

SHB 2030 - H AMD TO H AMD (H-2660.1/13) 540
By Representative Klippert

NOT CONSIDERED

1 On page 70, after line 18 of the amendment, insert the following:

2 "Sec. 34. RCW 46.61.5055 and 2012 c 183 s 12, 2012 c 42 s 2, and
3 2012 c 28 s 1 are each reenacted and amended to read as follows:

4 (1) No prior offenses 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 violation
6 of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven
7 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 whom
10 for reasons other than the person's refusal to take a test offered
11 pursuant to RCW 46.20.308 there is no test result indicating the
12 person's alcohol concentration:

13 (i) By imprisonment for not less than one day nor more than three
14 hundred sixty-four days. Twenty-four consecutive hours of the
15 imprisonment may not be suspended (~~or deferred~~) 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 (~~or~~
19 ~~deferred~~), the court shall state in writing the reason for granting
20 the suspension (~~or deferral~~) and the facts upon which the suspension
21 (~~or deferral~~) is based. In lieu of the mandatory minimum term of
22 imprisonment required under this subsection (1)(a)(i), the court may
23 order not less than fifteen days of electronic home monitoring. The
24 offender shall pay the cost of electronic home monitoring. The county
25 or municipality in which the penalty is being imposed shall determine
26 the cost. The court may also require the offender's electronic home
27 monitoring device to include an alcohol detection breathalyzer or other
28 separate alcohol monitoring device, and the court may restrict the
29 amount of alcohol the offender may consume during the time the offender
30 is on electronic home monitoring; and

1 (ii) By a fine of not less than three hundred fifty dollars nor
2 more than five thousand dollars. Three hundred fifty dollars of the
3 fine may not be suspended (~~(or deferred)~~) unless the court finds the
4 offender to be indigent; or

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

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

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

32 (2) **One prior offense in seven years.** Except as provided in RCW
33 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation
34 of RCW 46.61.502 or 46.61.504 and who has one prior offense within
35 seven years shall be punished as follows:

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

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

4 (i)(A) By imprisonment for not less than (~~thirty~~) forty days nor
5 more than three hundred sixty-four days (~~and~~), sixty days of
6 electronic home monitoring, and upon completion of the initial
7 mandatory minimum sentence either: (I) An additional ninety days in
8 jail; or (II) if available, a minimum of ninety days of 24/7
9 alcohol/drug monitoring. In all instances, the court shall order an
10 expanded alcohol and drug assessment, and shall order treatment as
11 recommended by the agency conducting the assessment.

12 (B) In lieu of the mandatory minimum term of sixty days electronic
13 home monitoring, the court may order at least an additional four days
14 in jail. 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, and may include an additional fee to
17 cover the cost of electronic monitoring for indigent offenders. The
18 court may also require the offender's electronic home monitoring device
19 include an alcohol detection breathalyzer or other separate alcohol
20 monitoring device, and may restrict the amount of alcohol the offender
21 may consume during the time the offender is on electronic home
22 monitoring. (~~Thirty~~) Forty days of imprisonment and sixty days of
23 electronic home monitoring may not be suspended (~~or deferred~~) unless
24 the court finds that the imposition of this mandatory minimum sentence
25 would impose a substantial risk to the offender's physical or mental
26 well-being. Whenever the mandatory minimum sentence is suspended (~~or~~
27 ~~deferred~~), the court shall state in writing the reason for granting
28 the suspension (~~or deferral~~) and the facts upon which the suspension
29 (~~or deferral~~) is based.

30 (C) The assessment-based treatment must be approved by the
31 department of social and health services; and

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

36 (b) Penalty for alcohol concentration at least 0.15. In the case
37 of a person whose alcohol concentration was at least 0.15, or for whom

1 by reason of the person's refusal to take a test offered pursuant to
2 RCW 46.20.308 there is no test result indicating the person's alcohol
3 concentration:

4 (i)(A) By imprisonment for not less than (~~forty-five~~) fifty-five
5 days nor more than three hundred sixty-four days (~~and~~), ninety days
6 of electronic home monitoring, and upon completion of the initial
7 mandatory minimum sentence either: (I) An additional ninety days in
8 jail; or (II) if available, a minimum of ninety days of 24/7
9 alcohol/drug monitoring. In all instances, the court shall order an
10 expanded alcohol and drug assessment, and shall order treatment as
11 recommended by the agency conducting the assessment.

