
SECOND SUBSTITUTE SENATE BILL 5105

State of Washington 64th Legislature 2015 Regular Session

By Senate Ways & Means (originally sponsored by Senators Padden, Frockt, O'Ban, Fain, Fraser, Pearson, Roach, and Darneille)

READ FIRST TIME 02/27/15.

1 AN ACT Relating to making a fourth driving under the influence
2 offense a felony; amending RCW 46.61.502, 46.61.504, 46.61.5055, and
3 46.61.5054; reenacting and amending RCW 9.94A.515; and prescribing
4 penalties.

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

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

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

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

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

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

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

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

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

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

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

33 (b) Analyses of blood samples obtained more than two hours after
34 the alleged driving may be used as evidence that within two hours of
35 the alleged driving, a person had a THC concentration of 5.00 or more
36 in 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 (~~four~~) three or more prior offenses within
6 ten 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 46.61.504(6).

15 **Sec. 2.** RCW 46.61.504 and 2013 c 3 s 35 (Initiative Measure No.
16 502) are each amended to read as follows:

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

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

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

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

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

33 (2) The fact that a person charged with a violation of this
34 section is or has been entitled to use a drug under the laws of this
35 state does not constitute a defense against any charge of violating
36 this section. No person may be convicted under this section if, prior
37 to being pursued by a law enforcement officer, the person has moved
38 the 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 (~~four~~) three or more prior offenses within
6 ten 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).

15 **Sec. 3.** RCW 46.61.5055 and 2014 c 100 s 1 are each amended to
16 read as follows:

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

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

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

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

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

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

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

35 (2) **One prior offense in seven years.** Except as provided in RCW
36 46.61.502(6) or 46.61.504(6), a person who is convicted of a
37 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
38 within seven years shall be punished as follows:

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

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

4 (i) By imprisonment for not less than thirty days nor more than
5 three hundred sixty-four days and sixty days of electronic home
6 monitoring. In lieu of the mandatory minimum term of sixty days
7 electronic home monitoring, the court may order at least an
8 additional four days in jail or, if available in that county or city,
9 a six-month period of 24/7 sobriety program monitoring pursuant to
10 RCW 36.28A.300 through 36.28A.390, and the court shall order an
11 expanded alcohol assessment and treatment, if deemed appropriate by
12 the assessment. The offender shall pay for the cost of the electronic
13 monitoring. The county or municipality where the penalty is being
14 imposed shall determine the cost. The court may also require the
15 offender's electronic home monitoring device include an alcohol
16 detection breathalyzer or other separate alcohol monitoring device,
17 and may restrict the amount of alcohol the offender may consume
18 during the time the offender is on electronic home monitoring. Thirty
19 days of imprisonment and sixty days of electronic home monitoring may
20 not be suspended 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. Whenever the mandatory
23 minimum sentence is suspended, the court shall state in writing the
24 reason for granting the suspension and the facts upon which the
25 suspension is based; and

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

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

34 (i) By imprisonment for not less than forty-five days nor more
35 than three hundred sixty-four days and ninety days of electronic home
36 monitoring. In lieu of the mandatory minimum term of ninety days
37 electronic home monitoring, the court may order at least an
38 additional six days in jail or, if available in that county or city,
39 a six-month period of 24/7 sobriety program monitoring pursuant to
40 RCW 36.28A.300 through 36.28A.390, and the court shall order an

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

16 (ii) By a fine of not less than seven hundred fifty dollars nor
17 more than five thousand dollars. Seven hundred fifty dollars of the
18 fine may not be suspended unless the court finds the offender to be
19 indigent.

