
SENATE BILL 5932

State of Washington 63rd Legislature 2013 1st Special Session

By Senator Roach

Read first time 05/13/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to blood and breath alcohol content limits;
2 amending RCW 38.38.760, 46.20.3101, 46.25.090, 46.61.502, 46.61.504,
3 46.61.506, 79A.60.040, 90.56.540, and 90.56.550; and reenacting and
4 amending RCW 46.20.308 and 46.61.5055.

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

6 **Sec. 1.** RCW 38.38.760 and 2009 c 378 s 24 are each amended to read
7 as follows:

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

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

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

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

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

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

11 **Sec. 2.** RCW 46.20.308 and 2013 c 3 s 31 (Initiative Measure No.
12 502), 2012 c 183 s 7, and 2012 c 80 s 12 are each reenacted and amended
13 to read as follows:

14 (1) Any person who operates a motor vehicle within this state is
15 deemed to have given consent, subject to the provisions of RCW
16 46.61.506, to a test or tests of his or her breath or blood for the
17 purpose of determining the alcohol concentration, THC concentration, or
18 presence of any drug in his or her breath or blood if arrested for any
19 offense where, at the time of the arrest, the arresting officer has
20 reasonable grounds to believe the person had been driving or was in
21 actual physical control of a motor vehicle while under the influence of
22 intoxicating liquor or any drug or was in violation of RCW 46.61.503.
23 Neither consent nor this section precludes a police officer from
24 obtaining a search warrant for a person's breath or blood.

25 (2) The test or tests of breath shall be administered at the
26 direction of a law enforcement officer having reasonable grounds to
27 believe the person to have been driving or in actual physical control
28 of a motor vehicle within this state while under the influence of
29 intoxicating liquor or any drug or the person to have been driving or
30 in actual physical control of a motor vehicle while having alcohol or
31 THC in a concentration in violation of RCW 46.61.503 in his or her
32 system and being under the age of twenty-one. However, in those
33 instances where the person is incapable due to physical injury,
34 physical incapacity, or other physical limitation, of providing a
35 breath sample or where the person is being treated in a hospital,
36 clinic, doctor's office, emergency medical vehicle, ambulance, or other
37 similar facility or where the officer has reasonable grounds to believe

1 that the person is under the influence of a drug, a blood test shall be
2 administered by a qualified person as provided in RCW 46.61.506(5).
3 The officer shall inform the person of his or her right to refuse the
4 breath or blood test, and of his or her right to have additional tests
5 administered by any qualified person of his or her choosing as provided
6 in RCW 46.61.506. The officer shall warn the driver, in substantially
7 the following language, that:

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

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

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

16 (i) The driver is age twenty-one or over and the test indicates
17 either that the alcohol concentration of the driver's breath or blood
18 is (~~(0.08)~~) 0.05 or more or that the THC concentration of the driver's
19 blood is 5.00 or more; or

20 (ii) The driver is under age twenty-one and the test indicates
21 either that the alcohol concentration of the driver's breath or blood
22 is 0.02 or more or that the THC concentration of the driver's blood is
23 above 0.00; or

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

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

29 (3) Except as provided in this section, the test administered shall
30 be of the breath only. If an individual is unconscious or is under
31 arrest for the crime of felony driving under the influence of
32 intoxicating liquor or drugs under RCW 46.61.502(6), felony physical
33 control of a motor vehicle while under the influence of intoxicating
34 liquor or any drug under RCW 46.61.504(6), vehicular homicide as
35 provided in RCW 46.61.520, or vehicular assault as provided in RCW
36 46.61.522, or if an individual is under arrest for the crime of driving
37 while under the influence of intoxicating liquor or drugs as provided
38 in RCW 46.61.502, which arrest results from an accident in which there

1 has been serious bodily injury to another person, a breath or blood
2 test may be administered without the consent of the individual so
3 arrested.

4 (4) Any person who is dead, unconscious, or who is otherwise in a
5 condition rendering him or her incapable of refusal, shall be deemed
6 not to have withdrawn the consent provided by subsection (1) of this
7 section and the test or tests may be administered, subject to the
8 provisions of RCW 46.61.506, and the person shall be deemed to have
9 received the warnings required under subsection (2) of this section.

10 (5) If, following his or her arrest and receipt of warnings under
11 subsection (2) of this section, the person arrested refuses upon the
12 request of a law enforcement officer to submit to a test or tests of
13 his or her breath or blood, no test shall be given except as authorized
14 under subsection (3) or (4) of this section.

