
SUBSTITUTE SENATE BILL 5002

State of Washington

68th Legislature

2023 Regular Session

By Senate Law & Justice (originally sponsored by Senators Lovick, Liiias, Dhingra, Kuderer, McCune, Nguyen, Rolfes, Shewmake, Valdez, C. Wilson, J. Wilson, and L. Wilson)

READ FIRST TIME 01/20/23.

1 AN ACT Relating to alcohol concentration; amending RCW 46.61.502,
2 46.61.504, 46.61.5055, 46.61.506, 46.20.308, and 46.20.3101; creating
3 a new section; prescribing penalties; and providing an effective
4 date.

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

6 NEW SECTION. **Sec. 1.** The legislature finds and declares that
7 2021 was the deadliest year on Washington roads since 2006.
8 Washington state saw 540 fatal crashes resulting in the death of more
9 than 600 people. Half of all serious and fatal crashes are caused by
10 driver impairment from drugs and alcohol, and the state saw a 31.3
11 percent increase in crashes as the result of an impaired driver
12 between 2020 and 2021. This alarming upward trend must be addressed
13 if Washington state is going to meet its goal of target zero. The
14 increase in Washingtonians choosing to drive while impaired points to
15 a need to adjust Washington's impaired driving laws. Utah lowered the
16 blood alcohol concentration limit for operating a motor vehicle
17 from .08 to .05 in 2019 and found that its fatal crash rate dropped
18 by 19.89 percent, and its fatality rate decreased by 18.3 percent.
19 Additionally, 22 percent of people who drank alcohol said they
20 changed their behavior as a result of the new law. The legislature
21 further finds that this is a well calibrated policy based on evidence

1 that shows if all states implemented a .05 blood alcohol
2 concentration level, 538 to 1,790 lives would be saved each year, and
3 alcohol-related fatalities would decrease by 11.1 percent overall.
4 Given the increase in traffic fatalities from impaired driving, the
5 legislature declares that it is time to keep Washington's roads safer
6 and lower the number of fatal crashes caused by impaired drivers by
7 lowering the blood alcohol limit to .05.

8 **Sec. 2.** RCW 46.61.502 and 2022 c 16 s 40 are each amended to
9 read as follows:

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

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

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

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

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

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

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

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

1 sufficient quantity of cannabis after the time of driving and before
2 the administration of an analysis of the person's blood to cause the
3 defendant's THC concentration to be 5.00 or more within two hours
4 after driving. The court shall not admit evidence of this defense
5 unless the defendant notifies the prosecution prior to the omnibus or
6 pretrial hearing in the case of the defendant's intent to assert the
7 affirmative defense.

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

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

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

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

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

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

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

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

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

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

37 **Sec. 3.** RCW 46.61.504 and 2022 c 16 s 42 are each amended to
38 read as follows:

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

5 (a) And the person has, within two hours after being in actual
6 physical control of the vehicle, an alcohol concentration of (~~0.08~~)
7 0.05 or higher as shown by analysis of the person's breath or blood
8 made under RCW 46.61.506; or

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

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

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

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

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

36 (b) It is an affirmative defense to a violation of subsection
37 (1)(b) of this section, which the defendant must prove by a
38 preponderance of the evidence, that the defendant consumed a
39 sufficient quantity of cannabis after the time of being in actual
40 physical control of the vehicle and before the administration of an

1 analysis of the person's blood to cause the defendant's THC
2 concentration to be 5.00 or more within two hours after being in
3 control of the vehicle. The court shall not admit evidence of this
4 defense unless the defendant notifies the prosecution prior to the
5 omnibus or pretrial hearing in the case of the defendant's intent to
6 assert the affirmative defense.

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

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

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

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

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

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

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

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

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

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

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

1 (1) **No prior offenses in seven years.** Except as provided in RCW
2 46.61.502(6) or 46.61.504(6), a person who is convicted of a
3 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
4 within seven years shall be punished as follows:

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

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

26 (ii) By a fine of not less than (~~three hundred fifty dollars~~)
27 \$350 nor more than (~~five thousand dollars~~) \$5,000. (~~Three hundred~~
28 ~~fifty dollars~~) \$350 of the fine may not be suspended unless the
29 court finds the offender to be indigent; or

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

35 (i) By imprisonment for not less than (~~forty-eight~~) 48
36 consecutive hours nor more than (~~three hundred sixty-four days~~)
37 364. In lieu of the mandatory minimum term of imprisonment required
38 under this subsection (1)(b)(i), the court, in its discretion, may
39 order not less than (~~thirty~~) 30 days of electronic home monitoring
40 or a (~~one hundred twenty day~~) 120-day period of 24/7 sobriety

1 program monitoring. The court may consider the offender's pretrial
2 24/7 sobriety program testing as fulfilling a portion of posttrial
3 sentencing. The offender shall pay the cost of electronic home
4 monitoring. The county or municipality in which the penalty is being
5 imposed shall determine the cost. The court may also require the
6 offender's electronic home monitoring device to include an alcohol
7 detection breathalyzer or other separate alcohol monitoring device,
8 and the court may restrict the amount of alcohol the offender may
9 consume during the time the offender is on electronic home
10 monitoring; and

11 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor
12 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)
13 \$500 of the fine may not be suspended unless the court finds the
14 offender to be indigent.