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

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

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

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

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

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

20 (i) By imprisonment for not less than one hundred twenty days nor
21 more than three hundred sixty-four days, if available in that county
22 or city, a six-month period of 24/7 sobriety program monitoring
23 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty
24 days of electronic home monitoring. In lieu of the mandatory minimum
25 term of one hundred fifty days of electronic home monitoring, the
26 court may order at least an additional ten days in jail. The offender
27 shall pay for the cost of the electronic monitoring. The court shall
28 order an expanded alcohol assessment and treatment, if deemed
29 appropriate by the assessment. The county or municipality where the
30 penalty is being imposed shall determine the cost. The court may also
31 require the offender's electronic home monitoring device include an
32 alcohol detection breathalyzer or other separate alcohol monitoring
33 device, and may restrict the amount of alcohol the offender may
34 consume during the time the offender is on electronic home
35 monitoring. One hundred twenty days of imprisonment and one hundred
36 fifty days of electronic home monitoring may not be suspended unless
37 the court finds that the imposition of this mandatory minimum
38 sentence would impose a substantial risk to the offender's physical
39 or mental well-being. Whenever the mandatory minimum sentence is

1 suspended, the court shall state in writing the reason for granting
2 the suspension and the facts upon which the suspension is based; and

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

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

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

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

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

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

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

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

20 (5) **Monitoring.**

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

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

37 (c) **Ignition interlock device substituted for 24/7 sobriety**
38 **program monitoring.** In any county or city where a 24/7 sobriety
39 program is available and verified by the Washington association of
40 sheriffs and police chiefs, the court shall:

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

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

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

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

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

17 (b) In any case in which the person has no prior offenses within
18 seven years, and except as provided in RCW 46.61.502(6) or
19 46.61.504(6), order an additional twenty-four hours of imprisonment
20 and a fine of not less than one thousand dollars and not more than
21 five thousand dollars. One thousand dollars of the fine may not be
22 suspended unless the court finds the offender to be indigent;

23 (c) In any case in which the person has one prior offense within
24 seven years, and except as provided in RCW 46.61.502(6) or
25 46.61.504(6), order an additional five days of imprisonment and a
26 fine of not less than two thousand dollars and not more than five
27 thousand dollars. One thousand dollars of the fine may not be
28 suspended unless the court finds the offender to be indigent;

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

36 (7) **Other items courts must consider while setting penalties.** In
37 exercising its discretion in setting penalties within the limits
38 allowed by this section, the court shall particularly consider the
39 following:

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

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

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

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

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

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

18 (a) **Penalty for alcohol concentration less than 0.15.** If the
19 person's alcohol concentration was less than 0.15, or if for reasons
20 other than the person's refusal to take a test offered under RCW
21 46.20.308 there is no test result indicating the person's alcohol
22 concentration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (11) **Conditions of probation.** (a) In addition to any
30 nonsuspendable and nondeferrable jail sentence required by this
31 section, whenever the court imposes up to three hundred sixty-four
32 days in jail, the court shall also suspend but shall not defer a
33 period of confinement for a period not exceeding five years. The
34 court shall impose conditions of probation that include: (i) Not
35 driving a motor vehicle within this state without a valid license to
36 drive and proof of liability insurance or other financial
37 responsibility for the future pursuant to RCW 46.30.020; (ii) not
38 driving or being in physical control of a motor vehicle within this
39 state while having an alcohol concentration of 0.08 or more or a THC
40 concentration of 5.00 nanograms per milliliter of whole blood or

1 higher, within two hours after driving; and (iii) not refusing to
2 submit to a test of his or her breath or blood to determine alcohol
3 or drug concentration upon request of a law enforcement officer who
4 has reasonable grounds to believe the person was driving or was in
5 actual physical control of a motor vehicle within this state while
6 under the influence of intoxicating liquor or drug. The court may
7 impose conditions of probation that include nonrepetition,
8 installation of an ignition interlock device on the probationer's
9 motor vehicle, alcohol or drug treatment, supervised probation, or
10 other conditions that may be appropriate. The sentence may be imposed
11 in whole or in part upon violation of a condition of probation during
12 the suspension period.

13 (b) For each violation of mandatory conditions of probation under
14 (a)(i), (ii), or (iii) of this subsection, the court shall order the
15 convicted person to be confined for thirty days, which shall not be
16 suspended or deferred.

