

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 5880

69th Legislature
2026 Regular Session

Passed by the Senate March 9, 2026
Yeas 49 Nays 0

President of the Senate

Passed by the House March 6, 2026
Yeas 96 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5880** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 5880

AS AMENDED BY THE HOUSE

Passed Legislature - 2026 Regular Session

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 (d) A city or county that uses a laboratory under subsection
36 (3) (a) (ii) of this section must contract with the laboratory prior to
37 submitting evidence to the laboratory for analysis of a person's
38 blood or breath. The contract must include:

39 (i) A requirement that laboratory personnel who perform the blood
40 or breath analysis will be available for a defense interview at no

1 cost to the defendant, provided that the defense requests the
2 interview at least 30 days prior to the scheduled trial date. If the
3 laboratory report is disclosed fewer than 30 days before trial, the
4 interview request must be made within 10 days of disclosure. The
5 interview may be conducted virtually, telephonically, or by other
6 means mutually agreed to by the parties; and

7 (ii) A requirement that laboratory personnel who perform the
8 blood or breath analysis agree to accept electronic service of
9 pleadings, discovery, and subpoena requests pursuant to applicable
10 court rules.

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

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

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

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

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

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

31 (vi) The two breath samples agree to within plus or minus (~~ten~~)
32 10 percent of their mean to be determined by the method approved by
33 the state toxicologist;

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

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

38 (b) For purposes of this section, "prima facie evidence" is
39 evidence of sufficient circumstances that would support a logical and
40 reasonable inference of the facts sought to be proved. In assessing

1 whether there is sufficient evidence of the foundational facts, the
2 court or administrative tribunal is to assume the truth of the
3 prosecution's or department's evidence and all reasonable inferences
4 from it in a light most favorable to the prosecution or department.

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

13 ~~((5))~~ (6) When a blood test is administered under the
14 provisions of RCW 46.20.308, the withdrawal of blood for the purpose
15 of determining its alcohol or drug content may be performed only by a
16 physician licensed under chapter 18.71 RCW; an osteopathic physician
17 licensed under chapter 18.57 RCW; a registered nurse, licensed
18 practical nurse, or advanced registered nurse practitioner licensed
19 under chapter 18.79 RCW; a physician assistant licensed under chapter
20 18.71A RCW; an advanced emergency medical technician or paramedic
21 certified under chapter 18.71 RCW; or a medical assistant-certified
22 or medical assistant-phlebotomist certified under chapter 18.360 RCW,
23 a person holding another credential under Title 18 RCW whose scope of
24 practice includes performing venous blood draws, or a forensic
25 phlebotomist certified under chapter 18.360 RCW. When the blood test
26 is performed outside the state of Washington, the withdrawal of blood
27 for the purpose of determining its alcohol or drug content may be
28 performed by any person who is authorized by the out-of-state
29 jurisdiction to perform venous blood draws. Proof of qualification to
30 draw blood may be established through the department of health's
31 provider credential search. This limitation shall not apply to the
32 taking of breath specimens.

33 ~~((6))~~ (7) When a venous blood sample is performed by a forensic
34 phlebotomist certified under chapter 18.360 RCW, it must be done
35 under the following conditions:

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

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

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

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

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

16 ~~((+8))~~ (9) Upon the request of the person who shall submit to a
17 test or tests at the request of a law enforcement officer, full
18 information concerning the test or tests shall be made available to
19 him or her or his or her attorney.

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

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

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

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

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

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2 valid under the provisions of this section or RCW 46.61.502 or
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6 toxicologist and possessing a valid permit issued by the state
7 toxicologist for this purpose, as described in (b) of this
8 subsection; or

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

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

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

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

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

33 (d) A city or county that uses a laboratory under subsection
34 (3) (a) (ii) of this section must contract with the laboratory prior to
35 submitting evidence to the laboratory for analysis of a person's
36 blood or breath. The contract must include:

37 (i) A requirement that laboratory personnel who perform the blood
38 or breath analysis will be available for a defense interview at no
39 cost to the defendant, provided that the defense requests the
40 interview at least 30 days prior to the scheduled trial date. If the

1 laboratory report is disclosed fewer than 30 days before trial, the
2 interview request must be made within 10 days of disclosure. The
3 interview may be conducted virtually, telephonically, or by other
4 means mutually agreed to by the parties; and

5 (ii) A requirement that laboratory personnel who perform the
6 blood or breath analysis agree to accept electronic service of
7 pleadings, discovery, and subpoena requests pursuant to applicable
8 court rules.

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

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

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

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

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

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

29 (vi) The two breath samples agree to within plus or minus (~~ten~~)
30 10 percent of their mean to be determined by the method approved by
31 the state toxicologist;

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

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

36 (b) For purposes of this section, "prima facie evidence" is
37 evidence of sufficient circumstances that would support a logical and
38 reasonable inference of the facts sought to be proved. In assessing
39 whether there is sufficient evidence of the foundational facts, the
40 court or administrative tribunal is to assume the truth of the

1 prosecution's or department's evidence and all reasonable inferences
2 from it in a light most favorable to the prosecution or department.

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

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16 practical nurse, or advanced practice registered nurse licensed under
17 chapter 18.79 RCW; a physician assistant licensed under chapter
18 18.71A RCW; an advanced emergency medical technician or paramedic
19 certified under chapter 18.71 RCW; or a medical assistant-certified
20 or medical assistant-phlebotomist certified under chapter 18.360 RCW,
21 a person holding another credential under Title 18 RCW whose scope of
22 practice includes performing venous blood draws, or a forensic
23 phlebotomist certified under chapter 18.360 RCW. When the blood test
24 is performed outside the state of Washington, the withdrawal of blood
25 for the purpose of determining its alcohol or drug content may be
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35 or aid service vehicle licensed by the department of health under
36 chapter 18.73 RCW.

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

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

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

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

16 ~~((8))~~ (9) Upon the request of the person who shall submit to a
17 test or tests at the request of a law enforcement officer, full
18 information concerning the test or tests shall be made available to
19 him or her or his or her attorney.

20 NEW SECTION. **Sec. 3.** Section 1 of this act expires June 30,
21 2027.

22 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect June
23 30, 2027.

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