
SENATE BILL 6250

State of Washington 65th Legislature 2018 Regular Session

By Senators Frockt and Padden

Read first time 01/11/18. Referred to Committee on Law & Justice.

1 AN ACT Relating to removing the ten year reference in impaired
2 driving provisions; amending RCW 46.61.502 and 46.61.504; reenacting
3 and amending RCW 46.61.5055; and prescribing penalties.

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

5 **Sec. 1.** RCW 46.61.502 and 2017 c 335 s 1 are each amended to
6 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 B felony punishable under chapter 9.94A RCW, or
2 chapter 13.40 RCW if the person is a juvenile, if:

3 (a) The person has three or more prior offenses (~~within ten~~
4 ~~years~~) 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).

13 **Sec. 2.** RCW 46.61.5055 and 2017 c 336 s 6 and 2017 c 335 s 3 are
14 each reenacted and amended to read as follows:

15 (1) **No prior offenses in seven years.** Except as provided in RCW
16 46.61.502(6) or 46.61.504(6), a person who is convicted of a
17 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
18 within seven years shall be punished as follows:

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

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

1 offender's electronic home monitoring device or other separate
2 alcohol monitoring device to include an alcohol detection
3 breathalyzer, and the court may restrict the amount of alcohol the
4 offender may consume during the time the offender is on electronic
5 home monitoring; and

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

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

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

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

39 (2) **One prior offense in seven years.** Except as provided in RCW
40 46.61.502(6) or 46.61.504(6), a person who is convicted of a

1 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
2 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
5 whom for reasons other than the person's refusal to take a test
6 offered pursuant to RCW 46.20.308 there is no test result indicating
7 the person's alcohol concentration:

8 (i) By imprisonment for not less than thirty days nor more than
9 three hundred sixty-four days and sixty days of electronic home
10 monitoring. In lieu of the mandatory term of imprisonment and
11 electronic home monitoring under this subsection (2)(a)(i), the court
12 may order a minimum of four days in jail and either one hundred
13 eighty days of electronic home monitoring or a one hundred twenty-day
14 period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300
15 through 36.28A.390. The court may consider the offender's pretrial
16 24/7 sobriety program monitoring as fulfilling a portion of posttrial
17 sentencing. The court shall order an expanded alcohol assessment and
18 treatment, if deemed appropriate by the assessment. The offender
19 shall pay for the cost of the electronic monitoring. The county or
20 municipality where the penalty is being imposed shall determine the
21 cost. The court may also require the offender's electronic home
22 monitoring device include an alcohol detection breathalyzer or other
23 separate alcohol monitoring device, and may restrict the amount of
24 alcohol the offender may consume during the time the offender is on
25 electronic home monitoring. Thirty days of imprisonment and sixty
26 days of electronic home monitoring may not be suspended unless the
27 court finds that the imposition of this mandatory minimum sentence
28 would impose a substantial risk to the offender's physical or mental
29 well-being. Whenever the mandatory minimum sentence is suspended, the
30 court shall state in writing the reason for granting the suspension
31 and the facts upon which the suspension is based; and

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

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

1 (i) By imprisonment for not less than forty-five days nor more
2 than three hundred sixty-four days and ninety days of electronic home
3 monitoring. In lieu of the mandatory minimum term of imprisonment and
4 electronic home monitoring under this subsection (2)(b)(i), the court
5 may order a minimum of six days in jail and either six months of
6 electronic home monitoring or a one hundred twenty-day period of 24/7
7 sobriety program monitoring pursuant to RCW 36.28A.300 through
8 36.28A.390. The court may consider the offender's pretrial 24/7
9 sobriety program monitoring as fulfilling a portion of posttrial
10 sentencing. The court shall order an expanded alcohol assessment and
11 treatment, if deemed appropriate by the assessment. The offender
12 shall pay for the cost of the electronic monitoring. The county or
13 municipality where the penalty is being imposed shall determine the
14 cost. The court may also require the offender's electronic home
15 monitoring device include an alcohol detection breathalyzer or other
16 separate alcohol monitoring device, and may restrict the amount of
17 alcohol the offender may consume during the time the offender is on
18 electronic home monitoring. Forty-five days of imprisonment and
19 ninety days of electronic home monitoring may not be suspended unless
20 the court finds that the imposition of this mandatory minimum
21 sentence would impose a substantial risk to the offender's physical
22 or mental well-being. Whenever the mandatory minimum sentence is
23 suspended, the court shall state in writing the reason for granting
24 the suspension and the facts upon which the suspension is based; and

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

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

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

38 (i) By imprisonment for not less than ninety days nor more than
39 three hundred sixty-four days, if available in that county or city, a
40 six-month period of 24/7 sobriety program monitoring pursuant to RCW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 municipality where the penalty is being imposed shall determine the
2 cost.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (ii) Where there has been one prior offense within seven years,
35 be revoked or denied by the department for two years or until the
36 person is evaluated by an alcoholism agency or probation department
37 pursuant to RCW 46.20.311 and the person completes or is enrolled in
38 a six-month period of 24/7 sobriety program monitoring. In no
39 circumstances shall the license suspension be for less than one year;
40 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **Sec. 3.** RCW 46.61.504 and 2017 c 335 s 2 are each amended to
14 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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