
SENATE BILL 5981

State of Washington

56th Legislature

1999 Regular Session

By Senator Heavey

Read first time 02/18/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to legal blood alcohol concentrations; amending RCW
2 46.61.502, 46.61.504, 46.61.506, 88.12.025, 90.56.540, and 90.56.550;
3 reenacting and amending RCW 46.20.308, 46.20.3101, and 46.61.5055; and
4 prescribing penalties.

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

6 **Sec. 1.** RCW 46.20.308 and 1998 c 213 s 1, 1998 c 209 s 1, 1998 c
7 207 s 7, and 1998 c 41 s 4 are each reenacted and amended to read as
8 follows:

9 (1) Any person who operates a motor vehicle within this state is
10 deemed to have given consent, subject to the provisions of RCW
11 46.61.506, to a test or tests of his or her breath or blood for the
12 purpose of determining the alcohol concentration or presence of any
13 drug in his or her breath or blood if arrested for any offense where,
14 at the time of the arrest, the arresting officer has reasonable grounds
15 to believe the person had been driving or was in actual physical
16 control of a motor vehicle while under the influence of intoxicating
17 liquor or any drug or was in violation of RCW 46.61.503.

18 (2) The test or tests of breath shall be administered at the
19 direction of a law enforcement officer having reasonable grounds to

1 believe the person to have been driving or in actual physical control
2 of a motor vehicle within this state while under the influence of
3 intoxicating liquor or any drug or the person to have been driving or
4 in actual physical control of a motor vehicle while having alcohol in
5 a concentration in violation of RCW 46.61.503 in his or her system and
6 being under the age of twenty-one. However, in those instances where
7 the person is incapable due to physical injury, physical incapacity, or
8 other physical limitation, of providing a breath sample or where the
9 person is being treated in a hospital, clinic, doctor's office,
10 emergency medical vehicle, ambulance, or other similar facility in
11 which a breath testing instrument is not present or where the officer
12 has reasonable grounds to believe that the person is under the
13 influence of a drug, a blood test shall be administered by a qualified
14 person as provided in RCW 46.61.506(4). The officer shall inform the
15 person of his or her right to refuse the breath or blood test, and of
16 his or her right to have additional tests administered by any qualified
17 person of his or her choosing as provided in RCW 46.61.506. The
18 officer shall warn the driver that:

19 (a) His or her license, permit, or privilege to drive will be
20 revoked or denied if he or she refuses to submit to the test;

21 (b) His or her license, permit, or privilege to drive will be
22 suspended, revoked, or denied if the test is administered and the test
23 indicates the alcohol concentration of the person's breath or blood is
24 ((0.08)) 0.05 or more, in the case of a person age twenty-one or over,
25 or in violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case
26 of a person under age twenty-one; and

27 (c) His or her refusal to take the test may be used in a criminal
28 trial.

29 (3) Except as provided in this section, the test administered shall
30 be of the breath only. If an individual is unconscious or is under
31 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
32 or vehicular assault as provided in RCW 46.61.522, or if an individual
33 is under arrest for the crime of driving while under the influence of
34 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
35 results from an accident in which there has been serious bodily injury
36 to another person, a breath or blood test may be administered without
37 the consent of the individual so arrested.

38 (4) Any person who is dead, unconscious, or who is otherwise in a
39 condition rendering him or her incapable of refusal, shall be deemed

1 not to have withdrawn the consent provided by subsection (1) of this
2 section and the test or tests may be administered, subject to the
3 provisions of RCW 46.61.506, and the person shall be deemed to have
4 received the warnings required under subsection (2) of this section.

5 (5) If, following his or her arrest and receipt of warnings under
6 subsection (2) of this section, the person arrested refuses upon the
7 request of a law enforcement officer to submit to a test or tests of
8 his or her breath or blood, no test shall be given except as authorized
9 under subsection (3) or (4) of this section.

10 (6) If, after arrest and after the other applicable conditions and
11 requirements of this section have been satisfied, a test or tests of
12 the person's blood or breath is administered and the test results
13 indicate that the alcohol concentration of the person's breath or blood
14 is ~~((0.08))~~ 0.05 or more if the person is age twenty-one or over, or is
15 in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is
16 under the age of twenty-one, or the person refuses to submit to a test,
17 the arresting officer or other law enforcement officer at whose
18 direction any test has been given, or the department, where applicable,
19 if the arrest results in a test of the person's blood, shall:

20 (a) Serve notice in writing on the person on behalf of the
21 department of its intention to suspend, revoke, or deny the person's
22 license, permit, or privilege to drive as required by subsection (7) of
23 this section;

24 (b) Serve notice in writing on the person on behalf of the
25 department of his or her right to a hearing, specifying the steps he or
26 she must take to obtain a hearing as provided by subsection (8) of this
27 section;

28 (c) Mark the person's Washington state driver's license or permit
29 to drive, if any, in a manner authorized by the department;

30 (d) Serve notice in writing that the marked license or permit, if
31 any, is a temporary license that is valid for sixty days from the date
32 of arrest or from the date notice has been given in the event notice is
33 given by the department following a blood test, or until the
34 suspension, revocation, or denial of the person's license, permit, or
35 privilege to drive is sustained at a hearing pursuant to subsection (8)
36 of this section, whichever occurs first. No temporary license is valid
37 to any greater degree than the license or permit that it replaces; and