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

28 (a) Serve notice in writing on the person on behalf of the
29 department of its intention to suspend, revoke, or deny the person's
30 license, permit, or privilege to drive as required by subsection (7) of
31 this section;

32 (b) Serve notice in writing on the person on behalf of the
33 department of his or her right to a hearing, specifying the steps he or
34 she must take to obtain a hearing as provided by subsection (8) of this
35 section and that the person waives the right to a hearing if he or she
36 receives an ignition interlock driver's license;

37 (c) Mark the person's Washington state driver's license or permit
38 to drive, if any, in a manner authorized by the department;

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

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

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

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

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

30 (7) The department of licensing, upon the receipt of a sworn report
31 or report under a declaration authorized by RCW 9A.72.085 under
32 subsection (6)(e) of this section, shall suspend, revoke, or deny the
33 person's license, permit, or privilege to drive or any nonresident
34 operating privilege, as provided in RCW 46.20.3101, such suspension,
35 revocation, or denial to be effective beginning sixty days from the
36 date of arrest or from the date notice has been given in the event
37 notice is given by the department following a blood test, or when

1 sustained at a hearing pursuant to subsection (8) of this section,
2 whichever occurs first.

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

1 before the administration of the test or tests, whether the person
2 submitted to the test or tests, or whether a test was administered
3 without express consent as permitted under this section, and whether
4 the test or tests indicated that the alcohol concentration of the
5 person's breath or blood was (~~0.08~~) 0.05 or more, or the THC
6 concentration of the person's blood was 5.00 or more, if the person was
7 age twenty-one or over at the time of the arrest, or that the alcohol
8 concentration of the person's breath or blood was 0.02 or more, or the
9 THC concentration of the person's blood was above 0.00, if the person
10 was under the age of twenty-one at the time of the arrest. The sworn
11 report or report under a declaration authorized by RCW 9A.72.085
12 submitted by a law enforcement officer is prima facie evidence that the
13 officer had reasonable grounds to believe the person had been driving
14 or was in actual physical control of a motor vehicle within this state
15 while under the influence of intoxicating liquor or drugs, or both, or
16 the person had been driving or was in actual physical control of a
17 motor vehicle within this state while having alcohol in his or her
18 system in a concentration of 0.02 or more, or THC in his or her system
19 in a concentration above 0.00, and was under the age of twenty-one and
20 that the officer complied with the requirements of this section.

21 A hearing officer shall conduct the hearing, may issue subpoenas
22 for the attendance of witnesses and the production of documents, and
23 shall administer oaths to witnesses. The hearing officer shall not
24 issue a subpoena for the attendance of a witness at the request of the
25 person unless the request is accompanied by the fee required by RCW
26 5.56.010 for a witness in district court. The sworn report or report
27 under a declaration authorized by RCW 9A.72.085 of the law enforcement
28 officer and any other evidence accompanying the report shall be
29 admissible without further evidentiary foundation and the
30 certifications authorized by the criminal rules for courts of limited
31 jurisdiction shall be admissible without further evidentiary
32 foundation. The person may be represented by counsel, may question
33 witnesses, may present evidence, and may testify. The department shall
34 order that the suspension, revocation, or denial either be rescinded or
35 sustained.

36 (9) If the suspension, revocation, or denial is sustained after
37 such a hearing, the person whose license, privilege, or permit is
38 suspended, revoked, or denied has the right to file a petition in the

1 superior court of the county of arrest to review the final order of
2 revocation by the department in the same manner as an appeal from a
3 decision of a court of limited jurisdiction. Notice of appeal must be
4 filed within thirty days after the date the final order is served or
5 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
6 1.1, or other statutes or rules referencing de novo review, the appeal
7 shall be limited to a review of the record of the administrative
8 hearing. The appellant must pay the costs associated with obtaining
9 the record of the hearing before the hearing officer. The filing of
10 the appeal does not stay the effective date of the suspension,
11 revocation, or denial. A petition filed under this subsection must
12 include the petitioner's grounds for requesting review. Upon granting
13 petitioner's request for review, the court shall review the
14 department's final order of suspension, revocation, or denial as
15 expeditiously as possible. The review must be limited to a
16 determination of whether the department has committed any errors of
17 law. The superior court shall accept those factual determinations
18 supported by substantial evidence in the record: (a) That were
19 expressly made by the department; or (b) that may reasonably be
20 inferred from the final order of the department. The superior court
21 may reverse, affirm, or modify the decision of the department or remand
22 the case back to the department for further proceedings. The decision
23 of the superior court must be in writing and filed in the clerk's
24 office with the other papers in the case. The court shall state the
25 reasons for the decision. If judicial relief is sought for a stay or
26 other temporary remedy from the department's action, the court shall
27 not grant such relief unless the court finds that the appellant is
28 likely to prevail in the appeal and that without a stay the appellant
29 will suffer irreparable injury. If the court stays the suspension,
30 revocation, or denial it may impose conditions on such stay.

