

2SSB 5002 - S AMD 200

By Senator Fortunato

NOT CONSIDERED 05/17/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 46.61.5055 and 2020 c 330 s 15 are each amended to
4 read as follows:

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

9 (a) **Penalty for alcohol concentration less than (~~0.15~~) 0.10.** In
10 the case of a person whose alcohol concentration was less than
11 (~~0.15~~) 0.10, or for whom for reasons other than the person's
12 refusal to take a test offered pursuant to RCW 46.20.308 there is no
13 test result indicating the person's alcohol concentration:

14 (i) By imprisonment for not less than (~~twenty-four~~) 24
15 consecutive hours nor more than (~~three hundred sixty-four~~) 364
16 days. In lieu of the mandatory minimum term of imprisonment required
17 under this subsection (1)(a)(i), the court, in its discretion, may
18 order not less than (~~fifteen~~) 15 days of electronic home monitoring
19 or a (~~ninety-day~~) 90-day period of 24/7 sobriety program
20 monitoring. The court may consider the offender's pretrial 24/7
21 sobriety program monitoring as fulfilling a portion of posttrial
22 sentencing. The offender shall pay the cost of electronic home
23 monitoring. The county or municipality in which the penalty is being
24 imposed shall determine the cost. The court may also require the
25 offender's electronic home monitoring device or other separate
26 alcohol monitoring device to include an alcohol detection
27 breathalyzer, and the court may restrict the amount of alcohol the
28 offender may consume during the time the offender is on electronic
29 home monitoring; and

30 (ii) By a fine of not less than (~~three hundred fifty dollars~~)
31 \$350 nor more than (~~five thousand dollars~~) \$5,000. (~~Three hundred~~

1 ~~fifty dollars~~) \$350 of the fine may not be suspended unless the
2 court finds the offender to be indigent; (~~(or)~~)

3 (b) **Penalty for alcohol concentration at least 0.10.** In the case
4 of a person whose alcohol concentration was at least 0.10:

5 (i) By imprisonment for not less than 48 consecutive hours nor
6 more than 364 days. In lieu of the mandatory minimum term of
7 imprisonment required under this subsection (1)(b)(i), the court, in
8 its discretion, may order not less than 30 days of electronic home
9 monitoring or a 120-day period of 24/7 sobriety program monitoring.
10 The court may consider the offender's pretrial 24/7 sobriety program
11 testing as fulfilling a portion of posttrial sentencing. The offender
12 shall pay the cost of electronic home monitoring. The county or
13 municipality in which the penalty is being imposed shall determine
14 the cost. The court may also require the offender's electronic home
15 monitoring device to include an alcohol detection breathalyzer or
16 other separate alcohol monitoring device, and the court may restrict
17 the amount of alcohol the offender may consume during the time the
18 offender is on electronic home monitoring; and

19 (ii) By a fine of not less than \$500 nor more than \$5,000. \$500
20 of the fine may not be suspended unless the court finds the offender
21 to be indigent; or

22 (c) **Penalty for alcohol concentration at least (~~(0.15)) 0.12.~~** In
23 the case of a person whose alcohol concentration was at least
24 (~~(0.15)) 0.12~~, or for whom by reason of the person's refusal to take
25 a 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 (~~(forty-eight)) 72~~
28 consecutive hours nor more than (~~(three hundred sixty-four)) 364~~
29 days. In lieu of the mandatory minimum term of imprisonment required
30 under this subsection (1)(~~(b)) (c)~~(i), the court, in its
31 discretion, may order not less than (~~(thirty)) 30~~ days of electronic
32 home monitoring or a (~~(one hundred twenty-day)) 120-day~~ period of
33 24/7 sobriety program monitoring. The court may consider the
34 offender's pretrial 24/7 sobriety program testing as fulfilling a
35 portion of posttrial sentencing. The offender shall pay the cost of
36 electronic home monitoring. The county or municipality in which the
37 penalty is being imposed shall determine the cost. The court may also
38 require the offender's electronic home monitoring device to include
39 an alcohol detection breathalyzer or other separate alcohol
40 monitoring device, and the court may restrict the amount of alcohol

1 the offender may consume during the time the offender is on
2 electronic home monitoring; and

3 (ii) By a fine of not less than (~~(five hundred dollars)~~) \$1,245
4 nor more than (~~(five thousand dollars)~~) \$5,000. (~~(Five hundred~~
5 ~~dollars)~~) \$500 of the fine may not be suspended unless the court
6 finds the offender to be indigent.

