

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 2280**

64th Legislature  
2016 Regular Session

Passed by the House February 15, 2016  
Yeas 97 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate March 2, 2016  
Yeas 47 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2280** as passed by House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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HOUSE BILL 2280

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Passed Legislature - 2016 Regular Session

State of Washington                      64th Legislature                      2015 2nd Special Session

By Representatives Klippert and Hayes

Prefiled 06/27/15.

1            AN ACT Relating to making felony driving under the influence of  
2 intoxicating liquor, marijuana, or any drug a class B felony;  
3 amending RCW 46.61.502; and prescribing penalties.

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

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

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

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

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

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

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

20            (2) The fact that a person charged with a violation of this  
21 section is or has been entitled to use a drug under the laws of this

1 state shall not constitute a defense against a charge of violating  
2 this section.

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

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

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

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

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

1           (6) It is a class ((C)) B felony punishable under chapter 9.94A  
2 RCW, or chapter 13.40 RCW if the person is a juvenile, if:  
3           (a) The person has four or more prior offenses within ten years  
4 as defined in RCW 46.61.5055; or  
5           (b) The person has ever previously been convicted of:  
6           (i) Vehicular homicide while under the influence of intoxicating  
7 liquor or any drug, RCW 46.61.520(1)(a);  
8           (ii) Vehicular assault while under the influence of intoxicating  
9 liquor or any drug, RCW 46.61.522(1)(b);  
10           (iii) An out-of-state offense comparable to the offense specified  
11 in (b)(i) or (ii) of this subsection; or  
12           (iv) A violation of this subsection (6) or RCW 46.61.504(6).

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