31 (10)(a) If a person whose driver's license, permit, or privilege to
32 drive has been or will be suspended, revoked, or denied under
33 subsection (7) of this section, other than as a result of a breath or
34 blood test refusal, and who has not committed an offense for which he
35 or she was granted a deferred prosecution under chapter 10.05 RCW,
36 petitions a court for a deferred prosecution on criminal charges
37 arising out of the arrest for which action has been or will be taken
38 under subsection (7) of this section, or notifies the department of

1 licensing of the intent to seek such a deferred prosecution, then the
2 license suspension or revocation shall be stayed pending entry of the
3 deferred prosecution. The stay shall not be longer than one hundred
4 fifty days after the date charges are filed, or two years after the
5 date of the arrest, whichever time period is shorter. If the court
6 stays the suspension, revocation, or denial, it may impose conditions
7 on such stay. If the person is otherwise eligible for licensing, the
8 department shall issue a temporary license, or extend any valid
9 temporary license marked under subsection (6) of this section, for the
10 period of the stay. If a deferred prosecution treatment plan is not
11 recommended in the report made under RCW 10.05.050, or if treatment is
12 rejected by the court, or if the person declines to accept an offered
13 treatment plan, or if the person violates any condition imposed by the
14 court, then the court shall immediately direct the department to cancel
15 the stay and any temporary marked license or extension of a temporary
16 license issued under this subsection.

17 (b) A suspension, revocation, or denial imposed under this section,
18 other than as a result of a breath or blood test refusal, shall be
19 stayed if the person is accepted for deferred prosecution as provided
20 in chapter 10.05 RCW for the incident upon which the suspension,
21 revocation, or denial is based. If the deferred prosecution is
22 terminated, the stay shall be lifted and the suspension, revocation, or
23 denial reinstated. If the deferred prosecution is completed, the stay
24 shall be lifted and the suspension, revocation, or denial canceled.

25 (c) The provisions of (b) of this subsection relating to a stay of
26 a suspension, revocation, or denial and the cancellation of any
27 suspension, revocation, or denial do not apply to the suspension,
28 revocation, denial, or disqualification of a person's commercial
29 driver's license or privilege to operate a commercial motor vehicle.

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

36 **Sec. 3.** RCW 46.20.3101 and 2013 c 3 s 32 (Initiative Measure No.
37 502) are each amended to read as follows:

1 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
2 deny the arrested person's license, permit, or privilege to drive as
3 follows:

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

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

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

14 (2) In the case of an incident where a person has submitted to or
15 been administered a test or tests indicating that the alcohol
16 concentration of the person's breath or blood was (~~(0.08)~~) 0.05 or
17 more, or that the THC concentration of the person's blood was 5.00 or
18 more:

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

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

24 (3) In the case of an incident where a person under age twenty-one
25 has submitted to or been administered a test or tests indicating that
26 the alcohol concentration of the person's breath or blood was 0.02 or
27 more, or that the THC concentration of the person's blood was above
28 0.00:

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

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

34 (4) The department shall grant credit on a day-for-day basis for
35 any portion of a suspension, revocation, or denial already served under
36 this section for a suspension, revocation, or denial imposed under RCW
37 46.61.5055 arising out of the same incident.

1 **Sec. 4.** RCW 46.25.090 and 2011 c 227 s 4 are each amended to read
2 as follows:

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

8 (a) Driving a motor vehicle under the influence of alcohol or any
9 drug;

10 (b) Driving a commercial motor vehicle while the alcohol
11 concentration in the person's system is 0.04 or more, or driving a
12 noncommercial motor vehicle while the alcohol concentration in the
13 person's system is ((~~0.08~~)) 0.05 or more, or is 0.02 or more if the
14 person is under age twenty-one, as determined by any testing methods
15 approved by law in this state or any other state or jurisdiction;

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

18 (d) Using a motor vehicle in the commission of a felony;

19 (e) Refusing to submit to a test or tests to determine the driver's
20 alcohol concentration or the presence of any drug while driving a motor
21 vehicle;

22 (f) Driving a commercial motor vehicle when, as a result of prior
23 violations committed while operating a commercial motor vehicle, the
24 driver's commercial driver's license is revoked, suspended, or
25 canceled, or the driver is disqualified from operating a commercial
26 motor vehicle;

27 (g) Causing a fatality through the negligent operation of a
28 commercial motor vehicle, including but not limited to the crimes of
29 vehicular homicide and negligent homicide.