7 (2) **One prior offense in seven years.** Except as provided in RCW
8 46.61.502(6) or 46.61.504(6), a person who is convicted of a
9 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
10 within seven years shall be punished as follows:

11 (a) **Penalty for alcohol concentration less than (~~(0.15)~~) 0.10.** In
12 the case of a person whose alcohol concentration was less than
13 (~~(0.15)~~) 0.10, or for whom for reasons other than the person's
14 refusal to take a test offered pursuant to RCW 46.20.308 there is no
15 test result indicating the person's alcohol concentration:

16 (i) By imprisonment for not less than (~~(thirty)~~) 30 days nor more
17 than (~~(three hundred sixty-four)~~) 364 days and (~~(sixty)~~) 60 days of
18 electronic home monitoring. Thirty days of imprisonment and (~~(sixty)~~)
19 60 days of electronic home monitoring may not be suspended or
20 converted unless the court finds that the imposition of this
21 mandatory minimum sentence would impose a substantial risk to the
22 offender's physical or mental well-being. If the offender shows that
23 the imposition of this mandatory minimum sentence would impose a
24 substantial risk to the offender's physical or mental well-being, in
25 lieu of the mandatory term of imprisonment and electronic home
26 monitoring under this subsection (2)(a)(i), the court may order a
27 minimum of either (~~(one hundred eighty)~~) 180 days of electronic home
28 monitoring or a (~~(one hundred twenty-day)~~) 120-day period of 24/7
29 sobriety program monitoring pursuant to RCW 36.28A.300 through
30 36.28A.390. Whenever the mandatory minimum sentence is suspended or
31 converted, the court shall state in writing the reason for granting
32 the suspension or conversion and the facts upon which the suspension
33 or conversion is based. The court may consider the offender's
34 pretrial 24/7 sobriety program monitoring as fulfilling a portion of
35 posttrial sentencing. The court shall order an expanded substance use
36 disorder assessment and treatment, if deemed appropriate by the
37 assessment. The offender shall pay for the cost of the electronic
38 monitoring. The county or municipality where the penalty is being
39 imposed shall determine the cost. The court may also require the
40 offender's electronic home monitoring device include an alcohol

1 detection breathalyzer or other separate alcohol monitoring device,
2 and may restrict the amount of alcohol the offender may consume
3 during the time the offender is on electronic home monitoring; and

4 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor
5 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)
6 \$500 of the fine may not be suspended unless the court finds the
7 offender to be indigent; (~~or~~)

8 (b) **Penalty for alcohol concentration at least 0.10.** In the case
9 of a person whose alcohol concentration was at least 0.10:

10 (i) By imprisonment for not less than 40 days nor more than 364
11 days. In lieu of the mandatory minimum term of imprisonment required
12 under this subsection (2)(b)(i), the court, in its discretion, may
13 order not less than 40 days of electronic home monitoring or a 120-
14 day period of 24/7 sobriety program monitoring. The court may
15 consider the offender's pretrial 24/7 sobriety program testing as
16 fulfilling a portion of posttrial sentencing. The offender shall pay
17 the cost of electronic home monitoring. The county or municipality in
18 which the penalty is being imposed shall determine the cost. The
19 court may also require the offender's electronic home monitoring
20 device to include an alcohol detection breathalyzer or other separate
21 alcohol monitoring device, and the court may restrict the amount of
22 alcohol the offender may consume during the time the offender is on
23 electronic home monitoring; and

24 (ii) By a fine of not less than \$600 nor more than \$5,000. \$500
25 of the fine may not be suspended unless the court finds the offender
26 to be indigent; or

27 (c) **Penalty for alcohol concentration at least (~~0.15~~) 0.12.** In
28 the case of a person whose alcohol concentration was at least
29 (~~0.15~~) 0.12, or for whom by reason of the person's refusal to take
30 a test offered pursuant to RCW 46.20.308 there is no test result
31 indicating the person's alcohol concentration:

