operating motor vehicles designed to transport
36 sixteen or more passengers, including the driver.

37 (7) A person is disqualified from driving a commercial motor
38 vehicle if a report has been received by the department under RCW
39 46.25.125 that the person has received a verified positive drug test
40 or positive alcohol confirmation test as part of the testing program

1 conducted under 49 C.F.R. 40. A disqualification under this
2 subsection remains in effect until the person undergoes a drug and
3 alcohol assessment by a substance abuse professional meeting the
4 requirements of 49 C.F.R. 40, and the person presents evidence of
5 satisfactory participation in or successful completion of a drug or
6 alcohol treatment and/or education program as recommended by the
7 substance abuse professional, and until the person has met the
8 requirements of RCW 46.25.100. The substance abuse professional shall
9 forward a diagnostic evaluation and treatment recommendation to the
10 department of licensing for use in determining the person's
11 eligibility for driving a commercial motor vehicle. Persons who are
12 disqualified under this subsection more than twice in a five-year
13 period are disqualified for life.

14 (8)(a) A person is disqualified from driving a commercial motor
15 vehicle for the period of time specified in (b) of this subsection if
16 he or she is convicted of or is found to have committed one of the
17 following six offenses at a railroad-highway grade crossing while
18 operating a commercial motor vehicle in violation of a federal,
19 state, or local law or regulation:

20 (i) For drivers who are not required to always stop, failing to
21 slow down and check that the tracks are clear of an approaching
22 train;

23 (ii) For drivers who are not required to always stop, failing to
24 stop before reaching the crossing, if the tracks are not clear;

25 (iii) For drivers who are always required to stop, failing to
26 stop before driving onto the crossing;

27 (iv) For all drivers, failing to have sufficient space to drive
28 completely through the crossing without stopping;

29 (v) For all drivers, failing to obey a traffic control device or
30 the directions of an enforcement officer at the crossing;

31 (vi) For all drivers, failing to negotiate a crossing because of
32 insufficient undercarriage clearance.

33 (b) A person is disqualified from driving a commercial motor
34 vehicle for a period of:

35 (i) Not less than sixty days if the driver is convicted of or is
36 found to have committed a first violation of a railroad-highway grade
37 crossing violation;

38 (ii) Not less than one hundred twenty days if the driver is
39 convicted of or is found to have committed a second railroad-highway

1 grade crossing violation in separate incidents within a three-year
2 period;

3 (iii) Not less than one year if the driver is convicted of or is
4 found to have committed a third or subsequent railroad-highway grade
5 crossing violation in separate incidents within a three-year period.

6 (9) A person is disqualified from driving a commercial motor
7 vehicle for not more than one year if a report has been received by
8 the department from the federal motor carrier safety administration
9 that the person's driving has been determined to constitute an
10 imminent hazard as defined by 49 C.F.R. 383.5. A person who is
11 simultaneously disqualified from driving a commercial motor vehicle
12 under this subsection and under other provisions of this chapter, or
13 under 49 C.F.R. 383.52, shall serve those disqualification periods
14 concurrently.

15 (10) Within ten days after suspending, revoking, or canceling a
16 commercial driver's license or disqualifying a driver from operating
17 a commercial motor vehicle, the department shall update its records
18 to reflect that action.

19 **Sec. 7.** RCW 46.61.504 and 2015 2nd sp.s. c 3 s 24 are each
20 amended to read as follows:

21 (1) A person is guilty of being in actual physical control of a
22 motor vehicle while under the influence of intoxicating liquor or any
23 drug if the person has actual physical control of a vehicle within
24 this state:

25 (a) And the person has, within two hours after being in actual
26 physical control of the vehicle, an alcohol concentration of (~~0.08~~)
27 0.05 or higher as shown by analysis of the person's breath or blood
28 made under RCW 46.61.506; or

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

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

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

37 (2) The fact that a person charged with a violation of this
38 section is or has been entitled to use a drug under the laws of this
39 state does not constitute a defense against any charge of violating

1 this section. No person may be convicted under this section and it is
2 an affirmative defense to any action pursuant to RCW 46.20.308 to
3 suspend, revoke, or deny the privilege to drive if, prior to being
4 pursued by a law enforcement officer, the person has moved the
5 vehicle safely off the roadway.