17 (c) For each incident involving a violation of a mandatory
18 condition of probation imposed under this subsection, the license,
19 permit, or privilege to drive of the person shall be suspended by the
20 court for thirty days or, if such license, permit, or privilege to
21 drive already is suspended, revoked, or denied at the time the
22 finding of probation violation is made, the suspension, revocation,
23 or denial then in effect shall be extended by thirty days. The court
24 shall notify the department of any suspension, revocation, or denial
25 or any extension of a suspension, revocation, or denial imposed under
26 this subsection.

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

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

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

36 (c) The court determines that there is reason to believe that the
37 offender would violate the conditions of the electronic home
38 monitoring penalty.

39 Whenever the mandatory minimum term of electronic home monitoring
40 is waived, the court shall state in writing the reason for granting

1 the waiver and the facts upon which the waiver is based, and shall
2 impose an alternative sentence with similar punitive consequences.
3 The alternative sentence may include, but is not limited to, use of
4 an ignition interlock device, the 24/7 sobriety program monitoring,
5 additional jail time, work crew, or work camp.

6 Whenever the combination of jail time and electronic home
7 monitoring or alternative sentence would exceed three hundred sixty-
8 four days, the offender shall serve the jail portion of the sentence
9 first, and the electronic home monitoring or alternative portion of
10 the sentence shall be reduced so that the combination does not exceed
11 three hundred sixty-four days.

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

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

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

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

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

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

26 (iv) A conviction for a violation of RCW 79A.60.040 or an
27 equivalent local ordinance;

28 (v) A conviction for a violation of RCW 47.68.220 or an
29 equivalent local ordinance;

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

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

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

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

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

13 (xi) An out-of-state conviction for a violation that would have
14 been a violation of (a)(i), (ii), (viii), (ix), or (x) of this
15 subsection if committed in this state;

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

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

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

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

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

1 (b) "Treatment" means alcohol or drug treatment approved by the
2 department of social and health services;

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

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

9 **Sec. 4.** RCW 9.94A.515 and 2013 c 322 s 26, 2013 c 290 s 8, 2013
10 c 267 s 2, and 2013 c 153 s 2 are each reenacted and amended to read
11 as follows:

12 TABLE 2
13 CRIMES INCLUDED WITHIN
14 EACH SERIOUSNESS LEVEL

- 15 XVI Aggravated Murder 1 (RCW
16 10.95.020)
- 17 XV Homicide by abuse (RCW 9A.32.055)
18 Malicious explosion 1 (RCW
19 70.74.280(1))
20 Murder 1 (RCW 9A.32.030)
- 21 XIV Murder 2 (RCW 9A.32.050)
22 Trafficking 1 (RCW 9A.40.100(1))
- 23 XIII Malicious explosion 2 (RCW
24 70.74.280(2))
25 Malicious placement of an explosive 1
26 (RCW 70.74.270(1))
- 27 XII Assault 1 (RCW 9A.36.011)
28 Assault of a Child 1 (RCW 9A.36.120)
29 Malicious placement of an imitation
30 device 1 (RCW 70.74.272(1)(a))
31 Promoting Commercial Sexual Abuse
32 of a Minor (RCW 9.68A.101)
33 Rape 1 (RCW 9A.44.040)
34 Rape of a Child 1 (RCW 9A.44.073)

1 Trafficking 2 (RCW 9A.40.100(~~(2)~~))
2 (3)
3 XI Manslaughter 1 (RCW 9A.32.060)
4 Rape 2 (RCW 9A.44.050)
5 Rape of a Child 2 (RCW 9A.44.076)
6 Vehicular Homicide, by being under
7 the influence of intoxicating liquor
8 or any drug (RCW 46.61.520)
9 X Child Molestation 1 (RCW 9A.44.083)
10 Criminal Mistreatment 1 (RCW
11 9A.42.020)
12 Indecent Liberties (with forcible
13 compulsion) (RCW
14 9A.44.100(1)(a))
15 Kidnapping 1 (RCW 9A.40.020)
16 Leading Organized Crime (RCW
17 9A.82.060(1)(a))
18 Malicious explosion 3 (RCW
19 70.74.280(3))
20 Sexually Violent Predator Escape
21 (RCW 9A.76.115)
22 IX Abandonment of Dependent Person 1
23 (RCW 9A.42.060)
24 Assault of a Child 2 (RCW 9A.36.130)
25 Explosive devices prohibited (RCW
26 70.74.180)
27 Hit and Run—Death (RCW
28 46.52.020(4)(a))
29 Homicide by Watercraft, by being
30 under the influence of intoxicating
31 liquor or any drug (RCW
32 79A.60.050)
33 Inciting Criminal Profiteering (RCW
34 9A.82.060(1)(b))