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

33 (2) A person is disqualified for life if it has been determined
34 that the person has committed or has been convicted of two or more
35 violations of any of the offenses specified in subsection (1) of this
36 section, or any combination of those offenses, arising from two or more
37 separate incidents.

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

5 (4) A person is disqualified from driving a commercial motor
6 vehicle for life who uses a motor vehicle in the commission of a felony
7 involving the manufacture, distribution, or dispensing of a controlled
8 substance, as defined by chapter 69.50 RCW, or possession with intent
9 to manufacture, distribute, or dispense a controlled substance, as
10 defined by chapter 69.50 RCW.

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

13 (i) Not less than sixty days if:

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

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

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

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

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

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

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

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

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

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

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

5 (d) Not less than one hundred eighty days nor more than two years
6 if the person is convicted of or is found to have committed a first
7 violation of an out-of-service order while transporting hazardous
8 materials, or while operating motor vehicles designed to transport
9 sixteen or more passengers, including the driver. A person is
10 disqualified for a period of not less than three years nor more than
11 five years if, during a ten-year period, the person is convicted of or
12 is found to have committed subsequent violations of out-of-service
13 orders, in separate incidents, while transporting hazardous materials,
14 or while operating motor vehicles designed to transport sixteen or more
15 passengers, including the driver.

16 (7) A person is disqualified from driving a commercial motor
17 vehicle if a report has been received by the department under RCW
18 46.25.125 that the person has received a verified positive drug test or
19 positive alcohol confirmation test as part of the testing program
20 conducted under 49 C.F.R. 40. A disqualification under this subsection
21 remains in effect until the person undergoes a drug and alcohol
22 assessment by a substance abuse professional meeting the requirements
23 of 49 C.F.R. 40, and the person presents evidence of satisfactory
24 participation in or successful completion of a drug or alcohol
25 treatment and/or education program as recommended by the substance
26 abuse professional, and until the person has met the requirements of
27 RCW 46.25.100. The substance abuse professional shall forward a
28 diagnostic evaluation and treatment recommendation to the department of
29 licensing for use in determining the person's eligibility for driving
30 a commercial motor vehicle. Persons who are disqualified under this
31 subsection more than twice in a five-year period are disqualified for
32 life.

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

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

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

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

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

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

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

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

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

18 (ii) Not less than one hundred twenty days if the driver is
19 convicted of or is found to have committed a second railroad-highway
20 grade crossing violation in separate incidents within a three-year
21 period;

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

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

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

1 **Sec. 5.** RCW 46.61.502 and 2013 c 3 s 33 (Initiative Measure No.
2 502) are each amended to read as follows:

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

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

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

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

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

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

20 (3)(a) It is an affirmative defense to a violation of subsection
21 (1)(a) of this section, which the defendant must prove by a
22 preponderance of the evidence, that the defendant consumed a sufficient
23 quantity of alcohol after the time of driving and before the
24 administration of an analysis of the person's breath or blood to cause
25 the defendant's alcohol concentration to be (~~0.08~~) 0.05 or more
26 within two hours after driving. The court shall not admit evidence of
27 this defense unless the defendant notifies the prosecution prior to the
28 omnibus or pretrial hearing in the case of the defendant's intent to
29 assert the affirmative defense.

30 (b) It is an affirmative defense to a violation of subsection
31 (1)(b) of this section, which the defendant must prove by a
32 preponderance of the evidence, that the defendant consumed a sufficient
33 quantity of marijuana after the time of driving and before the
34 administration of an analysis of the person's blood to cause the
35 defendant's THC concentration to be 5.00 or more within two hours after
36 driving. The court shall not admit evidence of this defense unless the
37 defendant notifies the prosecution prior to the omnibus or pretrial

1 hearing in the case of the defendant's intent to assert the affirmative
2 defense.