32 (i) By imprisonment for not less than (~~forty-five~~) 45 days nor
33 more than (~~three hundred sixty-four~~) 364 days and (~~ninety~~) 90
34 days of electronic home monitoring. Forty-five days of imprisonment
35 and (~~ninety~~) 90 days of electronic home monitoring may not be
36 suspended or converted unless the court finds that the imposition of
37 this mandatory minimum sentence would impose a substantial risk to
38 the offender's physical or mental well-being. If the offender shows
39 that the imposition of this mandatory minimum sentence would impose a
40 substantial risk to the offender's physical or mental well-being, in

1 lieu of the mandatory minimum term of imprisonment and electronic
2 home monitoring under this subsection (2) ~~((b))~~ (c)(i), the court
3 may order a minimum of either six months of electronic home
4 monitoring or a ~~((one hundred twenty day))~~ 120-day period of 24/7
5 sobriety program monitoring pursuant to RCW 36.28A.300 through
6 36.28A.390. Whenever the mandatory minimum sentence is suspended or
7 converted, the court shall state in writing the reason for granting
8 the suspension or conversion and the facts upon which the suspension
9 or conversion is based. The court may consider the offender's
10 pretrial 24/7 sobriety program monitoring as fulfilling a portion of
11 posttrial sentencing. The court shall order an expanded substance use
12 disorder assessment and treatment, if deemed appropriate by the
13 assessment. The offender shall pay for the cost of the electronic
14 monitoring. The county or municipality where the penalty is being
15 imposed shall determine the cost. The court may also require the
16 offender's electronic home monitoring device include an alcohol
17 detection breathalyzer or other separate alcohol monitoring device,
18 and may restrict the amount of alcohol the offender may consume
19 during the time the offender is on electronic home monitoring; and

20 (ii) By a fine of not less than ~~((seven hundred fifty dollars))~~
21 \$750 nor more than ~~((five thousand dollars))~~ \$5,000. ~~((Seven hundred~~
22 ~~fifty dollars))~~ \$750 of the fine may not be suspended unless the
23 court finds the offender to be indigent.

24 (3) **Two prior offenses in seven years.** Except as provided in RCW
25 46.61.502(6) or 46.61.504(6), a person who is convicted of a
26 violation of RCW 46.61.502 or 46.61.504 and who has two prior
27 offenses within seven years shall be punished as follows:

28 (a) **Penalty for alcohol concentration less than ~~((0.15))~~ 0.10.** In
29 the case of a person whose alcohol concentration was less than
30 ~~((0.15))~~ 0.10, or for whom for reasons other than the person's
31 refusal to take a test offered pursuant to RCW 46.20.308 there is no
32 test result indicating the person's alcohol concentration:

33 (i) By imprisonment for not less than ~~((ninety))~~ 90 days nor more
34 than ~~((three hundred sixty four))~~ 364 days, if available in that
35 county or city, a six-month period of 24/7 sobriety program
36 monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and ~~((one~~
37 ~~hundred twenty))~~ 120 days of electronic home monitoring. Ninety days
38 of imprisonment and ~~((one hundred twenty))~~ 120 days of electronic
39 home monitoring may not be suspended or converted unless the court
40 finds that the imposition of this mandatory minimum sentence would

1 impose a substantial risk to the offender's physical or mental well-
2 being. If the offender shows that the imposition of this mandatory
3 minimum sentence would impose a substantial risk to the offender's
4 physical or mental well-being, in lieu of the mandatory minimum term
5 of ~~((ninety))~~ 90 days of imprisonment and ~~((one hundred twenty))~~ 120
6 days of electronic home monitoring, the court may order ~~((three~~
7 ~~hundred sixty))~~ 360 days of electronic home monitoring or a ~~((three~~
8 ~~hundred sixty day))~~ 360-day period of 24/7 sobriety monitoring
9 pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory
10 minimum sentence is suspended or converted, the court shall state in
11 writing the reason for granting the suspension or conversion and the
12 facts upon which the suspension or conversion is based. The court
13 shall order an expanded substance use disorder assessment and
14 treatment, if deemed appropriate by the assessment. The offender
15 shall pay for the cost of the electronic monitoring. The county or
16 municipality where the penalty is being imposed shall determine the
17 cost. The court may also require the offender's electronic home
18 monitoring device include an alcohol detection breathalyzer or other
19 separate alcohol monitoring device, and may restrict the amount of
20 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 ~~((one thousand dollars))~~ \$1,000
23 nor more than ~~((five thousand dollars))~~ \$5,000. ~~((One thousand~~
24 ~~dollars))~~ \$1,000 of the fine may not be suspended unless the court
25 finds the offender to be indigent; ~~((or))~~