1 Malicious placement of an explosive 2
2 (RCW 70.74.270(2))
3 Robbery 1 (RCW 9A.56.200)
4 Sexual Exploitation (RCW 9.68A.040)
5 VIII Arson 1 (RCW 9A.48.020)
6 Commercial Sexual Abuse of a Minor
7 (RCW 9.68A.100)
8 Homicide by Watercraft, by the
9 operation of any vessel in a
10 reckless manner (RCW
11 79A.60.050)
12 Manslaughter 2 (RCW 9A.32.070)
13 Promoting Prostitution 1 (RCW
14 9A.88.070)
15 Theft of Ammonia (RCW 69.55.010)
16 Vehicular Homicide, by the operation
17 of any vehicle in a reckless
18 manner (RCW 46.61.520)
19 VII Burglary 1 (RCW 9A.52.020)
20 Child Molestation 2 (RCW 9A.44.086)
21 Civil Disorder Training (RCW
22 9A.48.120)
23 Dealing in depictions of minor engaged
24 in sexually explicit conduct 1
25 (RCW 9.68A.050(1))
26 Drive-by Shooting (RCW 9A.36.045)
27 Homicide by Watercraft, by disregard
28 for the safety of others (RCW
29 79A.60.050)
30 Indecent Liberties (without forcible
31 compulsion) (RCW 9A.44.100(1)
32 (b) and (c))
33 Introducing Contraband 1 (RCW
34 9A.76.140)

1 Malicious placement of an explosive 3
2 (RCW 70.74.270(3))
3 Negligently Causing Death By Use of a
4 Signal Preemption Device (RCW
5 46.37.675)
6 Sending, bringing into state depictions
7 of minor engaged in sexually
8 explicit conduct 1 (RCW
9 9.68A.060(1))
10 Unlawful Possession of a Firearm in
11 the first degree (RCW
12 9.41.040(1))
13 Use of a Machine Gun in Commission
14 of a Felony (RCW 9.41.225)
15 Vehicular Homicide, by disregard for
16 the safety of others (RCW
17 46.61.520)
18 VI Bail Jumping with Murder 1 (RCW
19 9A.76.170(3)(a))
20 Bribery (RCW 9A.68.010)
21 Incest 1 (RCW 9A.64.020(1))
22 Intimidating a Judge (RCW 9A.72.160)
23 Intimidating a Juror/Witness (RCW
24 9A.72.110, 9A.72.130)
25 Malicious placement of an imitation
26 device 2 (RCW 70.74.272(1)(b))
27 Possession of Depictions of a Minor
28 Engaged in Sexually Explicit
29 Conduct 1 (RCW 9.68A.070(1))
30 Rape of a Child 3 (RCW 9A.44.079)
31 Theft of a Firearm (RCW 9A.56.300)
32 Unlawful Storage of Ammonia (RCW
33 69.55.020)
34 V Abandonment of Dependent Person 2
35 (RCW 9A.42.070)

1 Advancing money or property for
2 extortionate extension of credit
3 (RCW 9A.82.030)

4 Bail Jumping with class A Felony
5 (RCW 9A.76.170(3)(b))

6 Child Molestation 3 (RCW 9A.44.089)

7 Criminal Mistreatment 2 (RCW
8 9A.42.030)

9 Custodial Sexual Misconduct 1 (RCW
10 9A.44.160)

11 Dealing in Depictions of Minor
12 Engaged in Sexually Explicit
13 Conduct 2 (RCW 9.68A.050(2))

14 Domestic Violence Court Order
15 Violation (RCW 10.99.040,
16 10.99.050, 26.09.300, 26.10.220,
17 26.26.138, 26.50.110, 26.52.070,
18 or 74.34.145)