38 (e) Immediately notify the department of the arrest and transmit to
39 the department within seventy-two hours, except as delayed as the

1 result of a blood test, a sworn report or report under a declaration
2 authorized by RCW 9A.72.085 that states:

3 (i) That the officer had reasonable grounds to believe the arrested
4 person had been driving or was in actual physical control of a motor
5 vehicle within this state while under the influence of intoxicating
6 liquor or drugs, or both, or was under the age of twenty-one years and
7 had been driving or was in actual physical control of a motor vehicle
8 while having an alcohol concentration in violation of RCW 46.61.503;

9 (ii) That after receipt of the warnings required by subsection (2)
10 of this section the person refused to submit to a test of his or her
11 blood or breath, or a test was administered and the results indicated
12 that the alcohol concentration of the person's breath or blood was
13 ((0.08)) 0.05 or more if the person is age twenty-one or over, or was
14 in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is
15 under the age of twenty-one; and

16 (iii) Any other information that the director may require by rule.

17 (7) The department of licensing, upon the receipt of a sworn report
18 or report under a declaration authorized by RCW 9A.72.085 under
19 subsection (6)(e) of this section, shall suspend, revoke, or deny the
20 person's license, permit, or privilege to drive or any nonresident
21 operating privilege, as provided in RCW 46.20.3101, such suspension,
22 revocation, or denial to be effective beginning sixty days from the
23 date of arrest or from the date notice has been given in the event
24 notice is given by the department following a blood test, or when
25 sustained at a hearing pursuant to subsection (8) of this section,
26 whichever occurs first.

27 (8) A person receiving notification under subsection (6)(b) of this
28 section may, within thirty days after the notice has been given,
29 request in writing a formal hearing before the department. The person
30 shall pay a fee of one hundred dollars as part of the request. If the
31 request is mailed, it must be postmarked within thirty days after
32 receipt of the notification. Upon timely receipt of such a request for
33 a formal hearing, including receipt of the required one hundred dollar
34 fee, the department shall afford the person an opportunity for a
35 hearing. Except as otherwise provided in this section, the hearing is
36 subject to and shall be scheduled and conducted in accordance with RCW
37 46.20.329 and 46.20.332. The hearing shall be conducted in the county
38 of the arrest, except that all or part of the hearing may, at the
39 discretion of the department, be conducted by telephone or other

1 electronic means. The hearing shall be held within sixty days
2 following the arrest or following the date notice has been given in the
3 event notice is given by the department following a blood test, unless
4 otherwise agreed to by the department and the person, in which case the
5 action by the department shall be stayed, and any valid temporary
6 license marked under subsection (6)(c) of this section extended, if the
7 person is otherwise eligible for licensing. For the purposes of this
8 section, the scope of the hearing shall cover the issues of whether a
9 law enforcement officer had reasonable grounds to believe the person
10 had been driving or was in actual physical control of a motor vehicle
11 within this state while under the influence of intoxicating liquor or
12 any drug or had been driving or was in actual physical control of a
13 motor vehicle within this state while having alcohol in his or her
14 system in a concentration in violation of RCW 46.61.503 and was under
15 the age of twenty-one, whether the person was placed under arrest, and
16 (a) whether the person refused to submit to the test or tests upon
17 request of the officer after having been informed that such refusal
18 would result in the revocation of the person's license, permit, or
19 privilege to drive, or (b) if a test or tests were administered,
20 whether the applicable requirements of this section were satisfied
21 before the administration of the test or tests, whether the person
22 submitted to the test or tests, or whether a test was administered
23 without express consent as permitted under this section, and whether
24 the test or tests indicated that the alcohol concentration of the
25 person's breath or blood was ((0.08)) 0.05 or more if the person was
26 age twenty-one or over at the time of the arrest, or was in violation
27 of RCW 46.61.502, 46.61.503, or 46.61.504 if the person was under the
28 age of twenty-one at the time of the arrest. The sworn report or
29 report under a declaration authorized by RCW 9A.72.085 submitted by a
30 law enforcement officer is prima facie evidence that the officer had
31 reasonable grounds to believe the person had been driving or was in
32 actual physical control of a motor vehicle within this state while
33 under the influence of intoxicating liquor or drugs, or both, or the
34 person had been driving or was in actual physical control of a motor
35 vehicle within this state while having alcohol in his or her system in
36 a concentration in violation of RCW 46.61.503 and was under the age of
37 twenty-one and that the officer complied with the requirements of this
38 section.

1 A hearing officer shall conduct the hearing, may issue subpoenas
2 for the attendance of witnesses and the production of documents, and
3 shall administer oaths to witnesses. The hearing officer shall not
4 issue a subpoena for the attendance of a witness at the request of the
5 person unless the request is accompanied by the fee required by RCW
6 5.56.010 for a witness in district court. The sworn report or report
7 under a declaration authorized by RCW 9A.72.085 of the law enforcement
8 officer and any other evidence accompanying the report shall be
9 admissible without further evidentiary foundation and the
10 certifications authorized by the criminal rules for courts of limited
11 jurisdiction shall be admissible without further evidentiary
12 foundation. The person may be represented by counsel, may question
13 witnesses, may present evidence, and may testify. The department shall
14 order that the suspension, revocation, or denial either be rescinded or
15 sustained.

