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**SENATE BILL 5002**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Lovick, Liias, Dhingra, Kuderer, McCune, Nguyen, Rolfes, Shewmake, Valdez, C. Wilson, J. Wilson, and L. Wilson

AN ACT Relating to alcohol concentration; amending RCW 46.61.502, 46.61.504, 46.61.5055, and 46.61.506; creating a new section; prescribing penalties; providing an effective date; and declaring an emergency.

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

NEW SECTION. **Sec.**  The legislature finds and declares that 2021 was the deadliest year on Washington roads since 2006. Washington state saw 540 fatal crashes resulting in the death of more than 600 people. Half of all serious and fatal crashes are caused by driver impairment from drugs and alcohol, and the state saw a 31.3 percent increase in crashes as the result of an impaired driver between 2020 and 2021. This alarming upward trend must be addressed if Washington state is going to meet its goal of target zero. The increase in Washingtonians choosing to drive while impaired points to a need to adjust Washington's impaired driving laws. Utah lowered the blood alcohol concentration limit for operating a motor vehicle from .08 to .05 in 2019 and found that its fatal crash rate dropped by 19.89 percent, and its fatality rate decreased by 18.3 percent. Additionally, 22 percent of people who drank alcohol said they changed their behavior as a result of the new law. The legislature further finds that this is a well calibrated policy based on evidence that shows if all states implemented a .05 blood alcohol concentration level, 538 to 1,790 lives would be saved each year, and alcohol-related fatalities would decrease by 11.1 percent overall. Given the increase in traffic fatalities from impaired driving, the legislature declares that it is time to keep Washington's roads safer and lower the number of fatal crashes caused by impaired drivers by lowering the blood alcohol limit to .05.

**Sec.**  RCW 46.61.502 and 2022 c 16 s 40 are each amended to read as follows:

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

(a) And the person has, within two hours after driving, an alcohol concentration of ((~~0.08~~)) 0.05 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

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

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

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

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

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be ((~~0.08~~)) 0.05 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

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

(4)(a) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of ((~~0.08~~)) 0.05 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(c) or (d) of this section.

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

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

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

(a) The person has three or more prior offenses within ((~~ten~~)) 10 years as defined in RCW 46.61.5055; or

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

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

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

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

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

**Sec.**  RCW 46.61.504 and 2022 c 16 s 42 are each amended to read as follows:

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

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of ((~~0.08~~)) 0.05 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

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

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

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

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

(3)(a) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be ((~~0.08~~)) 0.05 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

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

(4)(a) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of ((~~0.08~~)) 0.05 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(c) or (d) of this section.

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

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

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

(a) The person has three or more prior offenses within ((~~ten~~)) 10 years as defined in RCW 46.61.5055; or

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

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

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

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

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

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

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

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

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

(ii) By a fine of not less than ((~~three hundred fifty dollars~~)) $350 nor more than ((~~five thousand dollars~~)) $5,000. ((~~Three hundred fifty dollars~~)) $350 of the fine may not be suspended unless the court finds the offender to be indigent; or

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

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

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

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

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

(i) By imprisonment for not less than ((~~thirty~~)) 30 days nor more than ((~~three hundred sixty-four~~)) 364 days and ((~~sixty~~)) 60 days of electronic home monitoring. Thirty days of imprisonment and ((~~sixty~~)) 60 days of electronic home monitoring may not be suspended or converted unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. If the offender shows that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being, in lieu of the mandatory term of imprisonment and electronic home monitoring under this subsection (2)(a)(i), the court may order a minimum of either ((~~one hundred eighty~~)) 180 days of electronic home monitoring or a ((~~one hundred twenty-day~~)) 120-day period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum sentence is suspended or converted, the court shall state in writing the reason for granting the suspension or conversion and the facts upon which the suspension or conversion is based. The court may consider the offender's pretrial 24/7 sobriety program monitoring as fulfilling a portion of posttrial sentencing. The court shall order an expanded substance use disorder assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