19 ~~((Driving While Under the Influence
20 (RCW 46.61.502(6))))~~

21 Extortion 1 (RCW 9A.56.120)

22 Extortionate Extension of Credit (RCW
23 9A.82.020)

24 Extortionate Means to Collect
25 Extensions of Credit (RCW
26 9A.82.040)

27 Incest 2 (RCW 9A.64.020(2))

28 Kidnapping 2 (RCW 9A.40.030)

29 Perjury 1 (RCW 9A.72.020)

30 Persistent prison misbehavior (RCW
31 9.94.070)

32 ~~((Physical Control of a Vehicle While
33 Under the Influence (RCW
34 46.61.504(6))))~~

35 Possession of a Stolen Firearm (RCW
36 9A.56.310)

1 Rape 3 (RCW 9A.44.060)
2 Rendering Criminal Assistance 1
3 (RCW 9A.76.070)
4 Sending, Bringing into State
5 Depictions of Minor Engaged in
6 Sexually Explicit Conduct 2
7 (RCW 9.68A.060(2))
8 Sexual Misconduct with a Minor 1
9 (RCW 9A.44.093)
10 Sexually Violating Human Remains
11 (RCW 9A.44.105)
12 Stalking (RCW 9A.46.110)
13 Taking Motor Vehicle Without
14 Permission 1 (RCW 9A.56.070)
15 IV Arson 2 (RCW 9A.48.030)
16 Assault 2 (RCW 9A.36.021)
17 Assault 3 (of a Peace Officer with a
18 Projectile Stun Gun) (RCW
19 9A.36.031(1)(h))
20 Assault by Watercraft (RCW
21 79A.60.060)
22 Bribing a Witness/Bribe Received by
23 Witness (RCW 9A.72.090,
24 9A.72.100)
25 Cheating 1 (RCW 9.46.1961)
26 Commercial Bribery (RCW
27 9A.68.060)
28 Counterfeiting (RCW 9.16.035(4))
29 Driving While Under the Influence
30 (RCW 46.61.502(6))
31 Endangerment with a Controlled
32 Substance (RCW 9A.42.100)
33 Escape 1 (RCW 9A.76.110)
34 Hit and Run—Injury (RCW
35 46.52.020(4)(b))

1 Hit and Run with Vessel—Injury
2 Accident (RCW 79A.60.200(3))
3 Identity Theft 1 (RCW 9.35.020(2))
4 Indecent Exposure to Person Under
5 Age Fourteen (subsequent sex
6 offense) (RCW 9A.88.010)
7 Influencing Outcome of Sporting Event
8 (RCW 9A.82.070)
9 Malicious Harassment (RCW
10 9A.36.080)
11 Physical Control of a Vehicle While
12 Under the Influence (RCW
13 46.61.504(6))
14 Possession of Depictions of a Minor
15 Engaged in Sexually Explicit
16 Conduct 2 (RCW 9.68A.070(2))
17 Residential Burglary (RCW
18 9A.52.025)
19 Robbery 2 (RCW 9A.56.210)
20 Theft of Livestock 1 (RCW 9A.56.080)
21 Threats to Bomb (RCW 9.61.160)
22 Trafficking in Stolen Property 1 (RCW
23 9A.82.050)
24 Unlawful factoring of a credit card or
25 payment card transaction (RCW
26 9A.56.290(4)(b))
27 Unlawful transaction of health
28 coverage as a health care service
29 contractor (RCW 48.44.016(3))
30 Unlawful transaction of health
31 coverage as a health maintenance
32 organization (RCW 48.46.033(3))
33 Unlawful transaction of insurance
34 business (RCW 48.15.023(3))
35 Unlicensed practice as an insurance
36 professional (RCW 48.17.063(2))