15 (2) **One prior offense in seven years.** Except as provided in RCW
16 46.61.502(6) or 46.61.504(6), a person who is convicted of a
17 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
18 within seven years shall be punished as follows:

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

24 (i) By imprisonment for not less than (~~thirty~~) 30 days nor more
25 than (~~three hundred sixty-four~~) 364 days and (~~sixty~~) 60 days of
26 electronic home monitoring. Thirty days of imprisonment and (~~sixty~~)
27 60 days of electronic home monitoring may not be suspended or
28 converted unless the court finds that the imposition of this
29 mandatory minimum sentence would impose a substantial risk to the
30 offender's physical or mental well-being. If the offender shows that
31 the imposition of this mandatory minimum sentence would impose a
32 substantial risk to the offender's physical or mental well-being, in
33 lieu of the mandatory term of imprisonment and electronic home
34 monitoring under this subsection (2)(a)(i), the court may order a
35 minimum of either (~~one hundred eighty~~) 180 days of electronic home
36 monitoring or a (~~one hundred twenty-day~~) 120-day period of 24/7
37 sobriety program monitoring pursuant to RCW 36.28A.300 through
38 36.28A.390. Whenever the mandatory minimum sentence is suspended or
39 converted, the court shall state in writing the reason for granting
40 the suspension or conversion and the facts upon which the suspension

1 or conversion is based. The court may consider the offender's
2 pretrial 24/7 sobriety program monitoring as fulfilling a portion of
3 posttrial sentencing. The court shall order an expanded substance use
4 disorder assessment and treatment, if deemed appropriate by the
5 assessment. The offender shall pay for the cost of the electronic
6 monitoring. The county or municipality where the penalty is being
7 imposed shall determine the cost. The court may also require the
8 offender's electronic home monitoring device include an alcohol
9 detection breathalyzer or other separate alcohol monitoring device,
10 and may restrict the amount of alcohol the offender may consume
11 during the time the offender is on electronic home monitoring; and

12 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor
13 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)
14 \$500 of the fine may not be suspended unless the court finds the
15 offender to be indigent; or

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

21 (i) By imprisonment for not less than (~~forty-five~~) 45 days nor
22 more than (~~three hundred sixty-four~~) 364 days and (~~ninety~~) 90
23 days of electronic home monitoring. Forty-five days of imprisonment
24 and (~~ninety~~) 90 days of electronic home monitoring may not be
25 suspended or converted unless the court finds that the imposition of
26 this mandatory minimum sentence would impose a substantial risk to
27 the offender's physical or mental well-being. If the offender shows
28 that the imposition of this mandatory minimum sentence would impose a
29 substantial risk to the offender's physical or mental well-being, in
30 lieu of the mandatory minimum term of imprisonment and electronic
31 home monitoring under this subsection (2)(b)(i), the court may order
32 a minimum of either six months of electronic home monitoring or a
33 (~~one hundred twenty-day~~) 120-day period of 24/7 sobriety program
34 monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever
35 the mandatory minimum sentence is suspended or converted, the court
36 shall state in writing the reason for granting the suspension or
37 conversion and the facts upon which the suspension or conversion is
38 based. The court may consider the offender's pretrial 24/7 sobriety
39 program monitoring as fulfilling a portion of posttrial sentencing.
40 The court shall order an expanded substance use disorder assessment

1 and treatment, if deemed appropriate by the assessment. The offender
2 shall pay for the cost of the electronic monitoring. The county or
3 municipality where the penalty is being imposed shall determine the
4 cost. The court may also require the offender's electronic home
5 monitoring device include an alcohol detection breathalyzer or other
6 separate alcohol monitoring device, and may restrict the amount of
7 alcohol the offender may consume during the time the offender is on
8 electronic home monitoring; and

9 (ii) By a fine of not less than (~~seven hundred fifty dollars~~)
10 \$750 nor more than (~~five thousand dollars~~) \$5,000. (~~Seven hundred~~
11 ~~fifty dollars~~) \$750 of the fine may not be suspended unless the
12 court finds the offender to be indigent.