3 (4)(a) Analyses of blood or breath samples obtained more than two
4 hours after the alleged driving may be used as evidence that within two
5 hours of the alleged driving, a person had an alcohol concentration of
6 (~~(0.08)~~) 0.05 or more in violation of subsection (1)(a) of this
7 section, and in any case in which the analysis shows an alcohol
8 concentration above 0.00 may be used as evidence that a person was
9 under the influence of or affected by intoxicating liquor or any drug
10 in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

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

32 **Sec. 6.** RCW 46.61.504 and 2013 c 3 s 35 (Initiative Measure No.
33 502) are each amended to read as follows:

34 (1) A person is guilty of being in actual physical control of a
35 motor vehicle while under the influence of intoxicating liquor or any
36 drug if the person has actual physical control of a vehicle within this
37 state:

1 (a) And the person has, within two hours after being in actual
2 physical control of the vehicle, an alcohol concentration of (~~0.08~~)
3 0.05 or higher as shown by analysis of the person's breath or blood
4 made under RCW 46.61.506; or

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

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

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

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

18 (3)(a) It is an affirmative defense to a violation of subsection
19 (1)(a) of this section which the defendant must prove by a
20 preponderance of the evidence that the defendant consumed a sufficient
21 quantity of alcohol after the time of being in actual physical control
22 of the vehicle and before the administration of an analysis of the
23 person's breath or blood to cause the defendant's alcohol concentration
24 to be (~~0.08~~) 0.05 or more within two hours after being in such
25 control. The court shall not admit evidence of this defense unless the
26 defendant notifies the prosecution prior to the omnibus or pretrial
27 hearing in the case of the defendant's intent to assert the affirmative
28 defense.

29 (b) It is an affirmative defense to a violation of subsection
30 (1)(b) of this section, which the defendant must prove by a
31 preponderance of the evidence, that the defendant consumed a sufficient
32 quantity of marijuana after the time of being in actual physical
33 control of the vehicle and before the administration of an analysis of
34 the person's blood to cause the defendant's THC concentration to be
35 5.00 or more within two hours after being in control of the vehicle.
36 The court shall not admit evidence of this defense unless the defendant
37 notifies the prosecution prior to the omnibus or pretrial hearing in
38 the case of the defendant's intent to assert the affirmative defense.

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

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

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

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

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

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

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

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

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

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

32 **Sec. 7.** RCW 46.61.5055 and 2012 c 183 s 12, 2012 c 42 s 2, and
33 2012 c 28 s 1 are each reenacted and amended to read as follows:

34 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
35 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
36 and who has no prior offense within seven years shall be punished as
37 follows:

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

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

22 (ii) By a fine of not less than three hundred fifty dollars nor
23 more than five thousand dollars. Three hundred fifty dollars of the
24 fine may not be suspended or deferred unless the court finds the
25 offender to be indigent; or

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

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

1 (1)(b)(i), the court may order not less than thirty days of electronic
2 home monitoring. 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 to include an alcohol
6 detection breathalyzer, and the court may restrict the amount of
7 alcohol the offender may consume during the time the offender is on
8 electronic home monitoring; and

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

13 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
14 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
15 and who has one prior offense within seven years shall be punished as
16 follows:

17 (a) In the case of a person whose alcohol concentration was less
18 than 0.15, or for whom for reasons other than the person's refusal to
19 take a test offered pursuant to RCW 46.20.308 there is no test result
20 indicating the person's alcohol concentration:

21 (i) By imprisonment for not less than thirty days nor more than
22 three hundred sixty-four days and sixty days of electronic home
23 monitoring. In lieu of the mandatory minimum term of sixty days
24 electronic home monitoring, the court may order at least an additional
25 four days in jail. The offender shall pay for the cost of the
26 electronic monitoring. The county or municipality where the penalty is
27 being imposed shall determine the cost. The court may also require the
28 offender's electronic home monitoring device include an alcohol
29 detection breathalyzer, and may restrict the amount of alcohol the
30 offender may consume during the time the offender is on electronic home
31 monitoring. Thirty days of imprisonment and sixty days of electronic
32 home monitoring may not be suspended or deferred unless the court finds
33 that the imposition of this mandatory minimum sentence would impose a
34 substantial risk to the offender's physical or mental well-being.
35 Whenever the mandatory minimum sentence is suspended or deferred, the
36 court shall state in writing the reason for granting the suspension or
37 deferral and the facts upon which the suspension or deferral is based;
38 and