6 (3)(a) It is an affirmative defense to a violation of subsection
7 (1)(a) of this section which the defendant must prove by a
8 preponderance of the evidence that the defendant consumed a
9 sufficient quantity of alcohol after the time of being in actual
10 physical control of the vehicle and before the administration of an
11 analysis of the person's breath or blood to cause the defendant's
12 alcohol concentration to be (~~(0.08)~~) 0.05 or more within two hours
13 after being in such control. The court shall not admit evidence of
14 this defense unless the defendant notifies the prosecution prior to
15 the omnibus or pretrial hearing in the case of the defendant's intent
16 to assert the affirmative defense.

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

28 (4)(a) Analyses of blood or breath samples obtained more than two
29 hours after the alleged being in actual physical control of a vehicle
30 may be used as evidence that within two hours of the alleged being in
31 such control, a person had an alcohol concentration of (~~(0.08)~~) 0.05
32 or more in violation of subsection (1)(a) of this section, and in any
33 case in which the analysis shows an alcohol concentration above 0.00
34 may be used as evidence that a person was under the influence of or
35 affected by intoxicating liquor or any drug in violation of
36 subsection (1)(c) or (d) of this section.

37 (b) Analyses of blood samples obtained more than two hours after
38 the alleged being in actual physical control of a vehicle may be used
39 as evidence that within two hours of the alleged being in control of
40 the vehicle, a person had a THC concentration of 5.00 or more in

1 violation of subsection (1)(b) of this section, and in any case in
2 which the analysis shows a THC concentration above 0.00 may be used
3 as evidence that a person was under the influence of or affected by
4 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

19 **Sec. 8.** RCW 46.61.5055 and 2016 sp.s. c 29 s 530 and 2016 c 203
20 s 17 are each reenacted and amended to read as follows:

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

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

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

1 monitoring or a ninety-day period of 24/7 sobriety program
2 monitoring. The court may consider the offender's pretrial 24/7
3 sobriety program monitoring as fulfilling a portion of posttrial
4 sentencing. The offender shall pay the cost of electronic home
5 monitoring. The county or municipality in which the penalty is being
6 imposed shall determine the cost. The court may also require the
7 offender's electronic home monitoring device or other separate
8 alcohol monitoring device to include an alcohol detection
9 breathalyzer, and the court may restrict the amount of alcohol the
10 offender may consume during the time the offender is on electronic
11 home monitoring; and

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (a) **Penalty for alcohol concentration less than 0.15.** In the case
38 of a person whose alcohol concentration was less than 0.15, or for
39 whom for reasons other than the person's refusal to take a test

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall
33 require any person convicted of a violation of RCW 46.61.502 or
34 46.61.504 or an equivalent local ordinance to comply with the rules
35 and requirements of the department regarding the installation and use
36 of a functioning ignition interlock device installed on all motor
37 vehicles operated by the person.

38 (b) **Monitoring devices.** If the court orders that a person refrain
39 from consuming any alcohol, the court may order the person to submit
40 to alcohol monitoring through an alcohol detection breathalyzer

1 device, transdermal sensor device, or other technology designed to
2 detect alcohol in a person's system. The person shall pay for the
3 cost of the monitoring, unless the court specifies that the cost of
4 monitoring will be paid with funds that are available from an
5 alternative source identified by the court. The county or
6 municipality where the penalty is being imposed shall determine the
7 cost.

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

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

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

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

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

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

27 (b) In any case in which the person has no prior offenses within
28 seven years, and except as provided in RCW 46.61.502(6) or
29 46.61.504(6), order an additional twenty-four hours of imprisonment
30 and a fine of not less than one thousand dollars and not more than
31 five thousand dollars. One thousand dollars of the fine may not be
32 suspended unless the court finds the offender to be indigent;

33 (c) In any case in which the person has one prior offense within
34 seven years, and except as provided in RCW 46.61.502(6) or
35 46.61.504(6), order an additional five days of imprisonment and a
36 fine of not less than two thousand dollars and not more than five
37 thousand dollars. One thousand dollars of the fine may not be
38 suspended unless the court finds the offender to be indigent;

39 (d) In any case in which the person has two or three prior
40 offenses within seven years, and except as provided in RCW

1 46.61.502(6) or 46.61.504(6), order an additional ten days of
2 imprisonment and a fine of not less than three thousand dollars and
3 not more than ten thousand dollars. One thousand dollars of the fine
4 may not be suspended unless the court finds the offender to be
5 indigent.