26 (b) **Penalty for alcohol concentration at least ~~((0.15))~~ 0.10**. In
27 the case of a person whose alcohol concentration was at least
28 ~~((0.15))~~ 0.10, or for whom by reason of the person's refusal to take
29 a test offered pursuant to RCW 46.20.308 there is no test result
30 indicating the person's alcohol concentration:

31 (i) By imprisonment for not less than ~~((one hundred twenty))~~ 105
32 days nor more than ~~((three hundred sixty four))~~ 364 days, if
33 available in that county or city, a six-month period of 24/7 sobriety
34 program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and
35 ~~((one hundred fifty))~~ 150 days of electronic home monitoring. One
36 hundred twenty days of imprisonment and ~~((one hundred fifty))~~ 150
37 days of electronic home monitoring may not be suspended or converted
38 unless the court finds that the imposition of this mandatory minimum
39 sentence would impose a substantial risk to the offender's physical
40 or mental well-being. If the offender shows that the imposition of

1 this mandatory minimum sentence would impose a substantial risk to
2 the offender's physical or mental well-being, in lieu of the
3 mandatory minimum term of (~~one hundred twenty~~) 105 days of
4 imprisonment and (~~one hundred fifty~~) 150 days of electronic home
5 monitoring, the court may order (~~three hundred sixty~~) 360 days of
6 electronic home monitoring or a (~~three hundred sixty-day~~) 360-day
7 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through
8 36.28A.390. Whenever the mandatory minimum sentence is suspended or
9 converted, the court shall state in writing the reason for granting
10 the suspension or conversion and the facts upon which the suspension
11 or conversion is based. The offender shall pay for the cost of the
12 electronic monitoring. The court shall order an expanded substance
13 use disorder assessment and treatment, if deemed appropriate by the
14 assessment. The county or municipality where the penalty is being
15 imposed shall determine the cost. The court may also require the
16 offender's electronic home monitoring device include an alcohol
17 detection breathalyzer or other separate alcohol monitoring device,
18 and may restrict the amount of alcohol the offender may consume
19 during the time the offender is on electronic home monitoring; and

20 (ii) By a fine of not less than (~~one thousand five hundred~~
21 ~~dollars~~) \$1,250 nor more than (~~five thousand dollars~~) \$5,000.
22 (~~One thousand five hundred dollars~~) \$1,000 of the fine may not be
23 suspended unless the court finds the offender to be indigent; or

24 (c) **Penalty for alcohol concentration at least 0.12.** In the case
25 of a person whose alcohol concentration was at least 0.12, or for
26 whom by reason of the person's refusal to take a test offered
27 pursuant to RCW 46.20.308 there is no test result indicating the
28 person's alcohol concentration:

29 (i) By imprisonment for not less than 120 days nor more than 364
30 days, if available in that county or city, a six-month period of 24/7
31 sobriety program monitoring pursuant to RCW 36.28A.300 through
32 36.28A.390, and 150 days of electronic home monitoring. One hundred
33 twenty days of imprisonment and 150 days of electronic home
34 monitoring may not be suspended or converted unless the court finds
35 that the imposition of this mandatory minimum sentence would impose a
36 substantial risk to the offender's physical or mental well-being. If
37 the offender shows that the imposition of this mandatory minimum
38 sentence would impose a substantial risk to the offender's physical
39 or mental well-being, in lieu of the mandatory minimum term of 120
40 days of imprisonment and 150 days of electronic home monitoring, the

1 court may order 360 days of electronic home monitoring or a 360-day
2 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through
3 36.28A.390. Whenever the mandatory minimum sentence is suspended or
4 converted, the court shall state in writing the reason for granting
5 the suspension or conversion and the facts upon which the suspension
6 or conversion is based. The offender shall pay for the cost of the
7 electronic monitoring. The court shall order an expanded substance
8 use disorder assessment and treatment, if deemed appropriate by the
9 assessment. The county or municipality where the penalty is being
10 imposed shall determine the cost. The court may also require the
11 offender's electronic home monitoring device include an alcohol
12 detection breathalyzer or other separate alcohol monitoring device,
13 and may restrict the amount of alcohol the offender may consume
14 during the time the offender is on electronic home monitoring; and

15 (ii) By a fine of not less than \$1,500 nor more than \$5,000.
16 \$1,500 of the fine may not be suspended unless the court finds the
17 offender to be indigent.

