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SENATE BILL 5105

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State of Washington

64th Legislature

2015 Regular Session

By Senators Padden, Frockt, O'Ban, Fain, Fraser, Pearson, Roach, and Darneille

Read first time 01/14/15. Referred to Committee on Law & Justice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (3)(a) It is an affirmative defense to a violation of subsection  
38 (1)(a) of this section which the defendant must prove by a  
39 preponderance of the evidence that the defendant consumed a

1 sufficient quantity of alcohol after the time of being in actual  
2 physical control of the vehicle and before the administration of an  
3 analysis of the person's breath or blood to cause the defendant's  
4 alcohol concentration to be 0.08 or more within two hours after being  
5 in such control. The court shall not admit evidence of this defense  
6 unless the defendant notifies the prosecution prior to the omnibus or  
7 pretrial hearing in the case of the defendant's intent to assert the  
8 affirmative defense.

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

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

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

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

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

- 1 (a) The person has (~~four~~) three or more prior offenses within  
2 ten years as defined in RCW 46.61.5055; or
- 3 (b) The person has ever previously been convicted of:
- 4 (i) Vehicular homicide while under the influence of intoxicating  
5 liquor or any drug, RCW 46.61.520(1)(a);
- 6 (ii) Vehicular assault while under the influence of intoxicating  
7 liquor or any drug, RCW 46.61.522(1)(b);
- 8 (iii) An out-of-state offense comparable to the offense specified  
9 in (b)(i) or (ii) of this subsection; or
- 10 (iv) A violation of this subsection (6) or RCW 46.61.502(6).

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

13 (1) **No prior offenses in seven years.** Except as provided in RCW  
14 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
15 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense  
16 within seven years shall be punished as follows:

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

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

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

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

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

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

31 (2) **One prior offense in seven years.** Except as provided in RCW  
32 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
33 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense  
34 within seven years shall be punished as follows:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

39 (ii) By a fine of not less than one thousand five hundred dollars  
40 nor more than five thousand dollars. One thousand five hundred

1 dollars of the fine may not be suspended unless the court finds the  
2 offender to be indigent.

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

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

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

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

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

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

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

16 (5) **Monitoring.**

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

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

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

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

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

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

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

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

14 (b) In any case in which the person has no prior offenses within  
15 seven years, and except as provided in RCW 46.61.502(6) or  
16 46.61.504(6), order an additional twenty-four hours of imprisonment  
17 and a fine of not less than one thousand dollars and not more than  
18 five thousand dollars. One thousand dollars of the fine may not be  
19 suspended unless the court finds the offender to be indigent;

20 (c) In any case in which the person has one prior offense within  
21 seven years, and except as provided in RCW 46.61.502(6) or  
22 46.61.504(6), order an additional five days of imprisonment and a  
23 fine of not less than two thousand dollars and not more than five  
24 thousand dollars. One thousand dollars of the fine may not be  
25 suspended unless the court finds the offender to be indigent;

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

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

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

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

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

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

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

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

14 (a) **Penalty for alcohol concentration less than 0.15.** If the  
15 person's alcohol concentration was less than 0.15, or if for reasons  
16 other than the person's refusal to take a test offered under RCW  
17 46.20.308 there is no test result indicating the person's alcohol  
18 concentration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (11) **Conditions of probation.** (a) In addition to any  
26 nonsuspendable and nondeferrable jail sentence required by this  
27 section, whenever the court imposes up to three hundred sixty-four  
28 days in jail, the court shall also suspend but shall not defer a  
29 period of confinement for a period not exceeding five years. The  
30 court shall impose conditions of probation that include: (i) Not  
31 driving a motor vehicle within this state without a valid license to  
32 drive and proof of liability insurance or other financial  
33 responsibility for the future pursuant to RCW 46.30.020; (ii) not  
34 driving or being in physical control of a motor vehicle within this  
35 state while having an alcohol concentration of 0.08 or more or a THC  
36 concentration of 5.00 nanograms per milliliter of whole blood or  
37 higher, within two hours after driving; and (iii) not refusing to  
38 submit to a test of his or her breath or blood to determine alcohol  
39 or drug concentration upon request of a law enforcement officer who  
40 has reasonable grounds to believe the person was driving or was in

1 actual physical control of a motor vehicle within this state while  
2 under the influence of intoxicating liquor or drug. The court may  
3 impose conditions of probation that include nonrepetition,  
4 installation of an ignition interlock device on the probationer's  
5 motor vehicle, alcohol or drug treatment, supervised probation, or  
6 other conditions that may be appropriate. The sentence may be imposed  
7 in whole or in part upon violation of a condition of probation during  
8 the suspension period.

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

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

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

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

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

32 (c) The court determines that there is reason to believe that the  
33 offender would violate the conditions of the electronic home  
34 monitoring penalty.

35 Whenever the mandatory minimum term of electronic home monitoring  
36 is waived, the court shall state in writing the reason for granting  
37 the waiver and the facts upon which the waiver is based, and shall  
38 impose an alternative sentence with similar punitive consequences.  
39 The alternative sentence may include, but is not limited to, use of

1 an ignition interlock device, the 24/7 sobriety program monitoring,  
2 additional jail time, work crew, or work camp.

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

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

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

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

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

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

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

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

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

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

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

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

38 (ix) A conviction for a violation of RCW 46.61.522 committed  
39 while under the influence of intoxicating liquor or any drug, or a  
40 conviction for a violation of RCW 46.61.522 committed in a reckless

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

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

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

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

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

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

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

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

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



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

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

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