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

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

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

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

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

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

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

27 (a) **Penalty for alcohol concentration less than 0.15.** If the
28 person's alcohol concentration was less than 0.15, or if for reasons
29 other than the person's refusal to take a test offered under RCW
30 46.20.308 there is no test result indicating the person's alcohol
31 concentration:

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

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

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

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

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

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

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

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

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

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

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

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

30 Upon receipt of a notice from the court under RCW 36.28A.390 that
31 a participant has been removed from a 24/7 sobriety program, the
32 department must resume any suspension, revocation, or denial that had
33 been terminated early under this subsection due to participation in
34 the program, granting credit on a day-for-day basis for any portion
35 of a suspension, revocation, or denial already served under RCW
36 46.20.3101 or this section arising out of the same incident.

37 Upon its own motion or upon motion by a person, a court may find,
38 on the record, that notice to the department under RCW 46.20.270 has
39 been delayed for three years or more as a result of a clerical or
40 court error. If so, the court may order that the person's license,

1 permit, or nonresident privilege shall not be revoked, suspended, or
2 denied for that offense. The court shall send notice of the finding
3 and order to the department and to the person. Upon receipt of the
4 notice from the court, the department shall not revoke, suspend, or
5 deny the license, permit, or nonresident privilege of the person for
6 that offense.

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

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

15 (11) **Conditions of probation.** (a) In addition to any
16 nonsuspendable and nondeferrable jail sentence required by this
17 section, whenever the court imposes up to three hundred sixty-four
18 days in jail, the court shall also suspend but shall not defer a
19 period of confinement for a period not exceeding five years. The
20 court shall impose conditions of probation that include: (i) Not
21 driving a motor vehicle within this state without a valid license to
22 drive; (ii) not driving a motor vehicle within this state without
23 proof of liability insurance or other financial responsibility for
24 the future pursuant to RCW 46.30.020; (iii) not driving or being in
25 physical control of a motor vehicle within this state while having an
26 alcohol concentration of (~~0.08~~) 0.05 or more or a THC concentration
27 of 5.00 nanograms per milliliter of whole blood or higher, within two
28 hours after driving; (iv) not refusing to submit to a test of his or
29 her breath or blood to determine alcohol or drug concentration upon
30 request of a law enforcement officer who has reasonable grounds to
31 believe the person was driving or was in actual physical control of a
32 motor vehicle within this state while under the influence of
33 intoxicating liquor or drug; and (v) not driving a motor vehicle in
34 this state without a functioning ignition interlock device as
35 required by the department under RCW 46.20.720. The court may impose
36 conditions of probation that include nonrepetition, installation of
37 an ignition interlock device on the probationer's motor vehicle,
38 alcohol or drug treatment, supervised probation, or other conditions
39 that may be appropriate. The sentence may be imposed in whole or in

1 part upon violation of a condition of probation during the suspension
2 period.

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

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

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

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

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

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

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

36 Whenever the combination of jail time and electronic home
37 monitoring or alternative sentence would exceed three hundred sixty-
38 four days, the offender shall serve the jail portion of the sentence
39 first, and the electronic home monitoring or alternative portion of

1 the sentence shall be reduced so that the combination does not exceed
2 three hundred sixty-four days.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 violation of RCW 46.61.520 committed while under the influence of
2 intoxicating liquor or any drug;

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

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

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

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

21 (xv) A deferred prosecution under chapter 10.05 RCW granted in a
22 prosecution for a violation of RCW 46.61.5249, or an equivalent local
23 ordinance, if the charge under which the deferred prosecution was
24 granted was originally filed as a violation of RCW 46.61.502 or
25 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
26 46.61.522;

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

33 (xvii) A deferred sentence imposed in a prosecution for a
34 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
35 equivalent local ordinance, if the charge under which the deferred
36 sentence was imposed was originally filed as a violation of RCW
37 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
38 violation of RCW 46.61.520 or 46.61.522;

39 If a deferred prosecution is revoked based on a subsequent
40 conviction for an offense listed in this subsection (14)(a), the

1 subsequent conviction shall not be treated as a prior offense of the
2 revoked deferred prosecution for the purposes of sentencing;

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

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

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

11 (15) All fines imposed by this section apply to adult offenders
12 only.

13 **Sec. 9.** RCW 46.61.506 and 2016 c 203 s 8 are each amended to
14 read as follows:

15 (1) Upon the trial of any civil or criminal action or proceeding
16 arising out of acts alleged to have been committed by any person
17 while driving or in actual physical control of a vehicle while under
18 the influence of intoxicating liquor or any drug, if the person's
19 alcohol concentration is less than (~~(0.08)~~) 0.05 or the person's THC
20 concentration is less than 5.00, it is evidence that may be
21 considered with other competent evidence in determining whether the
22 person was under the influence of intoxicating liquor or any drug.