18 (4) **Three or more prior offenses in ((ten)) 10 years.** A person
19 who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall
20 be punished under chapter 9.94A RCW if:

21 (a) The person has three or more prior offenses within ((ten)) 10
22 years; or

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

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

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

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

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

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

37 (b) **Monitoring devices.** If the court orders that a person refrain
38 from consuming any alcohol, the court may order the person to submit
39 to alcohol monitoring through an alcohol detection breathalyzer
40 device, transdermal sensor device, or other technology designed to

1 detect alcohol in a person's system. The person shall pay for the
2 cost of the monitoring, unless the court specifies that the cost of
3 monitoring will be paid with funds that are available from an
4 alternative source identified by the court. The county or
5 municipality where the penalty is being imposed shall determine the
6 cost.

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

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

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

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

20 (6) **Penalty for having a minor passenger in vehicle.** If a person
21 who is convicted of a violation of RCW 46.61.502 or 46.61.504
22 committed the offense while one or more passengers under the age of
23 (~~sixteen~~) 16 were in the vehicle, the court shall:

24 (a) Order the use of an ignition interlock or other device for an
25 additional (~~twelve~~) 12 months for each passenger under the age of
26 (~~sixteen~~) 16 when the person is subject to the penalties under
27 subsection (1)(a), (2)(a), or (3)(a) of this section; and order the
28 use of an ignition interlock device for an additional (~~eighteen~~) 18
29 months for each passenger under the age of (~~sixteen~~) 16 when the
30 person is subject to the penalties under subsection (1)(~~b~~) (c),
31 (2)(~~b~~) (c), (3)(b), or (4) of this section;

32 (b) In any case in which the person has no prior offenses within
33 seven years, and except as provided in RCW 46.61.502(6) or
34 46.61.504(6), order an additional (~~twenty-four~~) 24 hours of
35 imprisonment to be served consecutively for each passenger under the
36 age of (~~sixteen~~) 16, and a fine of not less than (~~one thousand~~
37 ~~dollars~~) \$1,000 and not more than (~~five thousand dollars~~) \$5,000
38 for each passenger under the age of (~~sixteen~~) 16. (~~One thousand~~
39 ~~dollars~~) \$1,000 of the fine for each passenger under the age of

1 ((~~sixteen~~)) 16 may not be suspended unless the court finds the
2 offender to be indigent;

3 (c) In any case in which the person has one prior offense within
4 seven years, and except as provided in RCW 46.61.502(6) or
5 46.61.504(6), order an additional five days of imprisonment to be
6 served consecutively for each passenger under the age of ((~~sixteen~~))
7 16, and a fine of not less than ((~~two thousand dollars~~)) \$2,000 and
8 not more than ((~~five thousand dollars~~)) \$5,000 for each passenger
9 under the age of ((~~sixteen~~)) 16. One thousand dollars of the fine for
10 each passenger under the age of ((~~sixteen~~)) 16 may not be suspended
11 unless the court finds the offender to be indigent;

12 (d) In any case in which the person has two prior offenses within
13 seven years, and except as provided in RCW 46.61.502(6) or
14 46.61.504(6), order an additional ten days of imprisonment to be
15 served consecutively for each passenger under the age of ((~~sixteen~~))
16 16, and a fine of not less than ((~~three thousand dollars~~)) \$3,000 and
17 not more than ((~~ten thousand dollars~~)) \$10,000 for each passenger
18 under the age of ((~~sixteen~~)) 16. ((~~One thousand dollars~~)) \$1,000 of
19 the fine for each passenger under the age of ((~~sixteen~~)) 16 may not
20 be suspended unless the court finds the offender to be indigent.

21 (7) **Other items courts must consider while setting penalties.** In
22 exercising its discretion in setting penalties within the limits
23 allowed by this section, the court shall particularly consider the
24 following:

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

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

29 (c) Whether the driver was driving in the opposite direction of
30 the normal flow of traffic on a multiple lane highway, as defined by
31 RCW 46.04.350, with a posted speed limit of ((~~forty-five~~)) 45 miles
32 per hour or greater; and

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

35 (8) **Treatment and information school.** An offender punishable
36 under this section is subject to the substance use disorder
37 assessment and treatment provisions of RCW 46.61.5056.