16 (9) If the suspension, revocation, or denial is sustained after
17 such a hearing, the person whose license, privilege, or permit is
18 suspended, revoked, or denied has the right to file a petition in the
19 superior court of the county of arrest to review the final order of
20 revocation by the department in the same manner as an appeal from a
21 decision of a court of limited jurisdiction. Notice of appeal must be
22 filed within thirty days after the date the final order is served or
23 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ
24 1.1, or other statutes or rules referencing de novo review, the appeal
25 shall be limited to a review of the record of the administrative
26 hearing. The appellant must pay the costs associated with obtaining
27 the record of the hearing before the hearing officer. The filing of
28 the appeal does not stay the effective date of the suspension,
29 revocation, or denial. A petition filed under this subsection must
30 include the petitioner's grounds for requesting review. Upon granting
31 petitioner's request for review, the court shall review the
32 department's final order of suspension, revocation, or denial as
33 expeditiously as possible. The review must be limited to a
34 determination of whether the department has committed any errors of
35 law. The superior court shall accept those factual determinations
36 supported by substantial evidence in the record: (a) That were
37 expressly made by the department; or (b) that may reasonably be
38 inferred from the final order of the department. The superior court
39 may reverse, affirm, or modify the decision of the department or remand

1 the case back to the department for further proceedings. The decision
2 of the superior court must be in writing and filed in the clerk's
3 office with the other papers in the case. The court shall state the
4 reasons for the decision. If judicial relief is sought for a stay or
5 other temporary remedy from the department's action, the court shall
6 not grant such relief unless the court finds that the appellant is
7 likely to prevail in the appeal and that without a stay the appellant
8 will suffer irreparable injury. If the court stays the suspension,
9 revocation, or denial it may impose conditions on such stay.

10 (10) If a person whose driver's license, permit, or privilege to
11 drive has been or will be suspended, revoked, or denied under
12 subsection (7) of this section, other than as a result of a breath or
13 blood test refusal, and who has not committed an offense within the
14 last five years for which he or she was granted a deferred prosecution
15 under chapter 10.05 RCW, petitions a court for a deferred prosecution
16 on criminal charges arising out of the arrest for which action has been
17 or will be taken under subsection (7) of this section, the court may
18 direct the department to stay any actual or proposed suspension,
19 revocation, or denial for at least forty-five days but not more than
20 ninety days. If the court stays the suspension, revocation, or denial,
21 it may impose conditions on such stay. If the person is otherwise
22 eligible for licensing, the department shall issue a temporary license,
23 or extend any valid temporary license marked under subsection (6) of
24 this section, for the period of the stay. If a deferred prosecution
25 treatment plan is not recommended in the report made under RCW
26 10.05.050, or if treatment is rejected by the court, or if the person
27 declines to accept an offered treatment plan, or if the person violates
28 any condition imposed by the court, then the court shall immediately
29 direct the department to cancel the stay and any temporary marked
30 license or extension of a temporary license issued under this
31 subsection.

32 A suspension, revocation, or denial imposed under this section,
33 other than as a result of a breath or blood test refusal, shall be
34 stayed if the person is accepted for deferred prosecution as provided
35 in chapter 10.05 RCW for the incident upon which the suspension,
36 revocation, or denial is based. If the deferred prosecution is
37 terminated, the stay shall be lifted and the suspension, revocation, or
38 denial reinstated. If the deferred prosecution is completed, the stay
39 shall be lifted and the suspension, revocation, or denial canceled.

1 (11) When it has been finally determined under the procedures of
2 this section that a nonresident's privilege to operate a motor vehicle
3 in this state has been suspended, revoked, or denied, the department
4 shall give information in writing of the action taken to the motor
5 vehicle administrator of the state of the person's residence and of any
6 state in which he or she has a license.

7 **Sec. 2.** RCW 46.20.3101 and 1998 c 213 s 2, 1998 c 209 s 2, and
8 1998 c 207 s 8 are each reenacted and amended to read as follows:

9 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
10 deny the arrested person's license, permit, or privilege to drive as
11 follows:

12 (1) In the case of a person who has refused a test or tests:

13 (a) For a first refusal within seven years, where there has not
14 been a previous incident within seven years that resulted in
15 administrative action under this section, revocation or denial for one
16 year;

17 (b) For a second or subsequent refusal within seven years, or for
18 a first refusal where there has been one or more previous incidents
19 within seven years that have resulted in administrative action under
20 this section, revocation or denial for two years or until the person
21 reaches age twenty-one, whichever is longer. A revocation imposed
22 under this subsection (1)(b) shall run consecutively to the period of
23 any suspension, revocation, or denial imposed pursuant to a criminal
24 conviction arising out of the same incident.

25 (2) In the case of an incident where a person has submitted to or
26 been administered a test or tests indicating that the alcohol
27 concentration of the person's breath or blood was (~~0.08~~) 0.05 or
28 more:

29 (a) For a first incident within seven years, where there has not
30 been a previous incident within seven years that resulted in
31 administrative action under this section, suspension for ninety days;

32 (b) For a second or subsequent incident within seven years,
33 revocation or denial for two years.