13 (3) **Two 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 two prior
16 offenses 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 (~~ninety~~) 90 days nor more
23 than (~~three hundred sixty-four~~) 364 days, if available in that
24 county or city, a six-month period of 24/7 sobriety program
25 monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and (~~one~~
26 ~~hundred twenty~~) 120 days of electronic home monitoring. Ninety days
27 of imprisonment and (~~one hundred twenty~~) 120 days of electronic
28 home monitoring may not be suspended or converted unless the court
29 finds that the imposition of this mandatory minimum sentence would
30 impose a substantial risk to the offender's physical or mental well-
31 being. If the offender shows that the imposition of this mandatory
32 minimum sentence would impose a substantial risk to the offender's
33 physical or mental well-being, in lieu of the mandatory minimum term
34 of (~~ninety~~) 90 days of imprisonment and (~~one hundred twenty~~) 120
35 days of electronic home monitoring, the court may order (~~three~~
36 ~~hundred sixty~~) 360 days of electronic home monitoring or a (~~three~~
37 ~~hundred sixty-day~~) 360-day period of 24/7 sobriety monitoring
38 pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory
39 minimum sentence is suspended or converted, the court shall state in
40 writing the reason for granting the suspension or conversion and the

1 facts upon which the suspension or conversion is based. The court
2 shall order an expanded substance use disorder assessment and
3 treatment, if deemed appropriate by the assessment. The offender
4 shall pay for the cost of the electronic monitoring. The county or
5 municipality where the penalty is being imposed shall determine the
6 cost. The court may also require the offender's electronic home
7 monitoring device include an alcohol detection breathalyzer or other
8 separate alcohol monitoring device, and may restrict the amount of
9 alcohol the offender may consume during the time the offender is on
10 electronic home monitoring; and

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

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

20 (i) By imprisonment for not less than (~~one hundred twenty~~) 120
21 days nor more than (~~three hundred sixty-four~~) 364 days, if
22 available in that county or city, a six-month period of 24/7 sobriety
23 program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and
24 (~~one hundred fifty~~) 150 days of electronic home monitoring. One
25 hundred twenty days of imprisonment and (~~one hundred fifty~~) 150
26 days of electronic home monitoring may not be suspended or converted
27 unless the court finds that the imposition of this mandatory minimum
28 sentence would impose a substantial risk to the offender's physical
29 or mental well-being. If the offender shows that the imposition of
30 this mandatory minimum sentence would impose a substantial risk to
31 the offender's physical or mental well-being, in lieu of the
32 mandatory minimum term of (~~one hundred twenty~~) 120 days of
33 imprisonment and (~~one hundred fifty~~) 150 days of electronic home
34 monitoring, the court may order (~~three hundred sixty~~) 360 days of
35 electronic home monitoring or a (~~three hundred sixty-day~~) 360-day
36 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through
37 36.28A.390. Whenever the mandatory minimum sentence is suspended or
38 converted, the court shall state in writing the reason for granting
39 the suspension or conversion and the facts upon which the suspension
40 or conversion is based. The offender shall pay for the cost of the

1 electronic monitoring. The court shall order an expanded substance
2 use disorder assessment and treatment, if deemed appropriate by the
3 assessment. The county or municipality where the penalty is being
4 imposed shall determine the cost. The court may also require the
5 offender's electronic home monitoring device include an alcohol
6 detection breathalyzer or other separate alcohol monitoring device,
7 and may restrict the amount of alcohol the offender may consume
8 during the time the offender is on electronic home monitoring; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (b) In any case in which the person has no prior offenses within
29 seven years, and except as provided in RCW 46.61.502(6) or
30 46.61.504(6), order an additional (~~twenty-four~~) 24 hours of
31 imprisonment to be served consecutively for each passenger under the
32 age of (~~sixteen~~) 16, and a fine of not less than (~~one-thousand~~
33 ~~dollars~~) \$1,000 and not more than (~~five-thousand-dollars~~) \$5,000
34 for each passenger under the age of (~~sixteen~~) 16. (~~One-thousand~~
35 ~~dollars~~) \$1,000 of the fine for each passenger under the age of
36 (~~sixteen~~) 16 may not be suspended unless the court finds the
37 offender to be indigent;

38 (c) In any case in which the person has one prior offense within
39 seven years, and except as provided in RCW 46.61.502(6) or
40 46.61.504(6), order an additional five days of imprisonment to be

1 served consecutively for each passenger under the age of (~~sixteen~~)
2 16, and a fine of not less than (~~two thousand dollars~~) \$2,000 and
3 not more than (~~five thousand dollars~~) \$5,000 for each passenger
4 under the age of (~~sixteen~~) 16. One thousand dollars of the fine for
5 each passenger under the age of (~~sixteen~~) 16 may not be suspended
6 unless the court finds the offender to be indigent;

7 (d) In any case in which the person has two prior offenses within
8 seven years, and except as provided in RCW 46.61.502(6) or
9 46.61.504(6), order an additional ten days of imprisonment to be
10 served consecutively for each passenger under the age of (~~sixteen~~)
11 16, and a fine of not less than (~~three thousand dollars~~) \$3,000 and
12 not more than (~~ten thousand dollars~~) \$10,000 for each passenger
13 under the age of (~~sixteen~~) 16. (~~One thousand dollars~~) \$1,000 of
14 the fine for each passenger under the age of (~~sixteen~~) 16 may not
15 be suspended unless the court finds the offender to be indigent.