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

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

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

32 (3) Analysis of the person's blood or breath to be considered
33 valid under the provisions of this section or RCW 46.61.502 or
34 46.61.504 shall have been performed according to methods approved by
35 the state toxicologist and by an individual possessing a valid permit
36 issued by the state toxicologist for this purpose. The state
37 toxicologist is directed to approve satisfactory techniques or
38 methods, to supervise the examination of individuals to ascertain
39 their qualifications and competence to conduct such analyses, and to

1 issue permits which shall be subject to termination or revocation at
2 the discretion of the state toxicologist.

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

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

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

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

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

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

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

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

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

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

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

1 this subsection. Instead, such challenges may be considered by the
2 trier of fact in determining what weight to give to the test result.

3 (5) When a blood test is administered under the provisions of RCW
4 46.20.308, the withdrawal of blood for the purpose of determining its
5 alcoholic or drug content may be performed only by a physician
6 licensed under chapter 18.71 RCW; an osteopathic physician licensed
7 under chapter 18.57 RCW; a registered nurse, licensed practical
8 nurse, or advanced registered nurse practitioner licensed under
9 chapter 18.79 RCW; a physician assistant licensed under chapter
10 18.71A RCW; an osteopathic physician assistant licensed under chapter
11 18.57A RCW; an advanced emergency medical technician or paramedic
12 licensed under chapter 18.73 RCW; until July 1, 2016, a health care
13 assistant certified under chapter 18.135 RCW; or a medical assistant-
14 certified or medical assistant-phlebotomist certified under chapter
15 18.360 RCW. Proof of qualification to draw blood may be established
16 through the department of health's provider credential search. This
17 limitation shall not apply to the taking of 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. 10.** RCW 79A.60.040 and 2014 c 132 s 1 are each amended to
33 read as follows:

34 (1) It is unlawful for any person to operate a vessel in a
35 reckless manner.

36 (2) It is unlawful for a person to operate a vessel while under
37 the influence of intoxicating liquor, marijuana, or any drug. A
38 person is considered to be under the influence of intoxicating

1 liquor, marijuana, or any drug if, within two hours of operating a
2 vessel:

3 (a) The person has an alcohol concentration of (~~0.08~~) 0.05 or
4 higher as shown by analysis of the person's breath or blood made
5 under RCW 46.61.506; or

6 (b) The person has a THC concentration of 5.00 or higher as shown
7 by analysis of the person's blood made under RCW 46.61.506; or

8 (c) The person is under the influence of or affected by
9 intoxicating liquor, marijuana, or any drug; or

10 (d) The person is under the combined influence of or affected by
11 intoxicating liquor, marijuana, and any drug.

12 (3) The fact that any person charged with a violation of this
13 section is or has been entitled to use such drug under the laws of
14 this state shall not constitute a defense against any charge of
15 violating this section.

16 (4)(a) Any person who operates a vessel within this state is
17 deemed to have given consent, subject to the provisions of RCW
18 46.61.506, to a test or tests of the person's breath for the purpose
19 of determining the alcohol concentration in the person's breath if
20 arrested for any offense where, at the time of the arrest, the
21 arresting officer has reasonable grounds to believe the person was
22 operating a vessel while under the influence of intoxicating liquor
23 or a combination of intoxicating liquor and any other drug.

24 (b) When an arrest results from an accident in which there has
25 been serious bodily injury to another person or death or the
26 arresting officer has reasonable grounds to believe the person was
27 operating a vessel while under the influence of THC or any other
28 drug, a blood test may be administered with the consent of the
29 arrested person and a valid waiver of the warrant requirement or
30 without the consent of the person so arrested pursuant to a search
31 warrant or when exigent circumstances exist.

32 (c) Neither consent nor this section precludes a police officer
33 from obtaining a search warrant for a person's breath or blood.

34 (d) An arresting officer may administer field sobriety tests when
35 circumstances permit.

36 (5) The test or tests of breath must be administered pursuant to
37 RCW 46.20.308. The officer shall warn the person that if the person
38 refuses to take the test, the person will be issued a class 1 civil
39 infraction under RCW 7.80.120.

1 (6) A violation of subsection (1) of this section is a
2 misdemeanor. A violation of subsection (2) of this section is a gross
3 misdemeanor. In addition to the statutory penalties imposed, the
4 court may order the defendant to pay restitution for any damages or
5 injuries resulting from the offense.

6 NEW SECTION. **Sec. 11.** Section 3 of this act expires January 1,
7 2019.

8 NEW SECTION. **Sec. 12.** Section 4 of this act takes effect
9 January 1, 2019.

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