38 (9) **Driver's license privileges of the defendant.** (a) The
39 license, permit, or nonresident privilege of a person convicted of

1 driving or being in physical control of a motor vehicle while under
2 the influence of intoxicating liquor or drugs must:

3 (i) **Penalty for alcohol concentration less than 0.15.** If the
4 person's alcohol concentration was less than 0.15, or if for reasons
5 other than the person's refusal to take a test offered under RCW
6 46.20.308 there is no test result indicating the person's alcohol
7 concentration:

8 (A) Where there has been no prior offense within seven years, be
9 suspended or denied by the department for (~~ninety~~) 90 days or until
10 the person is evaluated by a substance use disorder agency or
11 probation department pursuant to RCW 46.20.311 and the person
12 completes or is enrolled in a (~~ninety-day~~) 90-day period of 24/7
13 sobriety program monitoring. In no circumstances shall the license
14 suspension be for fewer than two days;

15 (B) Where there has been one prior offense within seven years, be
16 revoked or denied by the department for two years or until the person
17 is evaluated by a substance use disorder agency or probation
18 department pursuant to RCW 46.20.311 and the person completes or is
19 enrolled in a six-month period of 24/7 sobriety program monitoring.
20 In no circumstances shall the license suspension be for less than one
21 year; or

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

24 (ii) **Penalty for alcohol concentration at least 0.15.** If the
25 person's alcohol concentration was at least 0.15:

26 (A) Where there has been no prior offense within seven years, be
27 revoked or denied by the department for one year or until the person
28 is evaluated by a substance use disorder agency or probation
29 department pursuant to RCW 46.20.311 and the person completes or is
30 enrolled in a one hundred twenty day period of 24/7 sobriety program
31 monitoring. In no circumstances shall the license revocation be for
32 fewer than four days;

33 (B) Where there has been one prior offense within seven years, be
34 revoked or denied by the department for (~~nine-hundred~~) 900 days; or

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

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

1 (A) Where there have been no prior offenses within seven years,
2 be revoked or denied by the department for two years;

3 (B) Where there has been one prior offense within seven years, be
4 revoked or denied by the department for three years; or

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

7 (b) (i) The department shall grant credit on a day-for-day basis
8 for a suspension, revocation, or denial imposed under this subsection
9 (9) for any portion of a suspension, revocation, or denial already
10 served under RCW 46.20.3101 arising out of the same incident.

11 (ii) If a person has already served a suspension, revocation, or
12 denial under RCW 46.20.3101 for a period equal to or greater than the
13 period imposed under this subsection (9), the department shall
14 provide notice of full credit, shall provide for no further
15 suspension or revocation under this subsection provided the person
16 has completed the requirements under RCW 46.20.311 and paid the
17 probationary license fee under RCW 46.20.355 by the date specified in
18 the notice under RCW 46.20.245, and shall impose no additional
19 reissue fees for this credit.

20 (c) Upon receipt of a notice from the court under RCW 36.28A.390
21 that a participant has been removed from a 24/7 sobriety program, the
22 department must resume any suspension, revocation, or denial that had
23 been terminated early under this subsection due to participation in
24 the program, granting credit on a day-for-day basis for any portion
25 of a suspension, revocation, or denial already served under RCW
26 46.20.3101 or this section arising out of the same incident.

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

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

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

6 (11) **Conditions of probation.** (a) In addition to any
7 nonsuspendable and nondeferrable jail sentence required by this
8 section, whenever the court imposes up to (~~three hundred sixty~~
9 ~~four~~) 364 days in jail, the court shall also suspend but shall not
10 defer a period of confinement for a period not exceeding five years.
11 The court shall impose conditions of probation that include: (i) Not
12 driving a motor vehicle within this state without a valid license to
13 drive; (ii) not driving a motor vehicle within this state without
14 proof of liability insurance or other financial responsibility for
15 the future pursuant to RCW 46.30.020; (iii) not driving or being in
16 physical control of a motor vehicle within this state while having an
17 alcohol concentration of 0.08 or more or a THC concentration of 5.00
18 nanograms per milliliter of whole blood or higher, within two hours
19 after driving; (iv) not refusing to submit to a test of his or her
20 breath or blood to determine alcohol or drug concentration upon
21 request of a law enforcement officer who has reasonable grounds to
22 believe the person was driving or was in actual physical control of a
23 motor vehicle within this state while under the influence of
24 intoxicating liquor or drug; and (v) not driving a motor vehicle in
25 this state without a functioning ignition interlock device as
26 required by the department under RCW 46.20.720. The court may impose
27 conditions of probation that include nonrepetition, installation of
28 an ignition interlock device on the probationer's motor vehicle,
29 substance use disorder treatment, supervised probation, or other
30 conditions that may be appropriate. The sentence may be imposed in
31 whole or in part upon violation of a condition of probation during
32 the suspension period.