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

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

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

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

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

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

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

37 (i) **Penalty for alcohol concentration less than 0.15.** If the
38 person's alcohol concentration was less than 0.15, or if for reasons
39 other than the person's refusal to take a test offered under RCW

1 46.20.308 there is no test result indicating the person's alcohol
2 concentration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (d) Upon its own motion or upon motion by a person, a court may
22 find, on the record, that notice to the department under RCW
23 46.20.270 has been delayed for three years or more as a result of a
24 clerical or court error. If so, the court may order that the person's
25 license, permit, or nonresident privilege shall not be revoked,
26 suspended, or denied for that offense. The court shall send notice of
27 the finding and order to the department and to the person. Upon
28 receipt of the notice from the court, the department shall not
29 revoke, suspend, or deny the license, permit, or nonresident
30 privilege of the person for that offense.

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

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

39 (11) **Conditions of probation.** (a) In addition to any
40 nonsuspendable and nondeferrable jail sentence required by this

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

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

30 (c) For each incident involving a violation of a mandatory
31 condition of probation imposed under this subsection, the license,
32 permit, or privilege to drive of the person shall be suspended by the
33 court for (~~thirty~~) 30 days or, if such license, permit, or
34 privilege to drive already is suspended, revoked, or denied at the
35 time the finding of probation violation is made, the suspension,
36 revocation, or denial then in effect shall be extended by (~~thirty~~)
37 30 days. The court shall notify the department of any suspension,
38 revocation, or denial or any extension of a suspension, revocation,
39 or denial imposed under this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (xv) A deferred prosecution under chapter 10.05 RCW granted in a
5 prosecution for a violation of RCW 46.61.5249, or an equivalent local
6 ordinance, if the charge under which the deferred prosecution was
7 granted was originally filed as a violation of RCW 46.61.502 or
8 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
9 46.61.522;

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

16 (xvii) A deferred sentence imposed in a prosecution for a
17 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
18 equivalent local ordinance, if the charge under which the deferred
19 sentence was imposed was originally filed as a violation of RCW
20 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
21 violation of RCW 46.61.520 or 46.61.522;

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

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

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

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

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

36 **Sec. 5.** RCW 46.61.506 and 2020 c 80 s 33 are each amended to
37 read as follows:

38 (1) Upon the trial of any civil or criminal action or proceeding
39 arising out of acts alleged to have been committed by any person

1 while driving or in actual physical control of a vehicle while under
2 the influence of intoxicating liquor or any drug, if the person's
3 alcohol concentration is less than (~~(0.08)~~) 0.05 or the person's THC
4 concentration is less than 5.00, it is evidence that may be
5 considered with other competent evidence in determining whether the
6 person was under the influence of intoxicating liquor or any drug.

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

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

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

16 (3) Analysis of the person's blood or breath to be considered
17 valid under the provisions of this section or RCW 46.61.502 or
18 46.61.504 shall have been performed according to methods approved by
19 the state toxicologist and by an individual possessing a valid permit
20 issued by the state toxicologist for this purpose. The state
21 toxicologist is directed to approve satisfactory techniques or
22 methods, to supervise the examination of individuals to ascertain
23 their qualifications and competence to conduct such analyses, and to
24 issue permits which shall be subject to termination or revocation at
25 the discretion of the state toxicologist.

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

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

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

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

39 (iv) Prior to the start of the test, the temperature of any
40 liquid simulator solution utilized as an external standard, as

1 measured by a thermometer approved of by the state toxicologist was
2 (~~thirty-four~~) 34 degrees centigrade plus or minus 0.3 degrees
3 centigrade;

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

6 (vi) The two breath samples agree to within plus or minus (~~ten~~)
7 10 percent of their mean to be determined by the method approved by
8 the state toxicologist;

9 (vii) The result of the test of the liquid simulator solution
10 external standard or dry gas external standard result did lie between
11 (~~.072 to .088~~) .045 to .055 inclusive; and

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

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

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

28 (5) When a blood test is administered under the provisions of RCW
29 46.20.308, the withdrawal of blood for the purpose of determining its
30 alcohol or drug content may be performed only by a physician licensed
31 under chapter 18.71 RCW; an osteopathic physician licensed under
32 chapter 18.57 RCW; a registered nurse, licensed practical nurse, or
33 advanced registered nurse practitioner licensed under chapter 18.79
34 RCW; a physician assistant licensed under chapter 18.71A RCW; an
35 advanced emergency medical technician or paramedic certified under
36 chapter 18.71 RCW; or a medical assistant-certified or medical
37 assistant-phlebotomist certified under chapter 18.360 RCW, a person
38 holding another credential under Title 18 RCW whose scope of practice
39 includes performing venous blood draws, or a forensic phlebotomist
40 certified under chapter 18.360 RCW. When the blood test is performed

1 outside the state of Washington, the withdrawal of blood for the
2 purpose of determining its alcohol or drug content may be performed
3 by any person who is authorized by the out-of-state jurisdiction to
4 perform venous blood draws. Proof of qualification to draw blood may
5 be established through the department of health's provider credential
6 search. This limitation shall not apply to the taking of breath
7 specimens.