34 (3) In the case of an incident where a person under age twenty-one
35 has submitted to or been administered a test or tests indicating that
36 the alcohol concentration of the person's breath or blood was in
37 violation of RCW 46.61.502, 46.61.503, or 46.61.504:

1 (a) For a first incident within seven years, suspension or denial
2 for ninety days;

3 (b) For a second or subsequent incident within seven years,
4 revocation or denial for one year or until the person reaches age
5 twenty-one, whichever is longer.

6 **Sec. 3.** RCW 46.61.502 and 1998 c 213 s 3 are each amended to read
7 as follows:

8 (1) A person is guilty of driving while under the influence of
9 intoxicating liquor or any drug if the person drives a vehicle within
10 this state:

11 (a) And the person has, within two hours after driving, an alcohol
12 concentration of ((0.08)) 0.05 or higher as shown by analysis of the
13 person's breath or blood made under RCW 46.61.506; or

14 (b) While the person is under the influence of or affected by
15 intoxicating liquor or any drug; or

16 (c) While the person is under the combined influence of or affected
17 by intoxicating liquor and any drug.

18 (2) The fact that a person charged with a violation of this section
19 is or has been entitled to use a drug under the laws of this state
20 shall not constitute a defense against a charge of violating this
21 section.

22 (3) It is an affirmative defense to a violation of subsection
23 (1)(a) of this section which the defendant must prove by a
24 preponderance of the evidence that the defendant consumed a sufficient
25 quantity of alcohol after the time of driving and before the
26 administration of an analysis of the person's breath or blood to cause
27 the defendant's alcohol concentration to be ((0.08)) 0.05 or more
28 within two hours after driving. The court shall not admit evidence of
29 this defense unless the defendant notifies the prosecution prior to the
30 omnibus or pretrial hearing in the case of the defendant's intent to
31 assert the affirmative defense.

32 (4) Analyses of blood or breath samples obtained more than two
33 hours after the alleged driving may be used as evidence that within two
34 hours of the alleged driving, a person had an alcohol concentration of
35 ((0.08)) 0.05 or more in violation of subsection (1)(a) of this
36 section, and in any case in which the analysis shows an alcohol
37 concentration above 0.00 may be used as evidence that a person was

1 under the influence of or affected by intoxicating liquor or any drug
2 in violation of subsection (1)(b) or (c) of this section.

3 (5) A violation of this section is a gross misdemeanor.

4 **Sec. 4.** RCW 46.61.504 and 1998 c 213 s 5 are each amended to read
5 as follows:

6 (1) A person is guilty of being in actual physical control of a
7 motor vehicle while under the influence of intoxicating liquor or any
8 drug if the person has actual physical control of a vehicle within this
9 state:

10 (a) And the person has, within two hours after being in actual
11 physical control of the vehicle, an alcohol concentration of ((0.08))
12 0.05 or higher as shown by analysis of the person's breath or blood
13 made under RCW 46.61.506; or

14 (b) While the person is under the influence of or affected by
15 intoxicating liquor or any drug; or

16 (c) While the person is under the combined influence of or affected
17 by intoxicating liquor and any drug.

18 (2) The fact that a person charged with a violation of this section
19 is or has been entitled to use a drug under the laws of this state does
20 not constitute a defense against any charge of violating this section.
21 No person may be convicted under this section if, prior to being
22 pursued by a law enforcement officer, the person has moved the vehicle
23 safely off the roadway.

24 (3) It is an affirmative defense to a violation of subsection
25 (1)(a) of this section which the defendant must prove by a
26 preponderance of the evidence that the defendant consumed a sufficient
27 quantity of alcohol after the time of being in actual physical control
28 of the vehicle and before the administration of an analysis of the
29 person's breath or blood to cause the defendant's alcohol concentration
30 to be ((0.08)) 0.05 or more within two hours after being in such
31 control. The court shall not admit evidence of this defense unless the
32 defendant notifies the prosecution prior to the omnibus or pretrial
33 hearing in the case of the defendant's intent to assert the affirmative
34 defense.

35 (4) Analyses of blood or breath samples obtained more than two
36 hours after the alleged being in actual physical control of a vehicle
37 may be used as evidence that within two hours of the alleged being in
38 such control, a person had an alcohol concentration of ((0.08)) 0.05 or

1 more in violation of subsection (1)(a) of this section, and in any case
2 in which the analysis shows an alcohol concentration above 0.00 may be
3 used as evidence that a person was under the influence of or affected
4 by intoxicating liquor or any drug in violation of subsection (1)(b) or
5 (c) of this section.

6 (5) A violation of this section is a gross misdemeanor.

7 **Sec. 5.** RCW 46.61.5055 and 1998 c 215 s 1, 1998 c 214 s 1, 1998 c
8 211 s 1, 1998 c 210 s 4, 1998 c 207 s 1, and 1998 c 206 s 1 are each
9 reenacted and amended to read as follows:

10 (1) A person who is convicted of a violation of RCW 46.61.502 or
11 46.61.504 and who has no prior offense within seven years shall be
12 punished as follows:

13 (a) In the case of a person whose alcohol concentration was less
14 than 0.15, or for whom for reasons other than the person's refusal to
15 take a test offered pursuant to RCW 46.20.308 there is no test result
16 indicating the person's alcohol concentration:

17 (i) By imprisonment for not less than one day nor more than one
18 year. Twenty-four consecutive hours of the imprisonment may not be
19 suspended or deferred unless the court finds that the imposition of
20 this mandatory minimum sentence would impose a substantial risk to the
21 offender's physical or mental well-being. Whenever the mandatory
22 minimum sentence is suspended or deferred, the court shall state in
23 writing the reason for granting the suspension or deferral and the
24 facts upon which the suspension or deferral is based. In lieu of the
25 mandatory minimum term of imprisonment required under this subsection
26 (1)(a)(i), the court may order not less than fifteen days of electronic
27 home monitoring. The offender shall pay the cost of electronic home
28 monitoring. The county or municipality in which the penalty is being
29 imposed shall determine the cost. The court may also require the
30 offender's electronic home monitoring device to include an alcohol
31 detection breathalyzer, and the court may restrict the amount of
32 alcohol the offender may consume during the time the offender is on
33 electronic home monitoring; and

34 (ii) By a fine of not less than three hundred fifty dollars nor
35 more than five thousand dollars. Three hundred fifty dollars of the
36 fine may not be suspended or deferred unless the court finds the
37 offender to be indigent; and

1 (iii) By suspension of the offender's license or permit to drive,
2 or suspension of any nonresident privilege to drive, for a period of
3 ninety days. The period of license, permit, or privilege suspension
4 may not be suspended. The court shall notify the department of
5 licensing of the conviction, and upon receiving notification of the
6 conviction the department shall suspend the offender's license, permit,
7 or privilege; or

8 (b) In the case of a person whose alcohol concentration was at
9 least 0.15, or for whom by reason of the person's refusal to take a
10 test offered pursuant to RCW 46.20.308 there is no test result
11 indicating the person's alcohol concentration:

12 (i) By imprisonment for not less than two days nor more than one
13 year. Two consecutive days of the imprisonment may not be suspended or
14 deferred unless the court finds that the imposition of this mandatory
15 minimum sentence would impose a substantial risk to the offender's
16 physical or mental well-being. Whenever the mandatory minimum sentence
17 is suspended or deferred, the court shall state in writing the reason
18 for granting the suspension or deferral and the facts upon which the
19 suspension or deferral is based. In lieu of the mandatory minimum term
20 of imprisonment required under this subsection (1)(b)(i), the court may
21 order not less than thirty days of electronic home monitoring. The
22 offender shall pay the cost of electronic home monitoring. The county
23 or municipality in which the penalty is being imposed shall determine
24 the cost. The court may also require the offender's electronic home
25 monitoring device to include an alcohol detection breathalyzer, and the
26 court may restrict the amount of alcohol the offender may consume
27 during the time the offender is on electronic home monitoring; and

28 (ii) By a fine of not less than five hundred dollars nor more than
29 five thousand dollars. Five hundred dollars of the fine may not be
30 suspended or deferred unless the court finds the offender to be
31 indigent; and

32 (iii) By revocation of the offender's license or permit to drive,
33 or suspension of any nonresident privilege to drive, for a period of
34 one year. The period of license, permit, or privilege suspension may
35 not be suspended. The court shall notify the department of licensing
36 of the conviction, and upon receiving notification of the conviction
37 the department shall suspend the offender's license, permit, or
38 privilege; and

39 (iv) By a court-ordered restriction under RCW 46.20.720.

1 (2) A person who is convicted of a violation of RCW 46.61.502 or
2 46.61.504 and who has one prior offense within seven years shall be
3 punished as follows:

4 (a) In the case of a person whose alcohol concentration was less
5 than 0.15, or for whom for reasons other than the person's refusal to
6 take a test offered pursuant to RCW 46.20.308 there is no test result
7 indicating the person's alcohol concentration:

8 (i) By imprisonment for not less than thirty days nor more than one
9 year and sixty days of electronic home monitoring. The offender shall
10 pay for the cost of the electronic monitoring. The county or
11 municipality where the penalty is being imposed shall determine the
12 cost. The court may also require the offender's electronic home
13 monitoring device include an alcohol detection breathalyzer, and may
14 restrict the amount of alcohol the offender may consume during the time
15 the offender is on electronic home monitoring. Thirty days of
16 imprisonment and sixty days of electronic home monitoring may not be
17 suspended or deferred unless the court finds that the imposition of
18 this mandatory minimum sentence would impose a substantial risk to the
19 offender's physical or mental well-being. Whenever the mandatory
20 minimum sentence is suspended or deferred, the court shall state in
21 writing the reason for granting the suspension or deferral and the
22 facts upon which the suspension or deferral is based; and

23 (ii) By a fine of not less than five hundred dollars nor more than
24 five thousand dollars. Five hundred dollars of the fine may not be
25 suspended or deferred unless the court finds the offender to be
26 indigent; and

27 (iii) By revocation of the offender's license or permit to drive,
28 or suspension of any nonresident privilege to drive, for a period of
29 two years. The period of license, permit, or privilege revocation may
30 not be suspended. The court shall notify the department of licensing
31 of the conviction, and upon receiving notification of the conviction
32 the department shall revoke the offender's license, permit, or
33 privilege; and

34 (iv) By a court-ordered restriction under RCW 46.20.720; or

35 (b) In the case of a person whose alcohol concentration was at
36 least 0.15, or for whom by reason of the person's refusal to take a
37 test offered pursuant to RCW 46.20.308 there is no test result
38 indicating the person's alcohol concentration:

1 (i) By imprisonment for not less than forty-five days nor more than
2 one year and ninety days of electronic home monitoring. The offender
3 shall pay for the cost of the electronic monitoring. The county or
4 municipality where the penalty is being imposed shall determine the
5 cost. The court may also require the offender's electronic home
6 monitoring device include an alcohol detection breathalyzer, and may
7 restrict the amount of alcohol the offender may consume during the time
8 the offender is on electronic home monitoring. Forty-five days of
9 imprisonment and ninety days of electronic home monitoring may not be
10 suspended or deferred unless the court finds that the imposition of
11 this mandatory minimum sentence would impose a substantial risk to the
12 offender's physical or mental well-being. Whenever the mandatory
13 minimum sentence is suspended or deferred, the court shall state in
14 writing the reason for granting the suspension or deferral and the
15 facts upon which the suspension or deferral is based; and

16 (ii) By a fine of not less than seven hundred fifty dollars nor
17 more than five thousand dollars. Seven hundred fifty dollars of the
18 fine may not be suspended or deferred unless the court finds the
19 offender to be indigent; and

20 (iii) By revocation of the offender's license or permit to drive,
21 or suspension of any nonresident privilege to drive, for a period of
22 nine hundred days. The period of license, permit, or privilege
23 revocation may not be suspended. The court shall notify the department
24 of licensing of the conviction, and upon receiving notification of the
25 conviction the department shall revoke the offender's license, permit,
26 or privilege; and

27 (iv) By a court-ordered restriction under RCW 46.20.720.

28 (3) A person who is convicted of a violation of RCW 46.61.502 or
29 46.61.504 and who has two or more prior offenses within seven years
30 shall be punished as follows:

31 (a) In the case of a person whose alcohol concentration was less
32 than 0.15, or for whom for reasons other than the person's refusal to
33 take a test offered pursuant to RCW 46.20.308 there is no test result
34 indicating the person's alcohol concentration:

35 (i) By imprisonment for not less than ninety days nor more than one
36 year and one hundred twenty days of electronic home monitoring. The
37 offender shall pay for the cost of the electronic monitoring. The
38 county or municipality where the penalty is being imposed shall
39 determine the cost. The court may also require the offender's

1 electronic home monitoring device include an alcohol detection
2 breathalyzer, and may restrict the amount of alcohol the offender may
3 consume during the time the offender is on electronic home monitoring.
4 Ninety days of imprisonment and one hundred twenty days of electronic
5 home monitoring may not be suspended or deferred unless the court finds
6 that the imposition of this mandatory minimum sentence would impose a
7 substantial risk to the offender's physical or mental well-being.
8 Whenever the mandatory minimum sentence is suspended or deferred, the
9 court shall state in writing the reason for granting the suspension or
10 deferral and the facts upon which the suspension or deferral is based;
11 and

12 (ii) By a fine of not less than one thousand dollars nor more than
13 five thousand dollars. One thousand dollars of the fine may not be
14 suspended or deferred unless the court finds the offender to be
15 indigent; and

16 (iii) By revocation of the offender's license or permit to drive,
17 or suspension of any nonresident privilege to drive, for a period of
18 three years. The period of license, permit, or privilege revocation
19 may not be suspended. The court shall notify the department of
20 licensing of the conviction, and upon receiving notification of the
21 conviction the department shall revoke the offender's license, permit,
22 or privilege; and

23 (iv) By a court-ordered restriction under RCW 46.20.720; or

24 (b) In the case of a person whose alcohol concentration was at
25 least 0.15, or for whom by reason of the person's refusal to take a
26 test offered pursuant to RCW 46.20.308 there is no test result
27 indicating the person's alcohol concentration:

28 (i) By imprisonment for not less than one hundred twenty days nor
29 more than one year and one hundred fifty days of electronic home
30 monitoring. The offender shall pay for the cost of the electronic
31 monitoring. The county or municipality where the penalty is being
32 imposed shall determine the cost. The court may also require the
33 offender's electronic home monitoring device include an alcohol
34 detection breathalyzer, and may restrict the amount of alcohol the
35 offender may consume during the time the offender is on electronic home
36 monitoring. One hundred twenty days of imprisonment and one hundred
37 fifty days of electronic home monitoring may not be suspended or
38 deferred unless the court finds that the imposition of this mandatory
39 minimum sentence would impose a substantial risk to the offender's

1 physical or mental well-being. Whenever the mandatory minimum sentence
2 is suspended or deferred, the court shall state in writing the reason
3 for granting the suspension or deferral and the facts upon which the
4 suspension or deferral is based; and

5 (ii) By a fine of not less than one thousand five hundred dollars
6 nor more than five thousand dollars. One thousand five hundred dollars
7 of the fine may not be suspended or deferred unless the court finds the
8 offender to be indigent; and

9 (iii) By revocation of the offender's license or permit to drive,
10 or suspension of any nonresident privilege to drive, for a period of
11 four years. The period of license, permit, or privilege revocation may
12 not be suspended. The court shall notify the department of licensing
13 of the conviction, and upon receiving notification of the conviction
14 the department shall revoke the offender's license, permit, or
15 privilege; and

16 (iv) By a court-ordered restriction under RCW 46.20.720.

17 (4) In exercising its discretion in setting penalties within the
18 limits allowed by this section, the court shall particularly consider
19 the 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; and

22 (b) Whether the person was driving or in physical control of a
23 vehicle with one or more passengers at the time of the offense.

