
HOUSE BILL 2084

State of Washington 63rd Legislature 2013 2nd Special Session

By Representatives Klippert, Goodman, Smith, Morrell, Holy, Moscoso, Haler, Hurst, Manweller, Van De Wege, Hayes, Fagan, Vick, Zeiger, Kochmar, Wilcox, Alexander, Magendanz, Warnick, Kretz, and Hargrove

Read first time 06/28/13. Referred to Committee on Public Safety.

1 AN ACT Relating to impaired driving offenses that constitute a
2 felony offense; amending RCW 46.61.502 and 46.61.504; reenacting and
3 amending RCW 46.61.5055; and prescribing penalties.

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

5 **Sec. 1.** RCW 46.61.5055 and 2012 c 183 s 12, 2012 c 42 s 2, and
6 2012 c 28 s 1 are each reenacted and amended to read as follows:

7 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
8 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
9 and who has no prior offense within seven years shall be punished as
10 follows:

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

15 (i) By imprisonment for not less than one day nor more than three
16 hundred sixty-four days. Twenty-four consecutive hours of the
17 imprisonment may not be suspended or deferred unless the court finds
18 that the imposition of this mandatory minimum sentence would impose a
19 substantial risk to the offender's physical or mental well-being.

1 Whenever the mandatory minimum sentence is suspended or deferred, the
2 court shall state in writing the reason for granting the suspension or
3 deferral and the facts upon which the suspension or deferral is based.
4 In lieu of the mandatory minimum term of imprisonment required under
5 this subsection (1)(a)(i), the court may order not less than fifteen
6 days of electronic home monitoring. The offender shall pay the cost of
7 electronic home monitoring. The county or municipality in which the
8 penalty is being imposed shall determine the cost. The court may also
9 require the offender's electronic home monitoring device to include an
10 alcohol detection breathalyzer, and the court may restrict the amount
11 of alcohol the offender may consume during the time the offender is on
12 electronic home monitoring; and

13 (ii) By a fine of not less than three hundred fifty dollars nor
14 more than five thousand dollars. Three hundred fifty dollars of the
15 fine may not be suspended or deferred unless the court finds the
16 offender to be indigent; or

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

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

1 (ii) By a fine of not less than five hundred dollars nor more than
2 five thousand dollars. Five hundred dollars of the fine may not be
3 suspended or deferred unless the court finds the offender to be
4 indigent.

5 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
6 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
7 and who has one prior offense within seven years shall be punished as
8 follows:

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

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

31 (ii) By a fine of not less than five hundred dollars nor more than
32 five thousand dollars. Five hundred dollars of the fine may not be
33 suspended or deferred unless the court finds the offender to be
34 indigent; 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 three hundred sixty-four days and ninety days of electronic home
3 monitoring. In lieu of the mandatory minimum term of ninety days
4 electronic home monitoring, the court may order at least an additional
5 six days in jail. The offender shall pay for the cost of the
6 electronic monitoring. The county or municipality where the penalty is
7 being imposed shall determine the cost. The court may also require the
8 offender's electronic home monitoring device include an alcohol
9 detection breathalyzer, and may restrict the amount of alcohol the
10 offender may consume during the time the offender is on electronic home
11 monitoring. Forty-five days of imprisonment and ninety days of
12 electronic home monitoring may not be suspended or deferred unless the
13 court finds that the imposition of this mandatory minimum sentence
14 would impose a substantial risk to the offender's physical or mental
15 well-being. Whenever the mandatory minimum sentence is suspended or
16 deferred, the court shall state in writing the reason for granting the
17 suspension or deferral and the facts upon which the suspension or
18 deferral is based; and

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

23 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
24 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
25 and who has two (~~or three~~) prior offenses within seven years shall be
26 punished as follows:

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

31 (i) By imprisonment for not less than ninety days nor more than
32 three hundred sixty-four days and one hundred twenty days of electronic
33 home monitoring. In lieu of the mandatory minimum term of one hundred
34 twenty days of electronic home monitoring, the court may order at least
35 an additional eight days in jail. The offender shall pay for the cost
36 of the electronic monitoring. The county or municipality where the
37 penalty is being imposed shall determine the cost. The court may also
38 require the offender's electronic home monitoring device include an