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

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

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

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

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

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

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

35 **Sec. 6.** RCW 46.20.308 and 2022 c 16 s 38 are each amended to
36 read as follows:

37 (1) Any person who operates a motor vehicle within this state is
38 deemed to have given consent, subject to the provisions of RCW
39 46.61.506, to a test or tests of his or her breath for the purpose of

1 determining the alcohol concentration in his or her breath if
2 arrested for any offense where, at the time of the arrest, the
3 arresting officer has reasonable grounds to believe the person had
4 been driving or was in actual physical control of a motor vehicle
5 while under the influence of intoxicating liquor or any drug or was
6 in violation of RCW 46.61.503.

7 (2) The test or tests of breath shall be administered at the
8 direction of a law enforcement officer having reasonable grounds to
9 believe the person to have been driving or in actual physical control
10 of a motor vehicle within this state while under the influence of
11 intoxicating liquor or any drug or the person to have been driving or
12 in actual physical control of a motor vehicle while having alcohol in
13 a concentration in violation of RCW 46.61.503 in his or her system
14 and being under the age of (~~twenty-one~~) 21. Prior to administering
15 a breath test pursuant to this section, the officer shall inform the
16 person of his or her right under this section to refuse the breath
17 test, and of his or her right to have additional tests administered
18 by any qualified person of his or her choosing as provided in RCW
19 46.61.506. The officer shall warn the driver, in substantially the
20 following language, that:

21 (a) If the driver refuses to take the test, the driver's license,
22 permit, or privilege to drive will be revoked or denied for at least
23 one year; and

24 (b) If the driver refuses to take the test, the driver's refusal
25 to take the test may be used in a criminal trial; and

26 (c) If the driver submits to the test and the test is
27 administered, the driver's license, permit, or privilege to drive
28 will be suspended, revoked, or denied for at least (~~ninety~~) 90 days
29 if:

30 (i) The driver is age (~~twenty-one~~) 21 or over and the test
31 indicates either that the alcohol concentration of the driver's
32 breath is (~~0.08~~) 0.05 or more; or

33 (ii) The driver is under age (~~twenty-one~~) 21 and the test
34 indicates either that the alcohol concentration of the driver's
35 breath is 0.02 or more; or

36 (iii) The driver is under age (~~twenty-one~~) 21 and the driver is
37 in violation of RCW 46.61.502 or 46.61.504; and

38 (d) If the driver's license, permit, or privilege to drive is
39 suspended, revoked, or denied the driver may be eligible to
40 immediately apply for an ignition interlock driver's license.

1 (3) If, following his or her arrest and receipt of warnings under
2 subsection (2) of this section, the person arrested exercises the
3 right, granted herein, by refusing upon the request of a law
4 enforcement officer to submit to a test or tests of his or her
5 breath, no test shall be given except as otherwise authorized by law.

6 (4) Nothing in subsection (1), (2), or (3) of this section
7 precludes a law enforcement officer from obtaining a person's blood
8 to test for alcohol, cannabis, or any drug, pursuant to a search
9 warrant, a valid waiver of the warrant requirement, when exigent
10 circumstances exist, or under any other authority of law. Any blood
11 drawn for the purpose of determining the person's alcohol, cannabis
12 levels, or any drug, is drawn pursuant to this section when the
13 officer has reasonable grounds to believe that the person is in
14 physical control or driving a vehicle under the influence or in
15 violation of RCW 46.61.503.

16 (5) If, after arrest and after any other applicable conditions
17 and requirements of this section have been satisfied, a test or tests
18 of the person's blood or breath is administered and the test results
19 indicate that the alcohol concentration of the person's breath or
20 blood is ~~((0.08))~~ 0.05 or more, or the THC concentration of the
21 person's blood is 5.00 or more, if the person is age ~~((twenty-one))~~
22 21 or over, or that the alcohol concentration of the person's breath
23 or blood is 0.02 or more, or the THC concentration of the person's
24 blood is above 0.00, if the person is under the age of ~~((twenty-one))~~
25 21, or the person refuses to submit to a test, the arresting officer
26 or other law enforcement officer at whose direction any test has been
27 given, or the department, where applicable, if the arrest results in
28 a test of the person's blood, shall:

29 (a) Serve notice in writing on the person on behalf of the
30 department of its intention to suspend, revoke, or deny the person's
31 license, permit, or privilege to drive as required by subsection (6)
32 of this section;