(i) By imprisonment for not less than ((~~forty-five~~)) 45 days nor more than ((~~three hundred sixty-four~~)) 364 days and ((~~ninety~~)) 90 days of electronic home monitoring. Forty-five days of imprisonment and ((~~ninety~~)) 90 days of electronic home monitoring may not be suspended or converted unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. If the offender shows that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being, in lieu of the mandatory minimum term of imprisonment and electronic home monitoring under this subsection (2)(b)(i), the court may order a minimum of either six months of electronic home monitoring or a ((~~one hundred twenty-day~~)) 120-day period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum sentence is suspended or converted, the court shall state in writing the reason for granting the suspension or conversion and the facts upon which the suspension or conversion is based. The court may consider the offender's pretrial 24/7 sobriety program monitoring as fulfilling a portion of posttrial sentencing. The court shall order an expanded substance use disorder assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

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

(i) By imprisonment for not less than ((~~ninety~~)) 90 days nor more than ((~~three hundred sixty-four~~)) 364 days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and ((~~one hundred twenty~~)) 120 days of electronic home monitoring. Ninety days of imprisonment and ((~~one hundred twenty~~)) 120 days of electronic home monitoring may not be suspended or converted unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. If the offender shows that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being, in lieu of the mandatory minimum term of ((~~ninety~~)) 90 days of imprisonment and ((~~one hundred twenty~~)) 120 days of electronic home monitoring, the court may order ((~~three hundred sixty~~)) 360 days of electronic home monitoring or a ((~~three hundred sixty-day~~)) 360-day period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum sentence is suspended or converted, the court shall state in writing the reason for granting the suspension or conversion and the facts upon which the suspension or conversion is based. The court shall order an expanded substance use disorder assessment and treatment, if deemed appropriate by the assessment. The offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

(i) By imprisonment for not less than ((~~one hundred twenty~~)) 120 days nor more than ((~~three hundred sixty-four~~)) 364 days, if available in that county or city, a six-month period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and ((~~one hundred fifty~~)) 150 days of electronic home monitoring. One hundred twenty days of imprisonment and ((~~one hundred fifty~~)) 150 days of electronic home monitoring may not be suspended or converted unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. If the offender shows that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being, in lieu of the mandatory minimum term of ((~~one hundred twenty~~)) 120 days of imprisonment and ((~~one hundred fifty~~)) 150 days of electronic home monitoring, the court may order ((~~three hundred sixty~~)) 360 days of electronic home monitoring or a ((~~three hundred sixty-day~~)) 360-day period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory minimum sentence is suspended or converted, the court shall state in writing the reason for granting the suspension or conversion and the facts upon which the suspension or conversion is based. The offender shall pay for the cost of the electronic monitoring. The court shall order an expanded substance use disorder assessment and treatment, if deemed appropriate by the assessment. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer or other separate alcohol monitoring device, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) In any case in which the person has no prior offenses within seven years, and except as provided in RCW 46.61.502(6) or 46.61.504(6), order an additional ((~~twenty-four~~)) 24 hours of imprisonment to be served consecutively for each passenger under the age of ((~~sixteen~~)) 16, and a fine of not less than ((~~one thousand dollars~~)) $1,000 and not more than ((~~five thousand dollars~~)) $5,000 for each passenger under the age of ((~~sixteen~~)) 16. ((~~One thousand dollars~~)) $1,000 of the fine for each passenger under the age of ((~~sixteen~~)) 16 may not be suspended unless the court finds the offender to be indigent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) **Conditions of probation.** (a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes up to ((~~three hundred sixty-four~~)) 364 days in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive; (ii) not driving a motor vehicle within this state without proof of liability insurance or other financial responsibility for the future pursuant to RCW 46.30.020; (iii) not driving or being in physical control of a motor vehicle within this state while having an alcohol concentration of ((~~0.08~~)) 0.05 or more or a THC concentration of 5.00 nanograms per milliliter of whole blood or higher, within two hours after driving; (iv) not refusing to submit to a test of his or her breath or blood to determine alcohol or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drug; and (v) not driving a motor vehicle in this state without a functioning ignition interlock device as required by the department under RCW 46.20.720. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, substance use disorder treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

(c) For each incident involving a violation of a mandatory condition of probation imposed under this subsection, the license, permit, or privilege to drive of the person shall be suspended by the court for ((~~thirty~~)) 30 days or, if such license, permit, or privilege to drive already is suspended, revoked, or denied at the time the finding of probation violation is made, the suspension, revocation, or denial then in effect shall be extended by ((~~thirty~~)) 30 days. The court shall notify the department of any suspension, revocation, or denial or any extension of a suspension, revocation, or denial imposed under this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 46.61.506 and 2020 c 80 s 33 are each amended to read as follows:

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than ((~~0.08~~)) 0.05 or the person's THC concentration is less than 5.00, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2)(a) The breath analysis of the person's alcohol concentration shall be based upon grams of alcohol per ((~~two hundred ten~~)) 210 liters of breath.

