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**SUBSTITUTE SENATE BILL 5002**

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**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.

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