33 (b) Serve notice in writing on the person on behalf of the
34 department of his or her right to a hearing, specifying the steps he
35 or she must take to obtain a hearing as provided by subsection (7) of
36 this section;

37 (c) Serve notice in writing that the license or permit, if any,
38 is a temporary license that is valid for ~~((thirty))~~ 30 days from the
39 date of arrest or from the date notice has been given in the event
40 notice is given by the department following a blood test, or until

1 the suspension, revocation, or denial of the person's license,
2 permit, or privilege to drive is sustained at a hearing pursuant to
3 subsection (7) of this section, whichever occurs first. No temporary
4 license is valid to any greater degree than the license or permit
5 that it replaces; and

6 (d) Immediately notify the department of the arrest and transmit
7 to the department within (~~(seventy-two)~~) 72 hours, except as delayed
8 as the result of a blood test, a sworn report or report under a
9 declaration authorized by chapter 5.50 RCW that states:

10 (i) That the officer had reasonable grounds to believe the
11 arrested person had been driving or was in actual physical control of
12 a motor vehicle within this state while under the influence of
13 intoxicating liquor or drugs, or both, or was under the age of
14 (~~(twenty-one)~~) 21 years and had been driving or was in actual
15 physical control of a motor vehicle while having an alcohol or THC
16 concentration in violation of RCW 46.61.503;

17 (ii) That after receipt of any applicable warnings required by
18 subsection (2) of this section the person refused to submit to a test
19 of his or her breath, or a test was administered and the results
20 indicated that the alcohol concentration of the person's breath or
21 blood was (~~(0.08)~~) 0.05 or more, or the THC concentration of the
22 person's blood was 5.00 or more, if the person is age (~~(twenty-one)~~)
23 21 or over, or that the alcohol concentration of the person's breath
24 or blood was 0.02 or more, or the THC concentration of the person's
25 blood was above 0.00, if the person is under the age of (~~(twenty-~~
26 ~~one)~~) 21; and

27 (iii) Any other information that the director may require by
28 rule.

29 (6) The department of licensing, upon the receipt of a sworn
30 report or report under a declaration authorized by chapter 5.50 RCW
31 under subsection (5)(d) of this section, shall suspend, revoke, or
32 deny the person's license, permit, or privilege to drive or any
33 nonresident operating privilege, as provided in RCW 46.20.3101, such
34 suspension, revocation, or denial to be effective beginning thirty
35 days from the date of arrest or from the date notice has been given
36 in the event notice is given by the department following a blood
37 test, or when sustained at a hearing pursuant to subsection (7) of
38 this section, whichever occurs first.

39 (7) A person receiving notification under subsection (5)(b) of
40 this section may, within seven days after the notice has been given,

1 request in writing a formal hearing before the department. The person
2 shall pay a fee of (~~three hundred seventy-five dollars~~) \$375 as
3 part of the request. If the request is mailed, it must be postmarked
4 within seven days after receipt of the notification. Upon timely
5 receipt of such a request for a formal hearing, including receipt of
6 the required (~~three hundred seventy-five dollar~~) \$375 fee, the
7 department shall afford the person an opportunity for a hearing. The
8 department may waive the required (~~three hundred seventy-five~~
9 ~~dollar~~) \$375 fee if the person is an indigent as defined in RCW
10 10.101.010. Except as otherwise provided in this section, the hearing
11 is subject to and shall be scheduled and conducted in accordance with
12 RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the
13 county of the arrest, except that all or part of the hearing may, at
14 the discretion of the department, be conducted by telephone or other
15 electronic means. The hearing shall be held within (~~thirty~~) 30
16 days, excluding Saturdays, Sundays, and legal holidays, following the
17 date of timely receipt of such request for a formal hearing before
18 the department or (~~thirty~~) 30 days, excluding Saturdays, Sundays,
19 and legal holidays following the date notice has been given in the
20 event notice is given by the department following a blood test,
21 unless otherwise agreed to by the department and the person, in which
22 case the action by the department shall be stayed, and any valid
23 temporary license under subsection (5) of this section extended, if
24 the person is otherwise eligible for licensing. Unless otherwise
25 agreed to by the department and the person, the department must give
26 five days notice of the hearing to the person. For the purposes of
27 this section, the scope of the hearing shall cover the issues of
28 whether a law enforcement officer had reasonable grounds to believe
29 the person had been driving or was in actual physical control of a
30 motor vehicle within this state while under the influence of
31 intoxicating liquor or any drug or had been driving or was in actual
32 physical control of a motor vehicle within this state while having
33 alcohol in his or her system in a concentration of 0.02 or more, or
34 THC in his or her system in a concentration above 0.00, if the person
35 was under the age of (~~twenty-one~~) 21, whether the person was placed
36 under arrest, and (a) whether the person refused to submit to the
37 test or tests upon request of the officer after having been informed
38 that such refusal would result in the revocation of the person's
39 license, permit, or privilege to drive, or (b) if a test or tests
40 were administered, whether the applicable requirements of this