24 (5) An offender punishable under this section is subject to the
25 alcohol assessment and treatment provisions of RCW 46.61.5056.

26 (6) After expiration of any period of suspension or revocation of
27 the offender's license, permit, or privilege to drive required by this
28 section, the department shall place the offender's driving privilege in
29 probationary status pursuant to RCW 46.20.355.

30 (7)(a) In addition to any nonsuspendable and nondeferrable jail
31 sentence required by this section, whenever the court imposes less than
32 one year in jail, the court shall also suspend but shall not defer a
33 period of confinement for a period not exceeding five years. The court
34 shall impose conditions of probation that include: (i) Not driving a
35 motor vehicle within this state without a valid license to drive and
36 proof of financial responsibility for the future; (ii) not driving a
37 motor vehicle within this state while having an alcohol concentration
38 of ~~((0-08))~~ 0.05 or more within two hours after driving; and (iii) not
39 refusing to submit to a test of his or her breath or blood to determine

1 alcohol concentration upon request of a law enforcement officer who has
2 reasonable grounds to believe the person was driving or was in actual
3 physical control of a motor vehicle within this state while under the
4 influence of intoxicating liquor. The court may impose conditions of
5 probation that include nonrepetition, installation of an ignition
6 interlock or other biological or technical device on the probationer's
7 motor vehicle, alcohol or drug treatment, supervised probation, or
8 other conditions that may be appropriate. The sentence may be imposed
9 in whole or in part upon violation of a condition of probation during
10 the suspension period.

11 (b) For each violation of mandatory conditions of probation under
12 (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall
13 order the convicted person to be confined for thirty days, which shall
14 not be suspended or deferred.

15 (c) For each incident involving a violation of a mandatory
16 condition of probation imposed under this subsection, the license,
17 permit, or privilege to drive of the person shall be suspended by the
18 court for thirty days or, if such license, permit, or privilege to
19 drive already is suspended, revoked, or denied at the time the finding
20 of probation violation is made, the suspension, revocation, or denial
21 then in effect shall be extended by thirty days. The court shall
22 notify the department of any suspension, revocation, or denial or any
23 extension of a suspension, revocation, or denial imposed under this
24 subsection.

25 (8) For purposes of this section:

26 (a) "Electronic home monitoring" shall not be considered
27 confinement as defined in RCW 9.94A.030;

28 (b) A "prior offense" means any of the following:

29 (i) A conviction for a violation of RCW 46.61.502 or an equivalent
30 local ordinance;

31 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent
32 local ordinance;

33 (iii) A conviction for a violation of RCW 46.61.520 committed while
34 under the influence of intoxicating liquor or any drug;

35 (iv) A conviction for a violation of RCW 46.61.522 committed while
36 under the influence of intoxicating liquor or any drug;

37 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
38 9A.36.050 or an equivalent local ordinance, if the conviction is the
39 result of a charge that was originally filed as a violation of RCW

1 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
2 46.61.520 or 46.61.522;

3 (vi) An out-of-state conviction for a violation that would have
4 been a violation of (b)(i), (ii), (iii), (iv), or (v) of this
5 subsection if committed in this state;

6 (vii) A deferred prosecution under chapter 10.05 RCW granted in a
7 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
8 equivalent local ordinance; or

9 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
10 prosecution for a violation of RCW 46.61.5249, or an equivalent local
11 ordinance, if the charge under which the deferred prosecution was
12 granted was originally filed as a violation of RCW 46.61.502 or
13 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
14 46.61.522; and

15 (c) "Within seven years" means that the arrest for a prior offense
16 occurred within seven years of the arrest for the current offense.

17 **Sec. 6.** RCW 46.61.506 and 1998 c 213 s 6 are each amended to read
18 as follows:

19 (1) Upon the trial of any civil or criminal action or proceeding
20 arising out of acts alleged to have been committed by any person while
21 driving or in actual physical control of a vehicle while under the
22 influence of intoxicating liquor or any drug, if the person's alcohol
23 concentration is less than (~~0.08~~) 0.05, it is evidence that may be
24 considered with other competent evidence in determining whether the
25 person was under the influence of intoxicating liquor or any drug.

26 (2) The breath analysis shall be based upon grams of alcohol per
27 two hundred ten liters of breath. The foregoing provisions of this
28 section shall not be construed as limiting the introduction of any
29 other competent evidence bearing upon the question whether the person
30 was under the influence of intoxicating liquor or any drug.

31 (3) Analysis of the person's blood or breath to be considered valid
32 under the provisions of this section or RCW 46.61.502 or 46.61.504
33 shall have been performed according to methods approved by the state
34 toxicologist and by an individual possessing a valid permit issued by
35 the state toxicologist for this purpose. The state toxicologist is
36 directed to approve satisfactory techniques or methods, to supervise
37 the examination of individuals to ascertain their qualifications and
38 competence to conduct such analyses, and to issue permits which shall

1 be subject to termination or revocation at the discretion of the state
2 toxicologist.

3 (4) When a blood test is administered under the provisions of RCW
4 46.20.308, the withdrawal of blood for the purpose of determining its
5 alcoholic or drug content may be performed only by a physician, a
6 registered nurse, or a qualified technician. This limitation shall not
7 apply to the taking of breath specimens.