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

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

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

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

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

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

1 (i) By imprisonment for not less than ninety days nor more than
2 three hundred sixty-four days and one hundred twenty days of electronic
3 home monitoring. In lieu of the mandatory minimum term of one hundred
4 twenty days of electronic home monitoring, the court may order at least
5 an additional eight days in jail. The offender shall pay for the cost
6 of the electronic monitoring. The county or municipality where the
7 penalty is being imposed shall determine the cost. The court may also
8 require the offender's electronic home monitoring device include an
9 alcohol detection breathalyzer, and may restrict the amount of alcohol
10 the offender may consume during the time the offender is on electronic
11 home monitoring. Ninety days of imprisonment and one hundred twenty
12 days of electronic home monitoring may not be suspended or deferred
13 unless the court finds that the imposition of this mandatory minimum
14 sentence would impose a substantial risk to the offender's physical or
15 mental well-being. Whenever the mandatory minimum sentence is
16 suspended or deferred, the court shall state in writing the reason for
17 granting the suspension or deferral and the facts upon which the
18 suspension or deferral is based; and

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

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

27 (i) By imprisonment for not less than one hundred twenty days nor
28 more than three hundred sixty-four days and one hundred fifty days of
29 electronic home monitoring. In lieu of the mandatory minimum term of
30 one hundred fifty days of electronic home monitoring, the court may
31 order at least an additional ten days in jail. The offender shall pay
32 for the cost of the electronic monitoring. The county or municipality
33 where the penalty is being imposed shall determine the cost. The court
34 may also require the offender's electronic home monitoring device
35 include an alcohol detection breathalyzer, and may restrict the amount
36 of alcohol the offender may consume during the time the offender is on
37 electronic home monitoring. One hundred twenty days of imprisonment
38 and one hundred fifty days of electronic home monitoring may not be

1 suspended or deferred unless the court finds that the imposition of
2 this mandatory minimum sentence would impose a substantial risk to the
3 offender's physical or mental well-being. Whenever the mandatory
4 minimum sentence is suspended or deferred, the court shall state in
5 writing the reason for granting the suspension or deferral and the
6 facts upon which the suspension or deferral is based; and

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

11 (4) A person who is convicted of a violation of RCW 46.61.502 or
12 46.61.504 shall be punished under chapter 9.94A RCW if:

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

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

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

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

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

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

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

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

36 (6) If a person who is convicted of a violation of RCW 46.61.502 or
37 46.61.504 committed the offense while a passenger under the age of
38 sixteen was in the vehicle, the court shall:

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

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

9 (c) In any case in which the person has one prior offense within
10 seven years, and except as provided in RCW 46.61.502(6) or
11 46.61.504(6), order a penalty by a fine of not less than two thousand
12 dollars and not more than five thousand dollars. One thousand dollars
13 of the fine may not be suspended or deferred unless the court finds the
14 offender to be indigent;

15 (d) In any case in which the person has two or three prior offenses
16 within seven years, and except as provided in RCW 46.61.502(6) or
17 46.61.504(6), order a penalty by a fine of not less than three thousand
18 dollars and not more than ten thousand dollars. One thousand dollars
19 of the fine may not be suspended or deferred unless the court finds the
20 offender to be indigent.

21 (7) In exercising its discretion in setting penalties within the
22 limits allowed by this section, the court shall particularly consider
23 the following:

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

26 (b) Whether at the time of the offense the person was driving or in
27 physical control of a vehicle with one or more passengers.

28 (8) An offender punishable under this section is subject to the
29 alcohol assessment and treatment provisions of RCW 46.61.5056.

30 (9) The license, permit, or nonresident privilege of a person
31 convicted of driving or being in physical control of a motor vehicle
32 while under the influence of intoxicating liquor or drugs must:

33 (a) If the person's alcohol concentration was less than 0.15, or if
34 for reasons other than the person's refusal to take a test offered
35 under RCW 46.20.308 there is no test result indicating the person's
36 alcohol concentration:

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

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

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

5 (b) If the person's alcohol concentration was at least 0.15:

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

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

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

12 (c) If by reason of the person's refusal to take a test offered
13 under RCW 46.20.308, there is no test result indicating the person's
14 alcohol concentration:

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

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

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

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

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

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

37 (10) After expiration of any period of suspension, revocation, or

1 denial of the offender's license, permit, or privilege to drive
2 required by this section, the department shall place the offender's
3 driving privilege in probationary status pursuant to RCW 46.20.355.