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

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

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

19 (i) By imprisonment for not less than one hundred twenty days nor
20 more than three hundred sixty-four days and one hundred fifty days of
21 electronic home monitoring. In lieu of the mandatory minimum term of
22 one hundred fifty days of electronic home monitoring, the court may
23 order at least an additional ten days in jail. The offender shall pay
24 for the cost of the electronic monitoring. The county or municipality
25 where the penalty is being imposed shall determine the cost. The court
26 may also require the offender's electronic home monitoring device
27 include an alcohol detection breathalyzer, and may restrict the amount
28 of alcohol the offender may consume during the time the offender is on
29 electronic home monitoring. One hundred twenty days of imprisonment
30 and one hundred fifty days of electronic home monitoring may not be
31 suspended or deferred unless the court finds that the imposition of
32 this mandatory minimum sentence would impose a substantial risk to the
33 offender's physical or mental well-being. Whenever the mandatory
34 minimum sentence is suspended or deferred, the court shall state in
35 writing the reason for granting the suspension or deferral and the
36 facts upon which the suspension or deferral is based; and

37 (ii) By a fine of not less than one thousand five hundred dollars

1 nor more than five thousand dollars. One thousand five hundred dollars
2 of the fine may not be suspended or deferred unless the court finds the
3 offender to be indigent.

4 (4) A person who is convicted of a violation of RCW 46.61.502 or
5 46.61.504 shall be punished under chapter 9.94A RCW if:

6 (a) The person has four or more prior offenses within ten years; or

7 (b) The person has ever previously been convicted of:

8 (i) A violation of RCW 46.61.520 committed while under the
9 influence of intoxicating liquor or any drug;

10 (ii) A violation of RCW 46.61.522 committed while under the
11 influence of intoxicating liquor or any drug;

12 (iii) An out-of-state offense comparable to the offense specified
13 in (b)(i) or (ii) of this subsection; or

14 (iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

15 (5)(a) The court shall require any person convicted of a violation
16 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to
17 comply with the rules and requirements of the department regarding the
18 installation and use of a functioning ignition interlock device
19 installed on all motor vehicles operated by the person.

20 (b) If the court orders that a person refrain from consuming any
21 alcohol, the court may order the person to submit to alcohol monitoring
22 through an alcohol detection breathalyzer device, transdermal sensor
23 device, or other technology designed to detect alcohol in a person's
24 system. The person shall pay for the cost of the monitoring, unless
25 the court specifies that the cost of monitoring will be paid with funds
26 that are available from an alternative source identified by the court.
27 The county or municipality where the penalty is being imposed shall
28 determine the cost.

29 (6) If a person who is convicted of a violation of RCW 46.61.502 or
30 46.61.504 committed the offense while a passenger under the age of
31 sixteen was in the vehicle, the court shall:

32 (a) Order the use of an ignition interlock or other device for an
33 additional six months;

34 (b) In any case in which the person has no prior offenses within
35 seven years, and except as provided in RCW 46.61.502(6) or
36 46.61.504(6), order a penalty by a fine of not less than one thousand
37 dollars and not more than five thousand dollars. One thousand dollars

1 of the fine may not be suspended or deferred unless the court finds the
2 offender to be indigent;

3 (c) In any case in which the person has one prior offense within
4 seven years, and except as provided in RCW 46.61.502(6) or
5 46.61.504(6), order a penalty by a fine of not less than two thousand
6 dollars and not more than five thousand dollars. One thousand dollars
7 of the fine may not be suspended or deferred unless the court finds the
8 offender to be indigent;

9 (d) In any case in which the person has two or three prior offenses
10 within seven years, and except as provided in RCW 46.61.502(6) or
11 46.61.504(6), order a penalty by a fine of not less than three thousand
12 dollars and not more than ten thousand dollars. One thousand dollars
13 of the fine may not be suspended or deferred unless the court finds the
14 offender to be indigent.

15 (7) In exercising its discretion in setting penalties within the
16 limits allowed by this section, the court shall particularly consider
17 the following:

18 (a) Whether the person's driving at the time of the offense was
19 responsible for injury or damage to another or another's property; and

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

22 (8) An offender punishable under this section is subject to the
23 alcohol assessment and treatment provisions of RCW 46.61.5056.