33 (b) For each violation of mandatory conditions of probation under
34 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall
35 order the convicted person to be confined for (~~thirty~~) 30 days,
36 which shall not be suspended or deferred.

37 (c) For each incident involving a violation of a mandatory
38 condition of probation imposed under this subsection, the license,
39 permit, or privilege to drive of the person shall be suspended by the
40 court for (~~thirty~~) 30 days or, if such license, permit, or

1 privilege to drive already is suspended, revoked, or denied at the
2 time the finding of probation violation is made, the suspension,
3 revocation, or denial then in effect shall be extended by (~~thirty~~)
4 30 days. The court shall notify the department of any suspension,
5 revocation, or denial or any extension of a suspension, revocation,
6 or denial imposed under this subsection.

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

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

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

16 (c) The court determines that there is reason to believe that the
17 offender would violate the conditions of the electronic home
18 monitoring penalty.

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

26 Whenever the combination of jail time and electronic home
27 monitoring or alternative sentence would exceed (~~three hundred~~
28 ~~sixty-four~~) 364 days, the offender shall serve the jail portion of
29 the sentence first, and the electronic home monitoring or alternative
30 portion of the sentence shall be reduced so that the combination does
31 not exceed (~~three hundred sixty-four~~) 364 days.

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

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

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

- 1 (i) A conviction for a violation of RCW 46.61.502 or an
2 equivalent local ordinance;
- 3 (ii) A conviction for a violation of RCW 46.61.504 or an
4 equivalent local ordinance;
- 5 (iii) A conviction for a violation of RCW 46.25.110 or an
6 equivalent local ordinance;
- 7 (iv) A conviction for a violation of RCW 79A.60.040(2) or an
8 equivalent local ordinance;
- 9 (v) A conviction for a violation of RCW 79A.60.040(1) or an
10 equivalent local ordinance committed in a reckless manner if the
11 conviction is the result of a charge that was originally filed as a
12 violation of RCW 79A.60.040(2) or an equivalent local ordinance;
- 13 (vi) A conviction for a violation of RCW 47.68.220 or an
14 equivalent local ordinance committed while under the influence of
15 intoxicating liquor or any drug;
- 16 (vii) A conviction for a violation of RCW 47.68.220 or an
17 equivalent local ordinance committed in a careless or reckless manner
18 if the conviction is the result of a charge that was originally filed
19 as a violation of RCW 47.68.220 or an equivalent local ordinance
20 while under the influence of intoxicating liquor or any drug;
- 21 (viii) A conviction for a violation of RCW 46.09.470(2) or an
22 equivalent local ordinance;
- 23 (ix) A conviction for a violation of RCW 46.10.490(2) or an
24 equivalent local ordinance;
- 25 (x) A conviction for a violation of RCW 46.61.520 committed while
26 under the influence of intoxicating liquor or any drug, or a
27 conviction for a violation of RCW 46.61.520 committed in a reckless
28 manner or with the disregard for the safety of others if the
29 conviction is the result of a charge that was originally filed as a
30 violation of RCW 46.61.520 committed while under the influence of
31 intoxicating liquor or any drug;
- 32 (xi) A conviction for a violation of RCW 46.61.522 committed
33 while under the influence of intoxicating liquor or any drug, or a
34 conviction for a violation of RCW 46.61.522 committed in a reckless
35 manner or with the disregard for the safety of others if the
36 conviction is the result of a charge that was originally filed as a
37 violation of RCW 46.61.522 committed while under the influence of
38 intoxicating liquor or any drug;
- 39 (xii) A conviction for a violation of RCW 46.61.5249, 46.61.500,
40 or 9A.36.050 or an equivalent local ordinance, if the conviction is