12 (B) In lieu of the mandatory minimum term of ninety days electronic
13 home monitoring, the court may order at least an additional six days in
14 jail. The offender shall pay for the cost of the electronic monitoring.
15 The county or municipality where the penalty is being imposed shall
16 determine the cost, and may include an additional fee to cover the cost
17 of electronic monitoring for indigent offenders. The court may also
18 require the offender's electronic home monitoring device include an
19 alcohol detection breathalyzer or other separate alcohol monitoring
20 device, and may restrict the amount of alcohol the offender may consume
21 during the time the offender is on electronic home monitoring.
22 (~~Forty-five~~) Fifty-five days of imprisonment and ninety days of
23 electronic home monitoring may not be suspended (~~or deferred~~) unless
24 the court finds that the imposition of this mandatory minimum sentence
25 would impose a substantial risk to the offender's physical or mental
26 well-being. Whenever the mandatory minimum sentence is suspended (~~or~~
27 ~~deferred~~), the court shall state in writing the reason for granting
28 the suspension (~~or deferral~~) and the facts upon which the suspension
29 (~~or deferral~~) is based.

30 (C) The assessment-based treatment must be approved by the
31 department of social and health services; and

32 (ii) By a fine of not less than seven hundred fifty dollars nor
33 more than five thousand dollars. Seven hundred fifty dollars of the
34 fine may not be suspended (~~or deferred~~) unless the court finds the
35 offender to be indigent.

36 (3) **Two prior offenses in seven years.** Except as provided in RCW
37 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation

1 of RCW 46.61.502 or 46.61.504 and who has two (~~or three~~) prior
2 offenses within seven years shall be punished as follows:

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

8 (i)~~(A)~~ By imprisonment for not less than (~~ninety~~) one hundred
9 days nor more than three hundred sixty-four days (~~and~~), one hundred
10 twenty days of electronic home monitoring, and upon completion of the
11 initial mandatory minimum sentence either: (I) An additional one
12 hundred eighty days in jail; or (II) if available, a minimum of one
13 hundred eighty days of 24/7 alcohol/drug monitoring. In all instances,
14 the court shall order an expanded alcohol and drug assessment, and
15 shall order treatment as recommended by the agency conducting the
16 assessment.

17 (B) In lieu of the mandatory minimum term of one hundred twenty
18 days of electronic home monitoring, the court may order at least an
19 additional eight days in jail. The offender shall pay for the cost of
20 the electronic monitoring. The county or municipality where the
21 penalty is being imposed shall determine the cost, and may include an
22 additional fee to cover the cost of electronic monitoring for indigent
23 offenders. The court may also require the offender's electronic home
24 monitoring device include an alcohol detection breathalyzer or other
25 separate alcohol monitoring device, and may restrict the amount of
26 alcohol the offender may consume during the time the offender is on
27 electronic home monitoring. (~~Ninety~~) One hundred days of
28 imprisonment and one hundred twenty days of electronic home monitoring
29 may not be suspended (~~or deferred~~) unless the court finds that the
30 imposition of this mandatory minimum sentence would impose a
31 substantial risk to the offender's physical or mental well-being.
32 Whenever the mandatory minimum sentence is suspended (~~or deferred~~),
33 the court shall state in writing the reason for granting the suspension
34 (~~or deferral~~) and the facts upon which the suspension (~~or deferral~~)
35 is based.