24 (9) The license, permit, or nonresident privilege of a person
25 convicted of driving or being in physical control of a motor vehicle
26 while under the influence of intoxicating liquor or drugs must:

27 (a) If the person's alcohol concentration was less than 0.15, or if
28 for reasons other than the person's refusal to take a test offered
29 under RCW 46.20.308 there is no test result indicating the person's
30 alcohol concentration:

31 (i) Where there has been no prior offense within seven years, be
32 suspended or denied by the department for ninety days;

33 (ii) Where there has been one prior offense within seven years, be
34 revoked or denied by the department for two years; or

35 (iii) Where there have been two or more prior offenses within seven
36 years, be revoked or denied by the department for three years;

37 (b) If the person's alcohol concentration was at least 0.15:

1 (i) Where there has been no prior offense within seven years, be
2 revoked or denied by the department for one year;

3 (ii) Where there has been one prior offense within seven years, be
4 revoked or denied by the department for nine hundred days; or

5 (iii) Where there have been two or more prior offenses within seven
6 years, be revoked or denied by the department for four years; or

7 (c) If by reason of the person's refusal to take a test offered
8 under RCW 46.20.308, there is no test result indicating the person's
9 alcohol concentration:

10 (i) Where there have been no prior offenses within seven years, be
11 revoked or denied by the department for two years;

12 (ii) Where there has been one prior offense within seven years, be
13 revoked or denied by the department for three years; or

14 (iii) Where there have been two or more previous offenses within
15 seven years, be revoked or denied by the department for four years.

16 The department shall grant credit on a day-for-day basis for any
17 portion of a suspension, revocation, or denial already served under
18 this subsection for a suspension, revocation, or denial imposed under
19 RCW 46.20.3101 arising out of the same incident.

20 Upon its own motion or upon motion by a person, a court may find,
21 on the record, that notice to the department under RCW 46.20.270 has
22 been delayed for three years or more as a result of a clerical or court
23 error. If so, the court may order that the person's license, permit,
24 or nonresident privilege shall not be revoked, suspended, or denied for
25 that offense. The court shall send notice of the finding and order to
26 the department and to the person. Upon receipt of the notice from the
27 court, the department shall not revoke, suspend, or deny the license,
28 permit, or nonresident privilege of the person for that offense.

29 For purposes of this subsection (9), the department shall refer to
30 the driver's record maintained under RCW 46.52.120 when determining the
31 existence of prior offenses.

32 (10) After expiration of any period of suspension, revocation, or
33 denial of the offender's license, permit, or privilege to drive
34 required by this section, the department shall place the offender's
35 driving privilege in probationary status pursuant to RCW 46.20.355.

36 (11)(a) In addition to any nonsuspendable and nondeferrable jail
37 sentence required by this section, whenever the court imposes up to
38 three hundred sixty-four days in jail, the court shall also suspend but

1 shall not defer a period of confinement for a period not exceeding five
2 years. The court shall impose conditions of probation that include:
3 (i) Not driving a motor vehicle within this state without a valid
4 license to drive and proof of financial responsibility for the future;
5 (ii) not driving a motor vehicle within this state while having an
6 alcohol concentration of 0.08 or more within two hours after driving;
7 and (iii) not refusing to submit to a test of his or her breath or
8 blood to determine alcohol concentration upon request of a law
9 enforcement officer who has reasonable grounds to believe the person
10 was driving or was in actual physical control of a motor vehicle within
11 this state while under the influence of intoxicating liquor. The court
12 may impose conditions of probation that include nonrepetition,
13 installation of an ignition interlock device on the probationer's motor
14 vehicle, alcohol or drug treatment, supervised probation, or other
15 conditions that may be appropriate. The sentence may be imposed in
16 whole or in part upon violation of a condition of probation during the
17 suspension period.

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

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

32 (12) A court may waive the electronic home monitoring requirements
33 of this chapter when:

34 (a) The offender does not have a dwelling, telephone service, or
35 any other necessity to operate an electronic home monitoring system;

36 (b) The offender does not reside in the state of Washington; or

37 (c) The court determines that there is reason to believe that the

1 offender would violate the conditions of the electronic home monitoring
2 penalty.

3 Whenever the mandatory minimum term of electronic home monitoring
4 is waived, the court shall state in writing the reason for granting the
5 waiver and the facts upon which the waiver is based, and shall impose
6 an alternative sentence with similar punitive consequences. The
7 alternative sentence may include, but is not limited to, additional
8 jail time, work crew, or work camp.