1 the result of a charge that was originally filed as a violation of
2 RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of
3 RCW 46.61.520 or 46.61.522;

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

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

10 (xv) A deferred prosecution under chapter 10.05 RCW granted in a
11 prosecution for a violation of RCW 46.61.5249, or an equivalent local
12 ordinance, if the charge under which the deferred prosecution was
13 granted was originally filed as a violation of RCW 46.61.502 or
14 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
15 46.61.522;

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

22 (xvii) A deferred sentence imposed in a prosecution for a
23 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
24 equivalent local ordinance, if the charge under which the deferred
25 sentence was imposed was originally filed as a violation of RCW
26 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
27 violation of RCW 46.61.520 or 46.61.522;

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) "Treatment" means substance use disorder treatment licensed
33 or certified by the department of health;

34 (c) "Within seven years" means that the arrest for a prior
35 offense occurred within seven years before or after the arrest for
36 the current offense; and

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

1 (15) All fines imposed by this section apply to adult offenders
2 only.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.59
4 RCW to read as follows:

5 The Washington traffic safety commission shall develop and
6 implement a public information campaign related to this act. In
7 developing and implementing the public information campaign, the
8 commission must:

9 (1) Ensure television, radio, and online advertisements are
10 provided in all areas of the state;

11 (2) Include multiple print advertisements in the largest
12 newspapers in each county;

13 (3) Provide content of the public information campaign in the top
14 nine most significant non-English-speaking languages spoken in the
15 state;

16 (4) Consider equity outcomes on overburdened communities as
17 defined in RCW 70A.02.010; and

18 (5) Ensure that at least 10 percent of the advertisements are
19 developed in conjunction with in-state hospitality stakeholders and
20 educate drivers about safe alternatives to driving while patronizing
21 hospitality businesses.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 66.44
23 RCW to read as follows:

24 The legislature finds that current civil law relating to civil
25 liability is that a licensed commercial vendor or quasi-commercial
26 vendor owes a duty to third persons not to sell, serve, or furnish
27 alcohol to a person who is apparently under the influence of alcohol,
28 or who is obviously intoxicated. This current civil law is both
29 statutory and also developed in case law. The legislature further
30 finds that civil liability to third persons under the civil law does
31 not depend upon a finding of the blood or breath alcohol
32 concentration. Therefore, nothing in this act shall be construed to
33 change current civil law for civil liability of a licensed commercial
34 vendor or quasi-commercial vendor.

35 NEW SECTION. **Sec. 4.** A new section is added to chapter 66.08
36 RCW to read as follows:

1 (1) The Washington state institute for public policy must conduct
2 an evaluation of the impacts of this act during the first two years
3 of implementation. By October 1, 2026, the institute must submit a
4 report to the appropriate committees of the legislature detailing the
5 results of its evaluation. The evaluation must include, but is not
6 limited to, the impact of this act on:

7 (a) The number of serious and fatal traffic accidents;

8 (b) Driving under the influence arrests and adjudications for
9 driving under the influence offenses;

10 (c) Equity outcomes on overburdened communities as defined in RCW
11 70A.02.010;

12 (d) Sales and other business effects on the hospitality industry
13 in the state; and

14 (e) Sales and other business effects on breweries, wineries, and
15 distilleries in the state.

16 (2) This section expires November 1, 2026.

17 NEW SECTION. **Sec. 5.** This act takes effect July 1, 2024."

2SSB 5002 - S AMD 200

By Senator Fortunato

NOT CONSIDERED 05/17/2023

18 On page 1, line 1 of the title, after "concentration;" strike the
19 remainder of the title and insert "amending RCW 46.61.5055; adding a
20 new section to chapter 43.59 RCW; adding a new section to chapter
21 66.44 RCW; adding a new section to chapter 66.08 RCW; prescribing
22 penalties; providing an effective date; and providing an expiration
23 date."

EFFECT: (1) Removes the intent section with findings supporting a
0.05 alcohol concentration.

(2) Retains the legal limit of 0.08 alcohol concentration.

(3) Changes the penalty schedule for violations of alcohol
concentration:

(a) Adds 0.10 as a penalty threshold.

(b) Reduces the 0.15 penalty threshold to 0.12.

--- END ---