1 section were satisfied before the administration of the test or
2 tests, whether the person submitted to the test or tests, or whether
3 a test was administered pursuant to a search warrant, a valid waiver
4 of the warrant requirement, when exigent circumstances exist, or
5 under any other authority of law as permitted under this section, and
6 whether the test or tests indicated that the alcohol concentration of
7 the person's breath or blood was (~~(0.08)~~) 0.05 or more, or the THC
8 concentration of the person's blood was 5.00 or more, if the person
9 was age (~~(twenty-one)~~) 21 or over at the time of the arrest, or that
10 the alcohol concentration of the person's breath or blood was 0.02 or
11 more, or the THC concentration of the person's blood was above 0.00,
12 if the person was under the age of (~~(twenty-one)~~) 21 at the time of
13 the arrest. Where a person is found to be in actual physical control
14 of a motor vehicle while under the influence of intoxicating liquor
15 or any drug or was under the age of (~~(twenty-one)~~) 21 at the time of
16 the arrest and was in physical control of a motor vehicle while
17 having alcohol in his or her system in a concentration of 0.02 or THC
18 concentration above 0.00, the person may petition the hearing officer
19 to apply the affirmative defense found in RCW 46.61.504(3) and
20 46.61.503(2). The driver has the burden to prove the affirmative
21 defense by a preponderance of the evidence. The sworn report or
22 report under a declaration authorized by chapter 5.50 RCW submitted
23 by a law enforcement officer is prima facie evidence that the officer
24 had reasonable grounds to believe the person had been driving or was
25 in actual physical control of a motor vehicle within this state while
26 under the influence of intoxicating liquor or drugs, or both, or the
27 person had been driving or was in actual physical control of a motor
28 vehicle within this state while having alcohol in his or her system
29 in a concentration of 0.02 or more, or THC in his or her system in a
30 concentration above 0.00, and was under the age of (~~(twenty-one)~~) 21
31 and that the officer complied with the requirements of this section.

32 A hearing officer shall conduct the hearing, may issue subpoenas
33 for the attendance of witnesses and the production of documents, and
34 shall administer oaths to witnesses. The hearing officer shall not
35 issue a subpoena for the attendance of a witness at the request of
36 the person unless the request is accompanied by the fee required by
37 RCW 5.56.010 for a witness in district court. The sworn report or
38 report under a declaration authorized by chapter 5.50 RCW of the law
39 enforcement officer and any other evidence accompanying the report
40 shall be admissible without further evidentiary foundation and the

1 certifications authorized by the criminal rules for courts of limited
2 jurisdiction shall be admissible without further evidentiary
3 foundation. The person may be represented by counsel, may question
4 witnesses, may present evidence, and may testify. The department
5 shall order that the suspension, revocation, or denial either be
6 rescinded or sustained.

7 (8) If the suspension, revocation, or denial is sustained after
8 such a hearing, the person whose license, privilege, or permit is
9 suspended, revoked, or denied has the right to file a petition in the
10 superior court of the county of arrest to review the final order of
11 revocation by the department in the same manner as an appeal from a
12 decision of a court of limited jurisdiction. Notice of appeal must be
13 filed within (~~thirty~~) 30 days after the date the final order is
14 served or the right to appeal is waived. Notwithstanding RCW
15 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo
16 review, the appeal shall be limited to a review of the record of the
17 administrative hearing. The appellant must pay the costs associated
18 with obtaining the record of the hearing before the hearing officer.
19 The filing of the appeal does not stay the effective date of the
20 suspension, revocation, or denial. A petition filed under this
21 subsection must include the petitioner's grounds for requesting
22 review. Upon granting petitioner's request for review, the court
23 shall review the department's final order of suspension, revocation,
24 or denial as expeditiously as possible. The review must be limited to
25 a determination of whether the department has committed any errors of
26 law. The superior court shall accept those factual determinations
27 supported by substantial evidence in the record: (a) That were
28 expressly made by the department; or (b) that may reasonably be
29 inferred from the final order of the department. The superior court
30 may reverse, affirm, or modify the decision of the department or
31 remand the case back to the department for further proceedings. The
32 decision of the superior court must be in writing and filed in the
33 clerk's office with the other papers in the case. The court shall
34 state the reasons for the decision. If judicial relief is sought for
35 a stay or other temporary remedy from the department's action, the
36 court shall not grant such relief unless the court finds that the
37 appellant is likely to prevail in the appeal and that without a stay
38 the appellant will suffer irreparable injury. If the court stays the
39 suspension, revocation, or denial it may impose conditions on such
40 stay.