9 Whenever the combination of jail time and electronic home
10 monitoring or alternative sentence would exceed three hundred sixty-
11 four days, the offender shall serve the jail portion of the sentence
12 first, and the electronic home monitoring or alternative portion of the
13 sentence shall be reduced so that the combination does not exceed three
14 hundred sixty-four days.

15 (13) An offender serving a sentence under this section, whether or
16 not a mandatory minimum term has expired, may be granted an
17 extraordinary medical placement by the jail administrator subject to
18 the standards and limitations set forth in RCW 9.94A.728(3).

19 (14) For purposes of this section and RCW 46.61.502 and 46.61.504:

20 (a) A "prior offense" means any of the following:

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

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

25 (iii) A conviction for a violation of RCW 46.61.520 committed while
26 under the influence of intoxicating liquor or any drug, or a conviction
27 for a violation of RCW 46.61.520 committed in a reckless manner or with
28 the disregard for the safety of others if the conviction is the result
29 of a charge that was originally filed as a violation of RCW 46.61.520
30 committed while under the influence of intoxicating liquor or any drug;

31 (iv) A conviction for a violation of RCW 46.61.522 committed while
32 under the influence of intoxicating liquor or any drug, or a conviction
33 for a violation of RCW 46.61.522 committed in a reckless manner or with
34 the disregard for the safety of others if the conviction is the result
35 of a charge that was originally filed as a violation of RCW 46.61.522
36 committed while 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

1 result of a charge that was originally filed as a violation of RCW
2 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
3 46.61.520 or 46.61.522;

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

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

10 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
11 prosecution for a violation of RCW 46.61.5249, or an equivalent local
12 ordinance, if the charge under which the deferred prosecution was
13 granted was originally filed as a violation of RCW 46.61.502 or
14 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
15 46.61.522; or

16 (ix) A deferred prosecution granted in another state for a
17 violation of driving or having physical control of a vehicle while
18 under the influence of intoxicating liquor or any drug if the out-of-
19 state deferred prosecution is equivalent to the deferred prosecution
20 under chapter 10.05 RCW, including a requirement that the defendant
21 participate in a chemical dependency treatment program;

22 If a deferred prosecution is revoked based on a subsequent
23 conviction for an offense listed in this subsection (14)(a), the
24 subsequent conviction shall not be treated as a prior offense of the
25 revoked deferred prosecution for the purposes of sentencing;

26 (b) "Within seven years" means that the arrest for a prior offense
27 occurred within seven years before or after the arrest for the current
28 offense; and

29 (c) "Within ten years" means that the arrest for a prior offense
30 occurred within ten years before or after the arrest for the current
31 offense.

32 **Sec. 2.** RCW 46.61.502 and 2013 c 3 s 33 (Initiative Measure No.
33 502) are each amended to read as follows:

34 (1) A person is guilty of driving while under the influence of
35 intoxicating liquor, marijuana, or any drug if the person drives a
36 vehicle within this state:

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

4 (b) The person has, within two hours after driving, a THC
5 concentration of 5.00 or higher as shown by analysis of the person's
6 blood made under RCW 46.61.506; or

7 (c) While the person is under the influence of or affected by
8 intoxicating liquor, marijuana, or any drug; or

9 (d) While the person is under the combined influence of or affected
10 by intoxicating liquor, marijuana, and any drug.

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

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

25 (b) It is an affirmative defense to a violation of subsection
26 (1)(b) of this section, which the defendant must prove by a
27 preponderance of the evidence, that the defendant consumed a sufficient
28 quantity of marijuana after the time of driving and before the
29 administration of an analysis of the person's blood to cause the
30 defendant's THC concentration to be 5.00 or more within two hours after
31 driving. 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)(a) Analyses of blood or breath samples obtained more than two
36 hours after the alleged driving may be used as evidence that within two
37 hours of the alleged driving, a person had an alcohol concentration of
38 0.08 or more in violation of subsection (1)(a) of this section, and in

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

5 (b) Analyses of blood samples obtained more than two hours after
6 the alleged driving may be used as evidence that within two hours of
7 the alleged driving, a person had a THC concentration of 5.00 or more
8 in violation of subsection (1)(b) of this section, and in any case in
9 which the analysis shows a THC concentration above 0.00 may be used as
10 evidence that a person was under the influence of or affected by
11 marijuana in violation of subsection (1)(c) or (d) of this section.