36 (C) The assessment-based treatment must be approved by the
37 department of social and health services; and

1 (ii) By a fine of not less than one thousand dollars nor more than
2 five thousand dollars. One thousand dollars of the fine may not be
3 suspended (~~or deferred~~) unless the court finds the offender to be
4 indigent; or

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

10 (i)(A) By imprisonment for not less than one hundred (~~twenty~~)
11 thirty days nor more than three hundred sixty-four days (~~and~~),
12 one hundred fifty days of electronic home monitoring, and upon completion
13 of the initial mandatory minimum sentence either: (I) An additional
14 one hundred eighty days in jail; or (II) if available, a minimum of one
15 hundred eighty days of 24/7 alcohol/drug monitoring. In all instances,
16 the court shall order an expanded alcohol and drug assessment, and
17 shall order treatment as recommended by the agency conducting the
18 assessment.

19 (B) In lieu of the mandatory minimum term of one hundred fifty days
20 of electronic home monitoring, the court may order at least an
21 additional ten days in jail. The offender shall pay for the cost of
22 the electronic monitoring. The county or municipality where the
23 penalty is being imposed shall determine the cost, and may include an
24 additional fee to cover the cost of electronic monitoring for indigent
25 offenders. The court may also require the offender's electronic home
26 monitoring device include an alcohol detection breathalyzer or other
27 separate alcohol monitoring device, and may restrict the amount of
28 alcohol the offender may consume during the time the offender is on
29 electronic home monitoring. One hundred (~~twenty~~) thirty days of
30 imprisonment and one hundred fifty days of electronic home monitoring
31 may not be suspended (~~or deferred~~) unless the court finds that the
32 imposition of this mandatory minimum sentence would impose a
33 substantial risk to the offender's physical or mental well-being.
34 Whenever the mandatory minimum sentence is suspended (~~or deferred~~),
35 the court shall state in writing the reason for granting the suspension
36 (~~or deferral~~) and the facts upon which the suspension (~~or deferral~~)
37 is based.

1 (C) The assessment-based treatment must be approved by the
2 department of social and health services; and

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

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

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

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

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

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

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

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

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

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

35 (6) (~~(If)~~) **Penalty for having a minor passenger in vehicle.** In
36 addition to any other penalty provided by law, if it is found by the
37 court that a person who is convicted of a violation of RCW 46.61.502 or

1 46.61.504 committed the offense while a passenger under the age of
2 sixteen was in the vehicle, the ~~((court shall))~~ following must occur:

3 (a) ~~((Order))~~ The department of licensing shall require the use of
4 an ignition interlock or other device for an additional six months;

5 (b) In any case in which the person has no prior offenses within
6 seven years, and except as provided in RCW 46.61.502(6) or
7 46.61.504(6), the court shall order ((a)) an additional penalty of
8 twenty-four hours of imprisonment and by a fine of not less than one
9 thousand dollars and not more than five thousand dollars. One thousand
10 dollars of the fine may not be suspended ~~((or deferred))~~ unless the
11 court finds the offender to be indigent;

12 (c) In any case in which the person has one prior offense within
13 seven years, and except as provided in RCW 46.61.502(6) or
14 46.61.504(6), the court shall order ((a)) an additional penalty of five
15 days of imprisonment and by a fine of not less than two thousand
16 dollars and not more than five thousand dollars. One thousand dollars
17 of the fine may not be suspended ~~((or deferred))~~ unless the court finds
18 the offender to be indigent;

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

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

30 (a) Whether the person's driving at the time of the offense was
31 responsible for injury or damage to another or another's property;
32 ~~((and))~~

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

35 (c) Whether the driver was driving in the opposite direction of the
36 normal flow of traffic on a multiple lane highway, as defined by RCW
37 46.04.350, with a posted speed limit of forty-five miles per hour or
38 greater; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (11) **Conditions of probation.**

23 (a) In addition to any nonsuspendable and nondeferrable jail
24 sentence required by this section, whenever the court imposes up to
25 three hundred sixty-four days in jail, the court shall also suspend
26 (~~but shall not defer~~) a period of confinement for a period not
27 exceeding five years. The court shall impose conditions of probation
28 that include:

29 (i) Not driving a motor vehicle within this state without both a
30 valid license to drive and proof of liability insurance or other
31 financial responsibility for the future pursuant to RCW 46.30.020;

32 (ii) Not driving a motor vehicle within this state while having an
33 alcohol concentration of 0.08 or more within two hours after driving;
34 (~~and~~)

35 (iii) Not being in physical control of a motor vehicle within this
36 state while having an alcohol concentration of 0.08 or more within two
37 hours after driving;

1 (iv) Not driving a motor vehicle within this state while having a
2 THC concentration of 5.00 nanograms per milliliter of whole blood or
3 higher within two hours after driving;

4 (v) Not being in physical control of a motor vehicle within this
5 state while having a THC concentration of 5.00 nanograms per milliliter
6 of whole blood or higher within two hours after driving;

7 (vi) Not refusing to submit to a test of his or her breath or blood
8 to determine alcohol or drug concentration upon request of a law
9 enforcement officer who has reasonable grounds to believe the person
10 was driving or was in actual physical control of a motor vehicle within
11 this state while under the influence of intoxicating liquor or drug;
12 and

13 (vii) Mandatory participation in 24/7 alcohol/drug monitoring for
14 a minimum period of: (A) Three months if the person has been convicted
15 of one prior violation of RCW 46.61.502 or 46.61.504 within seven
16 years; or (B) six months if the person has been convicted of two prior
17 violations of RCW 46.61.502 or 46.61.504 within seven years.

18 (b) The court may impose conditions of probation that include
19 nonrepetition, installation of an ignition interlock device on the
20 probationer's motor vehicle, alcohol or drug treatment, supervised
21 probation, or other conditions that may be appropriate. The sentence
22 may be imposed in whole or in part upon violation of a condition of
23 probation during the suspension period.

24 ~~((b))~~ (c) For each violation of mandatory conditions of probation
25 under (a)~~((i), (ii), or (iii))~~ and (b) of this subsection, the court
26 shall order the convicted person to be confined for thirty days, which
27 shall not be suspended ~~((or deferred))~~.

28 ~~((e))~~ (d) For each incident involving a violation of a mandatory
29 condition of probation imposed under this subsection, the license,
30 permit, or privilege to drive of the person shall be suspended by the
31 court for thirty days or, if such license, permit, or privilege to
32 drive already is suspended, revoked, or denied at the time the finding
33 of probation violation is made, the suspension, revocation, or denial
34 then in effect shall be extended by thirty days. The court shall
35 notify the department of any suspension, revocation, or denial or any
36 extension of a suspension, revocation, or denial imposed under this
37 subsection.

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

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

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

10 (c) The court determines that there is reason to believe that the
11 offender would violate the conditions of the electronic home monitoring
12 penalty.

13 Whenever the mandatory minimum term of electronic home monitoring
14 is waived, the court shall state in writing the reason for granting the
15 waiver and the facts upon which the waiver is based, and shall impose
16 an alternative sentence with similar punitive consequences. The
17 alternative sentence may include, but is not limited to, use of an
18 ignition interlock device, the 24/7 alcohol/drug monitoring, additional
19 jail time, work crew, or work camp.

20 Whenever the combination of jail time and electronic home
21 monitoring or alternative sentence would exceed three hundred sixty-
22 four days, the offender shall serve the jail portion of the sentence
23 first, and the electronic home monitoring or alternative portion of the
24 sentence shall be reduced so that the combination does not exceed three
25 hundred sixty-four days.

