
SECOND SUBSTITUTE SENATE BILL 5880

State of Washington 69th Legislature 2026 Regular Session

By Senate Ways & Means (originally sponsored by Senator Wagoner)

READ FIRST TIME 02/09/26.

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 city or county that wishes to request previously
24 submitted evidence from the state toxicological laboratory for the
25 purpose of testing under subsection (3) (a) (ii) of this section must
26 contract with the Washington state patrol to reimburse the Washington
27 state patrol's costs.

28 (b) The contract must provide for reimbursement by the requesting
29 city or county for the costs associated with packaging, handling, and
30 transporting the evidence and related materials to the requesting
31 city or county.

32 (c) The state toxicological laboratory is not required to release
33 or return evidence under this subsection unless a contract is in
34 place.

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

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

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

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

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

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

15 (vi) The two breath samples agree to within plus or minus (~~(ten)~~)
16 10 percent of their mean to be determined by the method approved by
17 the state toxicologist;

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

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

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

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

37 (~~(+5)~~) (6) When a blood test is administered under the
38 provisions of RCW 46.20.308, the withdrawal of blood for the purpose
39 of determining its alcohol or drug content may be performed only by a
40 physician licensed under chapter 18.71 RCW; an osteopathic physician

1 licensed under chapter 18.57 RCW; a registered nurse, licensed
2 practical nurse, or advanced registered nurse practitioner licensed
3 under chapter 18.79 RCW; a physician assistant licensed under chapter
4 18.71A RCW; an advanced emergency medical technician or paramedic
5 certified under chapter 18.71 RCW; or a medical assistant-certified
6 or medical assistant-phlebotomist certified under chapter 18.360 RCW,
7 a person holding another credential under Title 18 RCW whose scope of
8 practice includes performing venous blood draws, or a forensic
9 phlebotomist certified under chapter 18.360 RCW. When the blood test
10 is performed outside the state of Washington, the withdrawal of blood
11 for the purpose of determining its alcohol or drug content may be
12 performed by any person who is authorized by the out-of-state
13 jurisdiction to perform venous blood draws. Proof of qualification to
14 draw blood may be established through the department of health's
15 provider credential search. This limitation shall not apply to the
16 taking of breath specimens.

17 ~~((6))~~ (7) When a venous blood sample is performed by a forensic
18 phlebotomist certified under chapter 18.360 RCW, it must be done
19 under the following conditions:

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

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

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

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

30 ~~((7))~~ (8) The person tested may have a licensed or certified
31 health care provider listed in subsection ~~((5))~~ (6) of this
32 section, or a qualified technician, chemist, or other qualified
33 person of his or her own choosing administer one or more tests in
34 addition to any administered at the direction of a law enforcement
35 officer. The test will be admissible if the person establishes the
36 general acceptability of the testing technique or method. The failure
37 or inability to obtain an additional test by a person shall not
38 preclude the admission of evidence relating to the test or tests
39 taken at the direction of a law enforcement officer.

1 ~~((8))~~ (9) Upon the request of the person who shall submit to a
2 test or tests at the request of a law enforcement officer, full
3 information concerning the test or tests shall be made available to
4 him or her or his or her attorney.

5 **Sec. 2.** RCW 46.61.506 and 2025 c 58 s 5097 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
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19 based upon nanograms per milliliter of whole blood.

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21 construed as limiting the introduction of any other competent
22 evidence bearing upon the question whether the person was under the
23 influence of intoxicating liquor or any drug.

24 (3) (a) Analysis of the person's blood or breath to be considered
25 valid under the provisions of this section or RCW 46.61.502 or
26 46.61.504 shall have been performed ~~((according to methods approved
27 by the state toxicologist and by an individual))~~ by either:

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

32 (ii) A laboratory certified or accredited pursuant to the
33 international organization for standardization and the international
34 electrotechnical commission's ISO/IEC 17025 standard for forensic
35 toxicology testing. Local governments may accept donations from
36 private nongovernmental entities to facilitate the analysis of blood
37 or breath under this subsection. Local governments have no duty to
38 fund the analysis of blood or breath under this subsection.

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

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7 submitted evidence from the state toxicological laboratory for the
8 purpose of testing under subsection (3) (a) (ii) of this section must
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10 state patrol's costs.

11 **(b)** The contract must provide for reimbursement by the requesting
12 city or county for the costs associated with packaging, handling, and
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16 or return evidence under this subsection unless a contract is in
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19 state toxicologist shall be admissible at trial or in an
20 administrative proceeding if the prosecution or department produces
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23 such test by the state toxicologist;

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

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

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

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

38 **(vi)** The two breath samples agree to within plus or minus ~~((ten))~~
39 10 percent of their mean to be determined by the method approved by
40 the state toxicologist;

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

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7 reasonable inference of the facts sought to be proved. In assessing
8 whether there is sufficient evidence of the foundational facts, the
9 court or administrative tribunal is to assume the truth of the
10 prosecution's or department's evidence and all reasonable inferences
11 from it in a light most favorable to the prosecution or department.

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

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26 chapter 18.79 RCW; a physician assistant licensed under chapter
27 18.71A RCW; an advanced emergency medical technician or paramedic
28 certified under chapter 18.71 RCW; or a medical assistant-certified
29 or medical assistant-phlebotomist certified under chapter 18.360 RCW,
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6 chapter 18.73 RCW.

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8 provision of essential medical care.

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

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16 section, or a qualified technician, chemist, or other qualified
17 person of his or her own choosing administer one or more tests in
18 addition to any administered at the direction of a law enforcement
19 officer. The test will be admissible if the person establishes the
20 general acceptability of the testing technique or method. The failure
21 or inability to obtain an additional test by a person shall not
22 preclude the admission of evidence relating to the test or tests
23 taken at the direction of a law enforcement officer.

24 ~~((8))~~ (9) Upon the request of the person who shall submit to a
25 test or tests at the request of a law enforcement officer, full
26 information concerning the test or tests shall be made available to
27 him or her or his or her attorney.

28 NEW SECTION. **Sec. 3.** Section 1 of this act expires June 30,
29 2027.

30 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect June
31 30, 2027.

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