
SUBSTITUTE SENATE BILL 5880

State of Washington

69th Legislature

2026 Regular Session

By Senate Law & Justice (originally sponsored by Senator Wagoner)

READ FIRST TIME 01/16/26.

1 AN ACT Relating to toxicology testing by certified or accredited
2 laboratories; amending RCW 46.61.506 and 46.61.506; providing an
3 effective date; and providing an expiration date.

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

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

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

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

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

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

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

3 (3) (a) Analysis of the person's blood or breath to be considered
4 valid under the provisions of this section or RCW 46.61.502 or
5 46.61.504 shall have been performed (~~(according to methods approved~~
6 ~~by the state toxicologist and by an individual)~~) by either:

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

11 (ii) A laboratory certified or accredited pursuant to the
12 international organization for standardization and the international
13 electrotechnical commission's ISO/IEC 17025 standard for forensic
14 toxicology testing. Local governments may accept donations from
15 private nongovernmental entities to facilitate the analysis of blood
16 or breath under this subsection. Local governments have no duty to
17 fund the analysis of blood or breath under this subsection.

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

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

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

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

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

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

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

3 (vi) The two breath samples agree to within plus or minus (~~ten~~)
4 10 percent of their mean to be determined by the method approved by
5 the state toxicologist;

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

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

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

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

25 (5) When a blood test is administered under the provisions of RCW
26 46.20.308, the withdrawal of blood for the purpose of determining its
27 alcohol or drug content may be performed only by a physician licensed
28 under chapter 18.71 RCW; an osteopathic physician licensed under
29 chapter 18.57 RCW; a registered nurse, licensed practical nurse, or
30 advanced registered nurse practitioner licensed under chapter 18.79
31 RCW; a physician assistant licensed under chapter 18.71A RCW; an
32 advanced emergency medical technician or paramedic certified under
33 chapter 18.71 RCW; or a medical assistant-certified or medical
34 assistant-phlebotomist certified under chapter 18.360 RCW, a person
35 holding another credential under Title 18 RCW whose scope of practice
36 includes performing venous blood draws, or a forensic phlebotomist
37 certified under chapter 18.360 RCW. When the blood test is performed
38 outside the state of Washington, the withdrawal of blood for the
39 purpose of determining its alcohol or drug content may be performed
40 by any person who is authorized by the out-of-state jurisdiction to

1 perform venous blood draws. Proof of qualification to draw blood may
2 be established through the department of health's provider credential
3 search. This limitation shall not apply to the taking of breath
4 specimens.

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

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

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

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

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

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

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

32 **Sec. 2.** RCW 46.61.506 and 2025 c 58 s 5097 are each amended to
33 read as follows:

34 (1) Upon the trial of any civil or criminal action or proceeding
35 arising out of acts alleged to have been committed by any person
36 while driving or in actual physical control of a vehicle while under
37 the influence of intoxicating liquor or any drug, if the person's
38 alcohol concentration is less than 0.08 or the person's THC
39 concentration is less than 5.00, it is evidence that may be

1 considered with other competent evidence in determining whether the
2 person was under the influence of intoxicating liquor or any drug.

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

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

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

12 (3) (a) Analysis of the person's blood or breath to be considered
13 valid under the provisions of this section or RCW 46.61.502 or
14 46.61.504 shall have been performed (~~according to methods approved~~
15 ~~by the state toxicologist and by an individual~~) by either:

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

20 (ii) A laboratory certified or accredited pursuant to the
21 international organization for standardization and the international
22 electrotechnical commission's ISO/IEC 17025 standard for forensic
23 toxicology testing. Local governments may accept donations from
24 private nongovernmental entities to facilitate the analysis of blood
25 or breath under this subsection. Local governments have no duty to
26 fund the analysis of blood or breath under this subsection.

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

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

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

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

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

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

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13 10 percent of their mean to be determined by the method approved by
14 the state toxicologist;

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

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

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20 evidence of sufficient circumstances that would support a logical and
21 reasonable inference of the facts sought to be proved. In assessing
22 whether there is sufficient evidence of the foundational facts, the
23 court or administrative tribunal is to assume the truth of the
24 prosecution's or department's evidence and all reasonable inferences
25 from it in a light most favorable to the prosecution or department.

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

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35 46.20.308, the withdrawal of blood for the purpose of determining its
36 alcohol or drug content may be performed only by a physician licensed
37 under chapter 18.71 RCW; an osteopathic physician licensed under
38 chapter 18.57 RCW; a registered nurse, licensed practical nurse, or
39 advanced practice registered nurse licensed under chapter 18.79 RCW;
40 a physician assistant licensed under chapter 18.71A RCW; an advanced

1 emergency medical technician or paramedic certified under chapter
2 18.71 RCW; or a medical assistant-certified or medical assistant-
3 phlebotomist certified under chapter 18.360 RCW, a person holding
4 another credential under Title 18 RCW whose scope of practice
5 includes performing venous blood draws, or a forensic phlebotomist
6 certified under chapter 18.360 RCW. When the blood test is performed
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11 be established through the department of health's provider credential
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22 (c) The blood sample must be collected using sterile equipment
23 and the skin area of puncture must be thoroughly cleansed and
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26 or lying down when the blood is collected.

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

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

1 NEW SECTION. **Sec. 3.** Section 1 of this act expires June 30,
2 2027.

3 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect June
4 30, 2027.

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