1 (9) (a) If a person whose driver's license, permit, or privilege
2 to drive has been or will be suspended, revoked, or denied under
3 subsection (6) of this section, other than as a result of a breath
4 test refusal, and who has not committed an offense for which he or
5 she was granted a deferred prosecution under chapter 10.05 RCW,
6 petitions a court for a deferred prosecution on criminal charges
7 arising out of the arrest for which action has been or will be taken
8 under subsection (6) of this section, or notifies the department of
9 licensing of the intent to seek such a deferred prosecution, then the
10 license suspension or revocation shall be stayed pending entry of the
11 deferred prosecution. The stay shall not be longer than (~~one hundred~~
12 ~~fifty~~) 150 days after the date charges are filed, or two years after
13 the date of the arrest, whichever time period is shorter. If the
14 court stays the suspension, revocation, or denial, it may impose
15 conditions on such stay. If the person is otherwise eligible for
16 licensing, the department shall issue a temporary license, or extend
17 any valid temporary license under subsection (5) of this section, for
18 the period of the stay. If a deferred prosecution treatment plan is
19 not recommended in the report made under RCW 10.05.050, or if
20 treatment is rejected by the court, or if the person declines to
21 accept an offered treatment plan, or if the person violates any
22 condition imposed by the court, then the court shall immediately
23 direct the department to cancel the stay and any temporary license or
24 extension of a temporary license issued under this subsection.

25 (b) A suspension, revocation, or denial imposed under this
26 section, other than as a result of a breath test refusal, shall be
27 stayed if the person is accepted for deferred prosecution as provided
28 in chapter 10.05 RCW for the incident upon which the suspension,
29 revocation, or denial is based. If the deferred prosecution is
30 terminated, the stay shall be lifted and the suspension, revocation,
31 or denial reinstated. If the deferred prosecution is completed, the
32 stay shall be lifted and the suspension, revocation, or denial
33 canceled.

34 (c) The provisions of (b) of this subsection relating to a stay
35 of a suspension, revocation, or denial and the cancellation of any
36 suspension, revocation, or denial do not apply to the suspension,
37 revocation, denial, or disqualification of a person's commercial
38 driver's license or privilege to operate a commercial motor vehicle.

39 (10) When it has been finally determined under the procedures of
40 this section that a nonresident's privilege to operate a motor

1 vehicle in this state has been suspended, revoked, or denied, the
2 department shall give information in writing of the action taken to
3 the motor vehicle administrator of the state of the person's
4 residence and of any state in which he or she has a license.

5 **Sec. 7.** RCW 46.20.3101 and 2020 c 330 s 6 are each amended to
6 read as follows:

7 Pursuant to RCW 46.20.308, the department shall suspend, revoke,
8 or deny the arrested person's license, permit, or privilege to drive
9 as follows:

10 (1) In the case of a person who has refused a test or tests:

11 (a) For a first refusal within seven years, where there has not
12 been a previous incident within seven years that resulted in
13 administrative action under this section, revocation or denial for
14 one year;

15 (b) For a second or subsequent refusal within seven years, or for
16 a first refusal where there has been one or more previous incidents
17 within seven years that have resulted in administrative action under
18 this section, revocation or denial for two years or until the person
19 reaches age (~~(twenty-one)~~) 21, whichever is longer.

20 (2) In the case of an incident where a person has submitted to or
21 been administered a test or tests indicating that the alcohol
22 concentration of the person's breath or blood was (~~(0.08)~~) 0.05 or
23 more, or that the THC concentration of the person's blood was 5.00 or
24 more:

25 (a) For a first incident within seven years, where there has not
26 been a previous incident within seven years that resulted in
27 administrative action under this section, suspension for (~~(ninety)~~)
28 90 days, unless the person successfully completes or is enrolled in a
29 pretrial 24/7 sobriety program;

30 (b) For a second or subsequent incident within seven years,
31 revocation or denial for two years.

32 (3) In the case of an incident where a person under age (~~(twenty-~~
33 ~~one)~~) 21 has submitted to or been administered a test or tests
34 indicating that the alcohol concentration of the person's breath or
35 blood was 0.02 or more, or that the THC concentration of the person's
36 blood was above 0.00:

37 (a) For a first incident within seven years, suspension or denial
38 for (~~(ninety)~~) 90 days;

1 (b) For a second or subsequent incident within seven years,
2 revocation or denial for one year or until the person reaches age
3 (~~twenty-one~~) 21, whichever is longer.

4 (4) The department shall grant credit on a day-for-day basis for
5 a suspension, revocation, or denial imposed under this section for
6 any portion of a suspension, revocation, or denial already served
7 under RCW 46.61.5055 arising out of the same incident. If a person
8 has already served a suspension, revocation, or denial under RCW
9 46.61.5055 for a period equal to or greater than the period imposed
10 under this section, the department shall provide notice of full
11 credit, shall provide for no further suspension or revocation under
12 this section, and shall impose no additional reissue fees for this
13 credit.

14 NEW SECTION. **Sec. 8.** This act takes effect December 31, 2023.

--- END ---