1 Use of Proceeds of Criminal
2 Profiteering (RCW 9A.82.080 (1)
3 and (2))
4 Vehicle Prowling 2 (third or
5 subsequent offense) (RCW
6 9A.52.100(3))
7 Vehicular Assault, by being under the
8 influence of intoxicating liquor or
9 any drug, or by the operation or
10 driving of a vehicle in a reckless
11 manner (RCW 46.61.522)
12 Viewing of Depictions of a Minor
13 Engaged in Sexually Explicit
14 Conduct 1 (RCW 9.68A.075(1))
15 Willful Failure to Return from
16 Furlough (RCW 72.66.060)
17 III Animal Cruelty 1 (Sexual Conduct or
18 Contact) (RCW 16.52.205(3))
19 Assault 3 (Except Assault 3 of a Peace
20 Officer With a Projectile Stun
21 Gun) (RCW 9A.36.031 except
22 subsection (1)(h))
23 Assault of a Child 3 (RCW 9A.36.140)
24 Bail Jumping with class B or C Felony
25 (RCW 9A.76.170(3)(c))
26 Burglary 2 (RCW 9A.52.030)
27 Communication with a Minor for
28 Immoral Purposes (RCW
29 9.68A.090)
30 Criminal Gang Intimidation (RCW
31 9A.46.120)
32 Custodial Assault (RCW 9A.36.100)
33 Cyberstalking (subsequent conviction
34 or threat of death) (RCW
35 9.61.260(3))
36 Escape 2 (RCW 9A.76.120)

1 Extortion 2 (RCW 9A.56.130)
2 Harassment (RCW 9A.46.020)
3 Intimidating a Public Servant (RCW
4 9A.76.180)
5 Introducing Contraband 2 (RCW
6 9A.76.150)
7 Malicious Injury to Railroad Property
8 (RCW 81.60.070)
9 Mortgage Fraud (RCW 19.144.080)
10 Negligently Causing Substantial
11 Bodily Harm By Use of a Signal
12 Preemption Device (RCW
13 46.37.674)
14 Organized Retail Theft 1 (RCW
15 9A.56.350(2))
16 Perjury 2 (RCW 9A.72.030)
17 Possession of Incendiary Device (RCW
18 9.40.120)
19 Possession of Machine Gun or Short-
20 Barreled Shotgun or Rifle (RCW
21 9.41.190)
22 Promoting Prostitution 2 (RCW
23 9A.88.080)
24 Retail Theft with Special
25 Circumstances 1 (RCW
26 9A.56.360(2))
27 Securities Act violation (RCW
28 21.20.400)
29 Tampering with a Witness (RCW
30 9A.72.120)
31 Telephone Harassment (subsequent
32 conviction or threat of death)
33 (RCW 9.61.230(2))
34 Theft of Livestock 2 (RCW 9A.56.083)
35 Theft with the Intent to Resell 1 (RCW
36 9A.56.340(2))

1 Trafficking in Stolen Property 2 (RCW
2 9A.82.055)
3 Unlawful Hunting of Big Game 1
4 (RCW 77.15.410(3)(b))
5 Unlawful Imprisonment (RCW
6 9A.40.040)
7 Unlawful Misbranding of Food Fish or
8 Shellfish 1 (RCW 69.04.938(3))
9 Unlawful possession of firearm in the
10 second degree (RCW 9.41.040(2))
11 Unlawful Taking of Endangered Fish
12 or Wildlife 1 (RCW
13 77.15.120(3)(b))
14 Unlawful Trafficking in Fish, Shellfish,
15 or Wildlife 1 (RCW
16 77.15.260(3)(b))
17 Unlawful Use of a Nondesignated
18 Vessel (RCW 77.15.530(4))
19 Vehicular Assault, by the operation or
20 driving of a vehicle with disregard
21 for the safety of others (RCW
22 46.61.522)
23 Willful Failure to Return from Work
24 Release (RCW 72.65.070)
25 II Commercial Fishing Without a License
26 1 (RCW 77.15.500(3)(b))
27 Computer Trespass 1 (RCW
28 9A.52.110)
29 Counterfeiting (RCW 9.16.035(3))
30 Engaging in Fish Dealing Activity
31 Unlicensed 1 (RCW 77.15.620(3))
32 Escape from Community Custody
33 (RCW 72.09.310)
34 Failure to Register as a Sex Offender
35 (second or subsequent offense)
36 (RCW 9A.44.132)