4 (11)(a) In addition to any nonsuspendable and nondeferrable jail
5 sentence required by this section, whenever the court imposes up to
6 three hundred sixty-four days in jail, the court shall also suspend but
7 shall not defer a period of confinement for a period not exceeding five
8 years. The court shall impose conditions of probation that include:

9 (i) Not driving a motor vehicle within this state without a valid
10 license to drive and proof of financial responsibility for the future;

11 (ii) not driving a motor vehicle within this state while having an
12 alcohol concentration of (~~0.08~~) 0.05 or more within two hours after
13 driving; and (iii) not refusing to submit to a test of his or her
14 breath or blood to determine alcohol concentration upon request of a
15 law enforcement officer who has reasonable grounds to believe the
16 person was driving or was in actual physical control of a motor vehicle
17 within this state while under the influence of intoxicating liquor.

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

28 (c) 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) A court may waive the electronic home monitoring requirements
2 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 (b) The offender does not reside in the state of Washington; or

6 (c) The court determines that there is reason to believe that the
7 offender would violate the conditions of the electronic home monitoring
8 penalty.

9 Whenever the mandatory minimum term of electronic home monitoring
10 is waived, the court shall state in writing the reason for granting the
11 waiver and the facts upon which the waiver is based, and shall impose
12 an alternative sentence with similar punitive consequences. The
13 alternative sentence may include, but is not limited to, additional
14 jail time, work crew, or work camp.

15 Whenever the combination of jail time and electronic home
16 monitoring or alternative sentence would exceed three hundred sixty-
17 four days, the offender shall serve the jail portion of the sentence
18 first, and the electronic home monitoring or alternative portion of the
19 sentence shall be reduced so that the combination does not exceed three
20 hundred sixty-four days.

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

25 (14) For purposes of this section and RCW 46.61.502 and 46.61.504:

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

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

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

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

37 (iv) A conviction for a violation of RCW 46.61.522 committed while
38 under the influence of intoxicating liquor or any drug, or a conviction

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

5 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
6 9A.36.050 or an equivalent local ordinance, if the conviction is the
7 result of a charge that was originally filed as a violation of RCW
8 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
9 46.61.520 or 46.61.522;

10 (vi) An out-of-state conviction for a violation that would have
11 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this
12 subsection if committed in this state;

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

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

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

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

32 (b) "Within seven years" means that the arrest for a prior offense
33 occurred within seven years before or after the arrest for the current
34 offense; and

35 (c) "Within ten years" means that the arrest for a prior offense
36 occurred within ten years before or after the arrest for the current
37 offense.

1 **Sec. 8.** RCW 46.61.506 and 2013 c 3 s 37 (Initiative Measure No.
2 502) are each amended to read as follows:

3 (1) Upon the trial of any civil or criminal action or proceeding
4 arising out of acts alleged to have been committed by any person while
5 driving or in actual physical control of a vehicle while under the
6 influence of intoxicating liquor or any drug, if the person's alcohol
7 concentration is less than (~~0.08~~) 0.05 or the person's THC
8 concentration is less than 5.00, it is evidence that may be considered
9 with other competent evidence in determining whether the person was
10 under the influence of intoxicating liquor or any drug.

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

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

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

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

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

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

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

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

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

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

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

12 (vii) The result of the test of the liquid simulator solution
13 external standard or dry gas external standard result did lie between
14 .072 to .088 inclusive; and

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

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

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

31 (5) When a blood test is administered under the provisions of RCW
32 46.20.308, the withdrawal of blood for the purpose of determining its
33 alcoholic or drug content may be performed only by a physician, a
34 registered nurse, a licensed practical nurse, a nursing assistant as
35 defined in chapter 18.88A RCW, a physician assistant as defined in
36 chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW,
37 an emergency medical technician as defined in chapter 18.73 RCW, a

1 health care assistant as defined in chapter 18.135 RCW, or any
2 technician trained in withdrawing blood. This limitation shall not
3 apply to the taking of breath specimens.

4 (6) The person tested may have a physician, or a qualified
5 technician, chemist, registered nurse, or other qualified person of his
6 or her own choosing administer one or more tests in addition to any
7 administered at the direction of a law enforcement officer. The test
8 will be admissible if the person establishes the general acceptability
9 of the testing technique or method. The failure or inability to obtain
10 an additional test by a person shall not preclude the admission of
11 evidence relating to the test or tests taken at the direction of a law
12 enforcement officer.

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

17 **Sec. 9.** RCW 79A.60.040 and 1998 c 213 s 7 are each amended to read
18 as follows:

19 (1) It shall be unlawful for any person to operate a vessel in a
20 reckless manner.