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

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

33 (a) "24/7 alcohol/drug monitoring" means the monitoring by the use
34 of any electronic instrument that is capable of determining and
35 monitoring the presence of alcohol or drugs in a person's body and
36 includes any associated equipment a participant needs in order for the
37 device to properly perform;

38 (b) A "prior offense" means any of the following:

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

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

5 (iii) A conviction for a violation of RCW 46.61.520 committed while
6 under the influence of intoxicating liquor or any drug, or a conviction
7 for a violation of RCW 46.61.520 committed in a reckless manner or with
8 the disregard for the safety of others if the conviction is the result
9 of a charge that was originally filed as a violation of RCW 46.61.520
10 committed while under the influence of intoxicating liquor or any drug;

11 (iv) A conviction for a violation of RCW 46.61.522 committed while
12 under the influence of intoxicating liquor or any drug, or a conviction
13 for a violation of RCW 46.61.522 committed in a reckless manner or with
14 the disregard for the safety of others if the conviction is the result
15 of a charge that was originally filed as a violation of RCW 46.61.522
16 committed while under the influence of intoxicating liquor or any drug;

17 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
18 9A.36.050 or an equivalent local ordinance, if the conviction is the
19 result of a charge that was originally filed as a violation of RCW
20 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
21 46.61.520 or 46.61.522;

22 (vi) An out-of-state conviction for a violation that would have
23 been a violation of ~~((a))~~ (b)(i), (ii), (iii), (iv), or (v) of this
24 subsection if committed in this state;

25 (vii) A deferred prosecution under chapter 10.05 RCW granted in a
26 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
27 equivalent local ordinance;

28 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
29 prosecution for a violation of RCW 46.61.5249, or an equivalent local
30 ordinance, if the charge under which the deferred prosecution was
31 granted was originally filed as a violation of RCW 46.61.502 or
32 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
33 46.61.522; ~~((e))~~

34 (ix) A deferred prosecution granted in another state for a
35 violation of driving or having physical control of a vehicle while
36 under the influence of intoxicating liquor or any drug if the out-of-
37 state deferred prosecution is equivalent to the deferred prosecution

1 under chapter 10.05 RCW, including a requirement that the defendant
2 participate in a chemical dependency treatment program; or

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

9 If a deferred prosecution is revoked based on a subsequent
10 conviction for an offense listed in this subsection (14)((+a)) (b),
11 the subsequent conviction shall not be treated as a prior offense of
12 the revoked prosecution for the purposes of sentencing;

13 ((+b)) (c) "Within seven years" means that the arrest for a prior
14 offense occurred within seven years before or after the arrest for the
15 current offense; and

16 ((+e)) (d) "Within ten years" means that the arrest for a prior
17 offense occurred within ten years before or after the arrest for the
18 current offense.

19 (15) Cost of 24/7 alcohol/drug monitoring. For purposes of this
20 section, costs for participation in 24/7 alcohol/drug monitoring shall
21 be paid by the offender. The county or municipality where the
22 monitoring is being administered shall determine the cost. In addition
23 to any other costs associated with 24/7 alcohol/drug monitoring imposed
24 on the person restricted under this section, the person shall pay an
25 additional fee of twenty dollars per month. Payments must be made
26 directly to the sheriff or chief, or the entity designated by the
27 sheriff or chief, and deposited with the county or city treasurer
28 pursuant to section 28 of this act. The county or city treasurer shall
29 remit the additional twenty dollar fee to the criminal justice training
30 commission to be deposited into the ignition interlock device and
31 alcohol/drug monitoring revolving account under RCW 46.68.340.

32 **Sec. 35.** RCW 46.61.502 and 2013 c 3 s 33 (Initiative Measure No.
33 502) are each amended to read as follows:

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

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

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

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

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

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

15 (3)(a) It is an affirmative defense to a violation of subsection
16 (1)(a) of this section, which the defendant must prove by a
17 preponderance of the evidence, that the defendant consumed a sufficient
18 quantity of alcohol after the time of driving and before the
19 administration of an analysis of the person's breath or blood to cause
20 the defendant's alcohol concentration to be 0.08 or more within two
21 hours after driving. 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 (b) It is an affirmative defense to a violation of subsection
26 (1)(b) of this section, which the defendant must prove by a
27 preponderance of the evidence, that the defendant consumed a sufficient
28 quantity of marijuana after the time of driving and before the
29 administration of an analysis of the person's blood to cause the
30 defendant's THC concentration to be 5.00 or more within two hours after
31 driving. The court shall not admit evidence of this defense unless the
32 defendant notifies the prosecution prior to the omnibus or pretrial
33 hearing in the case of the defendant's intent to assert the affirmative
34 defense.