1 Health Care False Claims (RCW
2 48.80.030)
3 Identity Theft 2 (RCW 9.35.020(3))
4 Improperly Obtaining Financial
5 Information (RCW 9.35.010)
6 Malicious Mischief 1 (RCW
7 9A.48.070)
8 Organized Retail Theft 2 (RCW
9 9A.56.350(3))
10 Possession of Stolen Property 1 (RCW
11 9A.56.150)
12 Possession of a Stolen Vehicle (RCW
13 9A.56.068)
14 Retail Theft with Special
15 Circumstances 2 (RCW
16 9A.56.360(3))
17 Scrap Processing, Recycling, or
18 Supplying Without a License
19 (second or subsequent offense)
20 (RCW 19.290.100)
21 Theft 1 (RCW 9A.56.030)
22 Theft of a Motor Vehicle (RCW
23 9A.56.065)
24 Theft of Rental, Leased, or Lease-
25 purchased Property (valued at one
26 thousand five hundred dollars or
27 more) (RCW 9A.56.096(5)(a))
28 Theft with the Intent to Resell 2 (RCW
29 9A.56.340(3))
30 Trafficking in Insurance Claims (RCW
31 48.30A.015)
32 Unlawful factoring of a credit card or
33 payment card transaction (RCW
34 9A.56.290(4)(a))

1 Unlawful Participation of Non-Indians
2 in Indian Fishery (RCW
3 77.15.570(2))
4 Unlawful Practice of Law (RCW
5 2.48.180)
6 Unlawful Purchase or Use of a License
7 (RCW 77.15.650(3)(b))
8 Unlawful Trafficking in Fish, Shellfish,
9 or Wildlife 2 (RCW
10 77.15.260(3)(a))
11 Unlicensed Practice of a Profession or
12 Business (RCW 18.130.190(7))
13 Voyeurism (RCW 9A.44.115)
14 I Attempting to Elude a Pursuing Police
15 Vehicle (RCW 46.61.024)
16 False Verification for Welfare (RCW
17 74.08.055)
18 Forgery (RCW 9A.60.020)
19 Fraudulent Creation or Revocation of a
20 Mental Health Advance Directive
21 (RCW 9A.60.060)
22 Malicious Mischief 2 (RCW
23 9A.48.080)
24 Mineral Trespass (RCW 78.44.330)
25 Possession of Stolen Property 2 (RCW
26 9A.56.160)
27 Reckless Burning 1 (RCW 9A.48.040)
28 Spotlighting Big Game 1 (RCW
29 77.15.450(3)(b))
30 Suspension of Department Privileges 1
31 (RCW 77.15.670(3)(b))
32 Taking Motor Vehicle Without
33 Permission 2 (RCW 9A.56.075)
34 Theft 2 (RCW 9A.56.040)

1 Theft of Rental, Leased, or Lease-
2 purchased Property (valued at two
3 hundred fifty dollars or more but
4 less than one thousand five
5 hundred dollars) (RCW
6 9A.56.096(5)(b))
7 Transaction of insurance business
8 beyond the scope of licensure
9 (RCW 48.17.063)
10 Unlawful Fish and Shellfish Catch
11 Accounting (RCW
12 77.15.630(3)(b))
13 Unlawful Issuance of Checks or Drafts
14 (RCW 9A.56.060)
15 Unlawful Possession of Fictitious
16 Identification (RCW 9A.56.320)
17 Unlawful Possession of Instruments of
18 Financial Fraud (RCW 9A.56.320)
19 Unlawful Possession of Payment
20 Instruments (RCW 9A.56.320)
21 Unlawful Possession of a Personal
22 Identification Device (RCW
23 9A.56.320)
24 Unlawful Production of Payment
25 Instruments (RCW 9A.56.320)
26 ~~((Unlawful Release of Deleterious
27 Exotic Wildlife (RCW
28 77.15.250(2)(b))))~~
29 Unlawful Trafficking in Food Stamps
30 (RCW 9.91.142)
31 Unlawful Use of Food Stamps (RCW
32 9.91.144)
33 Unlawful Use of Net to Take Fish 1
34 (RCW 77.15.580(3)(b))
35 Unlawful Use of Prohibited Aquatic
36 Animal Species (RCW
37 77.15.253(3))

