

CERTIFICATION OF ENROLLMENT

SENATE BILL 5037

Chapter 335, Laws of 2017

(partial veto)

65th Legislature
2017 Regular Session

DRIVING UNDER THE INFLUENCE--FOURTH OFFENSE

EFFECTIVE DATE: 7/23/2017

Passed by the Senate February 23, 2017
Yeas 41 Nays 0

CYRUS HABIB

President of the Senate

Passed by the House April 20, 2017
Yeas 85 Nays 11

FRANK CHOPP

Speaker of the House of Representatives

Approved May 16, 2017 3:46 PM with the
exception of Section 5, which is
vetoed.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is **SENATE BILL 5037** as
passed by Senate and the House of
Representatives on the dates hereon
set forth.

HUNTER G. GOODMAN

Secretary

FILED

May 17, 2017

**Secretary of State
State of Washington**

SENATE BILL 5037

Passed Legislature - 2017 Regular Session

State of Washington

65th Legislature

2017 Regular Session

By Senators Padden, Frockt, O'Ban, Darneille, Miloscia, Kuderer, Zeiger, Carlyle, Pearson, Conway, Rolfes, Palumbo, Angel, and Wellman

Read first time 01/11/17. Referred to Committee on Law & Justice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 TABLE 2

14 CRIMES INCLUDED WITHIN EACH
15 SERIOUSNESS LEVEL

- 16 XVI Aggravated Murder 1 (RCW 10.95.020)
- 17 XV Homicide by abuse (RCW 9A.32.055)
- 18 Malicious explosion 1 (RCW
19 70.74.280(1))
- 20 Murder 1 (RCW 9A.32.030)
- 21 XIV Murder 2 (RCW 9A.32.050)
- 22 Trafficking 1 (RCW 9A.40.100(1))
- 23 XIII Malicious explosion 2 (RCW
24 70.74.280(2))
- 25 Malicious placement of an explosive 1
26 (RCW 70.74.270(1))
- 27 XII Assault 1 (RCW 9A.36.011)
- 28 Assault of a Child 1 (RCW 9A.36.120)
- 29 Malicious placement of an imitation
30 device 1 (RCW 70.74.272(1)(a))
- 31 Promoting Commercial Sexual Abuse of
32 a Minor (RCW 9.68A.101)
- 33 Rape 1 (RCW 9A.44.040)
- 34 Rape of a Child 1 (RCW 9A.44.073)
- 35 Trafficking 2 (RCW 9A.40.100(3))

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

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

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

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

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

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

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

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

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

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

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

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

12 Burglary 2 (RCW 9A.52.030)

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

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

18 Custodial Assault (RCW 9A.36.100)

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

21 Escape 2 (RCW 9A.76.120)

22 Extortion 2 (RCW 9A.56.130)

23 Harassment (RCW 9A.46.020)

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

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

28 Malicious Injury to Railroad Property
29 (RCW 81.60.070)

30 Mortgage Fraud (RCW 19.144.080)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (a) DUI courts; and

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

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

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

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

*Sec. 5 was vetoed. See message at end of chapter.

Passed by the Senate February 23, 2017.

Passed by the House April 20, 2017.

Approved by the Governor May 16, 2017, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 17, 2017.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 5, Senate Bill No. 5037 entitled:

"AN ACT Relating to making a fourth driving under the influence offense a felony."

Section 5 of this bill increases the \$200 fee assessed to alcohol violators by \$50. The revenue is used to fund grants to organizations that operate programs to reduce driving under the influence of alcohol or drugs. This language is nearly identical to Section 13 of Engrossed Second Substitute House Bill 1614, which passed on April 21, 2017, and will soon be signed into law. However, Engrossed Second Substitute House Bill 1614 includes a provision that a minimum of \$300,000 of these grant funds shall support newly established pilot programs for persons with two or more prior offenses in seven years, a preferable approach.

For these reasons I have vetoed Section 5 of Senate Bill No. 5037.

With the exception of Section 5, Senate Bill No. 5037 is approved."

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