35 (4)(a) Analyses of blood or breath samples obtained more than two
36 hours after the alleged driving may be used as evidence that within two
37 hours of the alleged driving, a person had an alcohol concentration of
38 0.08 or more in violation of subsection (1)(a) of this section, and in

1 any case in which the analysis shows an alcohol concentration above
2 0.00 may be used as evidence that a person was under the influence of
3 or affected by intoxicating liquor or any drug in violation of
4 subsection (1)(c) or (d) of this section.

5 (b) Analyses of blood samples obtained more than two hours after
6 the alleged driving may be used as evidence that within two hours of
7 the alleged driving, a person had a THC concentration of 5.00 or more
8 in violation of subsection (1)(b) of this section, and in any case in
9 which the analysis shows a THC concentration above 0.00 may be used as
10 evidence that a person was under the influence of or affected by
11 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

26 **Sec. 36.** RCW 46.61.504 and 2013 c 3 s 35 (Initiative Measure No.
27 502) are each amended to read as follows:

28 (1) A person is guilty of being in actual physical control of a
29 motor vehicle while under the influence of intoxicating liquor or any
30 drug if the person has actual physical control of a vehicle within this
31 state:

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

36 (b) The person has, within two hours after being in actual physical

1 control of a vehicle, a THC concentration of 5.00 or higher as shown by
2 analysis of the person's blood made under RCW 46.61.506; or

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

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

7 (2) The fact that a person charged with a violation of this section
8 is or has been entitled to use a drug under the laws of this state does
9 not constitute a defense against any charge of violating this section.
10 No person may be convicted under this section if, prior to being
11 pursued by a law enforcement officer, the person has moved the vehicle
12 safely off the roadway.

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

23 (b) It is an affirmative defense to a violation of subsection
24 (1)(b) of this section, which the defendant must prove by a
25 preponderance of the evidence, that the defendant consumed a sufficient
26 quantity of marijuana after the time of being in actual physical
27 control of the vehicle and before the administration of an analysis of
28 the person's blood to cause the defendant's THC concentration to be
29 5.00 or more within two hours after being in control of the vehicle.
30 The court shall not admit evidence of this defense unless the defendant
31 notifies the prosecution prior to the omnibus or pretrial hearing in
32 the case of the defendant's intent to assert the affirmative defense.

33 (4)(a) Analyses of blood or breath samples obtained more than two
34 hours after the alleged being in actual physical control of a vehicle
35 may be used as evidence that within two hours of the alleged being in
36 such control, a person had an alcohol concentration of 0.08 or more in
37 violation of subsection (1)(a) of this section, and in any case in
38 which the analysis shows an alcohol concentration above 0.00 may be

1 used as evidence that a person was under the influence of or affected
2 by intoxicating liquor or any drug in violation of subsection (1)(c) or
3 (d) of this section.

4 (b) Analyses of blood samples obtained more than two hours after
5 the alleged being in actual physical control of a vehicle may be used
6 as evidence that within two hours of the alleged being in control of
7 the vehicle, a person had a THC concentration of 5.00 or more in
8 violation of subsection (1)(b) of this section, and in any case in
9 which the analysis shows a THC concentration above 0.00 may be used as
10 evidence that a person was under the influence of or affected by
11 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

26 Renumber the remaining sections consecutively and correct any
27 internal references accordingly.

28 On page 70, after line 24 of the amendment, insert the following:

29 "NEW SECTION. **Sec. 36.** Sections 34 through 36 of this act take
30 effect January 1, 2014.

31 NEW SECTION. **Sec. 37.** Section 10 of this act expires January 1,
32 2014."

EFFECT: Effective January 1, 2014, makes it a class C felony

offense if a person is convicted of a Driving Under the Influence or Physical Control of A Vehicle offense and he or she has had three or more (instead of four or more) prior convictions.

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