(b) The blood analysis of the person's THC concentration shall be based upon nanograms per milliliter of whole blood.

(c) The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under the provisions of this section or RCW 46.61.502 or 46.61.504 shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

(4)(a) A breath test performed by any instrument approved by the state toxicologist shall be admissible at trial or in an administrative proceeding if the prosecution or department produces prima facie evidence of the following:

(i) The person who performed the test was authorized to perform such test by the state toxicologist;

(ii) The person being tested did not vomit or have anything to eat, drink, or smoke for at least ((~~fifteen~~)) 15 minutes prior to administration of the test;

(iii) The person being tested did not have any foreign substances, not to include dental work or piercings, fixed or removable, in his or her mouth at the beginning of the ((~~fifteen-minute~~)) 15-minute observation period;

(iv) Prior to the start of the test, the temperature of any liquid simulator solution utilized as an external standard, as measured by a thermometer approved of by the state toxicologist was ((~~thirty-four~~)) 34 degrees centigrade plus or minus 0.3 degrees centigrade;

(v) The internal standard test resulted in the message "verified";

(vi) The two breath samples agree to within plus or minus ((~~ten~~)) 10 percent of their mean to be determined by the method approved by the state toxicologist;

(vii) The result of the test of the liquid simulator solution external standard or dry gas external standard result did lie between ((~~.072 to .088~~)) .045 to .055 inclusive; and

(viii) All blank tests gave results of .000.

(b) For purposes of this section, "prima facie evidence" is evidence of sufficient circumstances that would support a logical and reasonable inference of the facts sought to be proved. In assessing whether there is sufficient evidence of the foundational facts, the court or administrative tribunal is to assume the truth of the prosecution's or department's evidence and all reasonable inferences from it in a light most favorable to the prosecution or department.

(c) Nothing in this section shall be deemed to prevent the subject of the test from challenging the reliability or accuracy of the test, the reliability or functioning of the instrument, or any maintenance procedures. Such challenges, however, shall not preclude the admissibility of the test once the prosecution or department has made a prima facie showing of the requirements contained in (a) of this subsection. Instead, such challenges may be considered by the trier of fact in determining what weight to give to the test result.

(5) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcohol or drug content may be performed only by a physician licensed under chapter 18.71 RCW; an osteopathic physician licensed under chapter 18.57 RCW; a registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW; a physician assistant licensed under chapter 18.71A RCW; an advanced emergency medical technician or paramedic certified under chapter 18.71 RCW; or a medical assistant-certified or medical assistant-phlebotomist certified under chapter 18.360 RCW, a person holding another credential under Title 18 RCW whose scope of practice includes performing venous blood draws, or a forensic phlebotomist certified under chapter 18.360 RCW. When the blood test is performed outside the state of Washington, the withdrawal of blood for the purpose of determining its alcohol or drug content may be performed by any person who is authorized by the out-of-state jurisdiction to perform venous blood draws. Proof of qualification to draw blood may be established through the department of health's provider credential search. This limitation shall not apply to the taking of breath specimens.

(6) When a venous blood sample is performed by a forensic phlebotomist certified under chapter 18.360 RCW, it must be done under the following conditions:

(a) If taken at the scene, it must be performed in an ambulance or aid service vehicle licensed by the department of health under chapter 18.73 RCW.

(b) The collection of blood samples must not interfere with the provision of essential medical care.

(c) The blood sample must be collected using sterile equipment and the skin area of puncture must be thoroughly cleansed and disinfected.

(d) The person whose blood is collected must be seated, reclined, or lying down when the blood is collected.

(7) The person tested may have a licensed or certified health care provider listed in subsection (5) of this section, or a qualified technician, chemist, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The test will be admissible if the person establishes the general acceptability of the testing technique or method. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(8) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2023.

**--- END ---**