1 Unlawfully Releasing, Planting,
2 Possessing, or Placing Deleterious
3 Exotic Wildlife (RCW
4 77.15.250(2)(b))
5 Vehicle Prowl 1 (RCW 9A.52.095)
6 Violating Commercial Fishing Area or
7 Time 1 (RCW 77.15.550(3)(b))

8 **Sec. 5.** RCW 46.61.5054 and 2011 c 293 s 12 are each amended to
9 read as follows:

10 (1)(a) In addition to penalties set forth in RCW 46.61.5051
11 through 46.61.5053 until September 1, 1995, and RCW 46.61.5055
12 thereafter, a two hundred fifty dollar fee shall be assessed to a
13 person who is either convicted, sentenced to a lesser charge, or
14 given deferred prosecution, as a result of an arrest for violating
15 RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for
16 the purpose of funding the Washington state toxicology laboratory and
17 the Washington state patrol for grants and activities to increase the
18 conviction rate and decrease the incidence of persons driving under
19 the influence of alcohol or drugs.

20 (b) Upon a verified petition by the person assessed the fee, the
21 court may suspend payment of all or part of the fee if it finds that
22 the person does not have the ability to pay.

23 (c) When a minor has been adjudicated a juvenile offender for an
24 offense which, if committed by an adult, would constitute a violation
25 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall
26 assess the two hundred fifty dollar fee under (a) of this subsection.
27 Upon a verified petition by a minor assessed the fee, the court may
28 suspend payment of all or part of the fee if it finds that the minor
29 does not have the ability to pay the fee.

30 (2) The fee assessed under subsection (1) of this section shall
31 be collected by the clerk of the court and, subject to subsection
32 (~~((4))~~) (5) of this section, one hundred seventy-five dollars of the
33 fee must be distributed as follows:

34 (a) Forty percent shall be subject to distribution under RCW
35 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

36 (b) The remainder of the fee shall be forwarded to the state
37 treasurer who shall, through June 30, 1997, deposit: Fifty percent in
38 the death investigations' account to be used solely for funding the

1 state toxicology laboratory blood or breath testing programs; and
2 fifty percent in the state patrol highway account to be used solely
3 for funding activities to increase the conviction rate and decrease
4 the incidence of persons driving under the influence of alcohol or
5 drugs. Effective July 1, 1997, the remainder of the fee shall be
6 forwarded to the state treasurer who shall deposit: Fifteen percent
7 in the death investigations' account to be used solely for funding
8 the state toxicology laboratory blood or breath testing programs; and
9 eighty-five percent in the state patrol highway account to be used
10 solely for funding activities to increase the conviction rate and
11 decrease the incidence of persons driving under the influence of
12 alcohol or drugs.

13 (3) Twenty-five dollars of the fee assessed under subsection (1)
14 of this section must be distributed to the highway safety (~~account~~
15 ~~{fund}~~) fund to be used solely for funding Washington traffic safety
16 commission grants to reduce statewide collisions caused by persons
17 driving under the influence of alcohol or drugs. Grants awarded under
18 this subsection may be for projects that encourage collaboration with
19 other community, governmental, and private organizations, and that
20 utilize innovative approaches based on best practices or proven
21 strategies supported by research or rigorous evaluation. Grants
22 recipients may include, for example:

23 (a) DUI courts; and

24 (b) Jurisdictions implementing the victim impact panel registries
25 under RCW 46.61.5152 and 10.01.230.

26 (4) Fifty dollars of the fee assessed under subsection (1) of
27 this section must be distributed to the highway safety fund to be
28 used solely for funding Washington traffic safety commission grants
29 to organizations within counties targeted for programs to reduce
30 driving under the influence of alcohol or drugs.

31 (5) If the court has suspended payment of part of the fee
32 pursuant to subsection (1)(b) or (c) of this section, amounts
33 collected shall be distributed proportionately.

34 ((+5)) (6) This section applies to any offense committed on or
35 after July 1, 1993.

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