8 (5) The person tested may have a physician, or a qualified
9 technician, chemist, registered nurse, or other qualified person of his
10 or her own choosing administer one or more tests in addition to any
11 administered at the direction of a law enforcement officer. The
12 failure or inability to obtain an additional test by a person shall not
13 preclude the admission of evidence relating to the test or tests taken
14 at the direction of a law enforcement officer.

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

19 **Sec. 7.** RCW 88.12.025 and 1998 c 213 s 7 are each amended to read
20 as follows:

21 (1) It shall be unlawful for any person to operate a vessel in a
22 reckless manner.

23 (2) It shall be a violation for a person to operate a vessel while
24 under the influence of intoxicating liquor or any drug. A person is
25 considered to be under the influence of intoxicating liquor or any drug
26 if:

27 (a) The person has ~~((0.08))~~ 0.05 grams or more of alcohol per two
28 hundred ten liters of breath, as shown by analysis of the person's
29 breath made under RCW 46.61.506; or

30 (b) The person has ~~((0.08))~~ 0.05 percent or more by weight of
31 alcohol in the person's blood, as shown by analysis of the person's
32 blood made under RCW 46.61.506; or

33 (c) The person is under the influence of or affected by
34 intoxicating liquor or any drug; or

35 (d) The person is under the combined influence of or affected by
36 intoxicating liquor and any drug.

37 The fact that any person charged with a violation of this section
38 is or has been entitled to use such drug under the laws of this state

1 shall not constitute a defense against any charge of violating this
2 section. A person cited under this subsection may upon request be
3 given a breath test for breath alcohol or may request to have a blood
4 sample taken for blood alcohol analysis. An arresting officer shall
5 administer field sobriety tests when circumstances permit.

6 (3) A violation of this section is a misdemeanor, punishable as
7 provided under RCW 9.92.030. In addition, the court may order the
8 defendant to pay restitution for any damages or injuries resulting from
9 the offense.

10 **Sec. 8.** RCW 90.56.540 and 1991 c 200 s 605 are each amended to
11 read as follows:

12 (1) A person is guilty of operating a vessel while under the
13 influence of intoxicating liquor or drugs if the person operates a
14 covered vessel within this state while:

15 (a) The person has ~~((0.06))~~ 0.05 grams or more of alcohol per two
16 hundred ten liters of breath, as shown by analysis of the person's
17 breath made under RCW ~~((88.16.230))~~ 90.56.550; or

18 (b) The person has ~~((0.06))~~ 0.05 percent or more by weight of
19 alcohol in the person's blood as shown by analysis of the person's
20 blood made under RCW ~~((88.16.230))~~ 90.56.550; or

21 (c) The person is under the influence of or affected by
22 intoxicating liquor or drugs; or

23 (d) The person is under the combined influence of or affected by
24 intoxicating liquor or drugs.

25 (2) The fact that any person charged with a violation of this
26 section is or has been entitled to use such drug under the laws of this
27 state shall not constitute a defense against any charge of violating
28 this section.

29 (3) Operating a vessel while intoxicated is a class C felony under
30 chapter 9A.20 RCW.

31 **Sec. 9.** RCW 90.56.550 and 1991 c 200 s 606 are each amended to
32 read as follows:

33 (1) Upon the trial of any civil or criminal action or proceeding
34 arising out of acts alleged to have been committed by a person while
35 operating a vessel while under the influence of intoxicating liquor or
36 drugs, if the amount of alcohol in the person's blood or breath at the
37 time alleged as shown by analysis of his blood or breath is less than

1 ((0.06)) 0.05 percent by weight of alcohol in his blood or ((0.06))
2 0.05 grams of alcohol per two hundred ten liters of the person's
3 breath, it is evidence that may be considered with other competent
4 evidence in determining whether the person was under the influence of
5 intoxicating liquor or drugs.

6 (2) The breath analysis shall be based upon grams of alcohol per
7 two hundred ten liters of breath. The foregoing provisions of this
8 section shall not be construed as limiting the introduction of any
9 other competent evidence bearing upon the question whether the person
10 was under the influence of intoxicating liquor or any drug.

11 (3) Analysis of the person's blood or breath to be considered valid
12 under this section shall have been performed according to methods
13 approved by the state toxicologist and by an individual possessing a
14 valid permit issued by the state toxicologist for this purpose. The
15 state toxicologist shall approve satisfactory techniques or methods, to
16 supervise the examination of individuals to ascertain their
17 qualifications and competence to conduct such analyses, and to issue
18 permits that are subject to termination or revocation at the discretion
19 of the state toxicologist.

20 (4) If a blood test is administered under this section, the
21 withdrawal of blood for the purpose of determining its alcoholic
22 content may be performed only by a physician, a registered nurse, or a
23 qualified technician. This limitation shall not apply to the taking of
24 breath specimens.

25 (5) The person tested may have a physician, or a qualified
26 technician, chemist, registered nurse, or other qualified person of his
27 or her own choosing administer one or more tests in addition to any
28 administered at the direction of a law enforcement officer. The
29 failure or inability to obtain an additional test by a person shall not
30 preclude the admission of evidence relating to the test or tests taken
31 at the direction of a law enforcement officer.

32 (6) Upon the request of the person who submits to a test or tests
33 at the request of a law enforcement officer, full information
34 concerning the test or tests shall be made available to the person or
35 his or her attorney.

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