H-3133.1

SUBSTITUTE HOUSE BILL 1228

State of Washington 69th Legislature 2026 Regular Session

By House Community Safety (originally sponsored by Representatives Hackney and Barkis)

READ FIRST TIME 01/26/26.

AN ACT Relating to toxicology testing by certified or accredited laboratories; amending RCW 46.61.506; adding a new section to chapter 43.43 RCW; and providing an expiration date.

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

Sec. 1. RCW 46.61.506 and 2020 c 80 s 33 are each amended to read as follows:

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

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

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

(c) The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent

evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3)(a) Analysis of the person's blood or breath to be considered valid under the provisions of this section or RCW 46.61.502 or 46.61.504 shall have been performed ((~~according to methods approved by the state toxicologist and by an individual~~)) by either:

(i) An individual employing methods approved by the state toxicologist and possessing a valid permit issued by the state toxicologist for this purpose, as described in (c) of this subsection; or

(ii) A laboratory certified or accredited pursuant to the international organization for standardization and the international electrotechnical commission's ISO/IEC 17025 standard for forensic toxicology testing.

(b) A laboratory outside the state may perform the analysis in (a) of this subsection when:

(i) The laboratory allows the pretrial interview of an expert witness by defense counsel; and

(ii) The laboratory allows an expert witness to appear at trial virtually, when requested by the prosecutor and with the consent of defense counsel.

(c) The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits, which shall be subject to termination or revocation at the discretion of the state toxicologist.

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

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

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

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

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

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

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

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

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

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

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

(5) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its alcohol or drug content may be performed only by a physician licensed under chapter 18.71 RCW; an osteopathic physician licensed under chapter 18.57 RCW; a registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW; a physician assistant licensed under chapter 18.71A RCW; an advanced emergency medical technician or paramedic certified under chapter 18.71 RCW; or a medical assistant-certified or medical assistant-phlebotomist certified under chapter 18.360 RCW, a person holding another credential under Title 18 RCW whose scope of practice

includes performing venous blood draws, or a forensic phlebotomist certified under chapter 18.360 RCW. When the blood test is performed outside the state of Washington, the withdrawal of blood for the purpose of determining its alcohol or drug content may be performed by any person who is authorized by the out-of-state jurisdiction to perform venous blood draws. Proof of qualification to draw blood may be established through the department of health's provider credential search. This limitation shall not apply to the taking of breath specimens.

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

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

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

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

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

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

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

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.43 RCW to read as follows:

(1) By October 1, 2031, the Washington state patrol shall submit a report to the relevant committees of the legislature detailing the implementation of this act. The report must include a status update about the backlog of cases awaiting toxicology testing, and recommendations for further policy changes to address any remaining backlog or impediments to timely toxicology testing.

(2) This section expires January 1, 2032.

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