12 (5) Except as provided in subsection (6) of this section, a
13 violation of this section is a gross misdemeanor.

14 (6) It is a class C felony punishable under chapter 9.94A RCW, or
15 chapter 13.40 RCW if the person is a juvenile, if:

16 (a) The person has (~~four~~) three or more prior offenses within ten
17 years as defined in RCW 46.61.5055; or

18 (b) The person has ever previously been convicted of:

19 (i) Vehicular homicide while under the influence of intoxicating
20 liquor or any drug, RCW 46.61.520(1)(a);

21 (ii) Vehicular assault while under the influence of intoxicating
22 liquor or any drug, RCW 46.61.522(1)(b);

23 (iii) An out-of-state offense comparable to the offense specified
24 in (b)(i) or (ii) of this subsection; or

25 (iv) A violation of this subsection (6) or RCW 46.61.504(6).

26 **Sec. 3.** RCW 46.61.504 and 2013 c 3 s 35 (Initiative Measure No.
27 502) are each amended to read as follows:

28 (1) A person is guilty of being in actual physical control of a
29 motor vehicle while under the influence of intoxicating liquor or any
30 drug if the person has actual physical control of a vehicle within this
31 state:

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

36 (b) The person has, within two hours after being in actual physical

1 control of a vehicle, a THC concentration of 5.00 or higher as shown by
2 analysis of the person's blood made under RCW 46.61.506; or

3 (c) While the person is under the influence of or affected by
4 intoxicating liquor or any drug; or

5 (d) While the person is under the combined influence of or affected
6 by intoxicating liquor and any drug.

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

13 (3)(a) It is an affirmative defense to a violation of subsection
14 (1)(a) of this section which the defendant must prove by a
15 preponderance of the evidence that the defendant consumed a sufficient
16 quantity of alcohol after the time of being in actual physical control
17 of the vehicle and before the administration of an analysis of the
18 person's breath or blood to cause the defendant's alcohol concentration
19 to be 0.08 or more within two hours after being in such control. The
20 court shall not admit evidence of this defense unless the defendant
21 notifies the prosecution prior to the omnibus or pretrial hearing in
22 the case of the defendant's intent to assert the affirmative defense.

23 (b) It is an affirmative defense to a violation of subsection
24 (1)(b) of this section, which the defendant must prove by a
25 preponderance of the evidence, that the defendant consumed a sufficient
26 quantity of marijuana after the time of being in actual physical
27 control of the vehicle and before the administration of an analysis of
28 the person's blood to cause the defendant's THC concentration to be
29 5.00 or more within two hours after being in control of the vehicle.
30 The court shall not admit evidence of this defense unless the defendant
31 notifies the prosecution prior to the omnibus or pretrial hearing in
32 the case of the defendant's intent to assert the affirmative defense.

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

1 used as evidence that a person was under the influence of or affected
2 by intoxicating liquor or any drug in violation of subsection (1)(c) or
3 (d) of this section.

4 (b) Analyses of blood samples obtained more than two hours after
5 the alleged being in actual physical control of a vehicle may be used
6 as evidence that within two hours of the alleged being in control of
7 the vehicle, a person had a THC concentration of 5.00 or more in
8 violation of subsection (1)(b) of this section, and in any case in
9 which the analysis shows a THC concentration above 0.00 may be used as
10 evidence that a person was under the influence of or affected by
11 marijuana in violation of subsection (1)(c) or (d) of this section.

12 (5) Except as provided in subsection (6) of this section, a
13 violation of this section is a gross misdemeanor.

14 (6) It is a class C felony punishable under chapter 9.94A RCW, or
15 chapter 13.40 RCW if the person is a juvenile, if:

16 (a) The person has (~~four~~) three or more prior offenses within ten
17 years as defined in RCW 46.61.5055; or

18 (b) The person has ever previously been convicted of:

19 (i) Vehicular homicide while under the influence of intoxicating
20 liquor or any drug, RCW 46.61.520(1)(a);

21 (ii) Vehicular assault while under the influence of intoxicating
22 liquor or any drug, RCW 46.61.522(1)(b);

23 (iii) An out-of-state offense comparable to the offense specified
24 in (b)(i) or (ii) of this subsection; or

25 (iv) A violation of this subsection (6) or RCW 46.61.502(6).

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