21 (2) It shall be a violation for a person to operate a vessel while
22 under the influence of intoxicating liquor or any drug. A person is
23 considered to be under the influence of intoxicating liquor or any drug
24 if:

25 (a) The person has (~~(0.08)~~) 0.05 grams or more of alcohol per two
26 hundred ten liters of breath, as shown by analysis of the person's
27 breath made under RCW 46.61.506; or

28 (b) The person has (~~(0.08)~~) 0.05 percent or more by weight of
29 alcohol in the person's blood, as shown by analysis of the person's
30 blood made under RCW 46.61.506; or

31 (c) The person is under the influence of or affected by
32 intoxicating liquor or any drug; or

33 (d) The person is under the combined influence of or affected by
34 intoxicating liquor and any drug.

35 The fact that any person charged with a violation of this section
36 is or has been entitled to use such drug under the laws of this state
37 shall not constitute a defense against any charge of violating this

1 section. A person cited under this subsection may upon request be
2 given a breath test for breath alcohol or may request to have a blood
3 sample taken for blood alcohol analysis. An arresting officer shall
4 administer field sobriety tests when circumstances permit.

5 (3) A violation of this section is a misdemeanor, punishable as
6 provided under RCW 9.92.030. In addition, the court may order the
7 defendant to pay restitution for any damages or injuries resulting from
8 the offense.

9 **Sec. 10.** RCW 90.56.540 and 2000 c 69 s 23 are each amended to read
10 as follows:

11 (1) A person is guilty of operating a vessel while under the
12 influence of intoxicating liquor or drugs if the person operates a
13 covered vessel within this state while:

14 (a) The person has (~~0.06~~) 0.05 grams or more of alcohol per two
15 hundred ten liters of breath, as shown by analysis of the person's
16 breath made under RCW 90.56.550; or

17 (b) The person has (~~0.06~~) 0.05 percent or more by weight of
18 alcohol in the person's blood as shown by analysis of the person's
19 blood made under RCW 90.56.550; or

20 (c) The person is under the influence of or affected by
21 intoxicating liquor or drugs; or

22 (d) The person is under the combined influence of or affected by
23 intoxicating liquor or drugs.

24 (2) The fact that any person charged with a violation of this
25 section is or has been entitled to use such drug under the laws of this
26 state shall not constitute a defense against any charge of violating
27 this section.

28 (3) Operating a vessel while intoxicated is a class C felony under
29 chapter 9A.20 RCW.

30 **Sec. 11.** RCW 90.56.550 and 1991 c 200 s 606 are each amended to
31 read as follows:

32 (1) Upon the trial of any civil or criminal action or proceeding
33 arising out of acts alleged to have been committed by a person while
34 operating a vessel while under the influence of intoxicating liquor or
35 drugs, if the amount of alcohol in the person's blood or breath at the
36 time alleged as shown by analysis of his blood or breath is less than

1 ((0.06)) 0.05 percent by weight of alcohol in his blood or ((0.06))
2 0.05 grams of alcohol per two hundred ten liters of the person's
3 breath, it is evidence that may be considered with other competent
4 evidence in determining whether the person was under the influence of
5 intoxicating liquor or drugs.

6 (2) The breath analysis shall be based upon grams of alcohol per
7 two hundred ten liters of breath. The foregoing provisions of this
8 section shall not be construed as limiting the introduction of any
9 other competent evidence bearing upon the question whether the person
10 was under the influence of intoxicating liquor or any drug.

11 (3) Analysis of the person's blood or breath to be considered valid
12 under this section shall have been performed according to methods
13 approved by the state toxicologist and by an individual possessing a
14 valid permit issued by the state toxicologist for this purpose. The
15 state toxicologist shall approve satisfactory techniques or methods, to
16 supervise the examination of individuals to ascertain their
17 qualifications and competence to conduct such analyses, and to issue
18 permits that are subject to termination or revocation at the discretion
19 of the state toxicologist.

20 (4) If a blood test is administered under this section, the
21 withdrawal of blood for the purpose of determining its alcoholic
22 content may be performed only by a physician, a registered nurse, or a
23 qualified technician. This limitation shall not apply to the taking of
24 breath specimens.

25 (5) The person tested may have a physician, or a qualified
26 technician, chemist, registered nurse, or other qualified person of his
27 or her own choosing administer one or more tests in addition to any
28 administered at the direction of a law enforcement officer. The
29 failure or inability to obtain an additional test by a person shall not
30 preclude the admission of evidence relating to the test or tests taken
31 at the direction of a law enforcement officer.

32 (6) Upon the request of the person who submits to a test or tests
33 at the request of a law enforcement officer, full information
34 concerning the test or tests shall be made available to the person or
35 his or her attorney.

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