
SENATE BILL 6090

State of Washington

63rd Legislature

2014 Regular Session

By Senators Padden, Pearson, Fain, Bailey, Dansel, Honeyford, Becker, Tom, Roach, Benton, Sheldon, Dammeier, O'Ban, Baumgartner, Brown, and Parlette

Read first time 01/15/14. Referred to Committee on Law & Justice.

1 AN ACT Relating to driving under the influence; amending RCW
2 46.61.502, 46.61.504, and 46.61.5055; and prescribing penalties.

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

4 **Sec. 1.** RCW 46.61.502 and 2013 c 3 s 33 (Initiative Measure No.
5 502) are each amended to read as follows:

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

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

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

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

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

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

5 (3)(a) It is an affirmative defense to a violation of subsection
6 (1)(a) of this section, which the defendant must prove by a
7 preponderance of the evidence, that the defendant consumed a sufficient
8 quantity of alcohol after the time of driving and before the
9 administration of an analysis of the person's breath or blood to cause
10 the defendant's alcohol concentration to be 0.08 or more within two
11 hours after driving. The court shall not admit evidence of this
12 defense unless the defendant notifies the prosecution prior to the
13 omnibus or pretrial hearing in the case of the defendant's intent to
14 assert the affirmative defense.

15 (b) It is an affirmative defense to a violation of subsection
16 (1)(b) of this section, which the defendant must prove by a
17 preponderance of the evidence, that the defendant consumed a sufficient
18 quantity of marijuana after the time of driving and before the
19 administration of an analysis of the person's blood to cause the
20 defendant's THC concentration to be 5.00 or more within two hours after
21 driving. The court shall not admit evidence of this defense unless the
22 defendant notifies the prosecution prior to the omnibus or pretrial
23 hearing in the case of the defendant's intent to assert the affirmative
24 defense.

25 (4)(a) Analyses of blood or breath samples obtained more than two
26 hours after the alleged driving may be used as evidence that within two
27 hours of the alleged driving, a person had an alcohol concentration of
28 0.08 or more in violation of subsection (1)(a) of this section, and in
29 any case in which the analysis shows an alcohol concentration above
30 0.00 may be used as evidence that a person was under the influence of
31 or affected by intoxicating liquor or any drug in violation of
32 subsection (1)(c) or (d) of this section.

33 (b) Analyses of blood samples obtained more than two hours after
34 the alleged driving may be used as evidence that within two hours of
35 the alleged driving, a person had a THC concentration of 5.00 or more
36 in violation of subsection (1)(b) of this section, and in any case in
37 which the analysis shows a THC concentration above 0.00 may be used as

1 evidence that a person was under the influence of or affected by
2 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

17 **Sec. 2.** RCW 46.61.504 and 2013 c 3 s 35 (Initiative Measure No.
18 502) are each amended to read as follows:

19 (1) A person is guilty of being in actual physical control of a
20 motor vehicle while under the influence of intoxicating liquor or any
21 drug if the person has actual physical control of a vehicle within this
22 state:

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

27 (b) The person has, within two hours after being in actual physical
28 control of a vehicle, a THC concentration of 5.00 or higher as shown by
29 analysis of the person's blood made under RCW 46.61.506; or

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

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

34 (2) The fact that a person charged with a violation of this section
35 is or has been entitled to use a drug under the laws of this state does
36 not constitute a defense against any charge of violating this section.

1 No person may be convicted under this section if, prior to being
2 pursued by a law enforcement officer, the person has moved the vehicle
3 safely off the roadway.

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

14 (b) It is an affirmative defense to a violation of subsection
15 (1)(b) of this section, which the defendant must prove by a
16 preponderance of the evidence, that the defendant consumed a sufficient
17 quantity of marijuana after the time of being in actual physical
18 control of the vehicle and before the administration of an analysis of
19 the person's blood to cause the defendant's THC concentration to be
20 5.00 or more within two hours after being in control of the vehicle.
21 The court shall not admit evidence of this defense unless the defendant
22 notifies the prosecution prior to the omnibus or pretrial hearing in
23 the case of the defendant's intent to assert the affirmative defense.

24 (4)(a) Analyses of blood or breath samples obtained more than two
25 hours after the alleged being in actual physical control of a vehicle
26 may be used as evidence that within two hours of the alleged being in
27 such control, a person had an alcohol concentration of 0.08 or more in
28 violation of subsection (1)(a) of this section, and in any case in
29 which the analysis shows an alcohol concentration above 0.00 may be
30 used as evidence that a person was under the influence of or affected
31 by intoxicating liquor or any drug in violation of subsection (1)(c) or
32 (d) of this section.

33 (b) Analyses of blood samples obtained more than two hours after
34 the alleged being in actual physical control of a vehicle may be used
35 as evidence that within two hours of the alleged being in control of
36 the vehicle, a person had a THC concentration of 5.00 or more in
37 violation of subsection (1)(b) of this section, and in any case in

1 which the analysis shows a THC concentration above 0.00 may be used as
2 evidence that a person was under the influence of or affected by
3 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

18 **Sec. 3.** RCW 46.61.5055 and 2013 2nd sp.s. c 35 s 13 are each
19 amended to read as follows:

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

24 (a) In the case of a person whose alcohol concentration was less
25 than 0.15, or for whom for reasons other than the person's refusal to
26 take a 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 day nor more than three
29 hundred sixty-four days. Twenty-four consecutive hours of the
30 imprisonment may not be suspended unless the court finds that the
31 imposition of this mandatory minimum sentence would impose a
32 substantial risk to the offender's physical or mental well-being.
33 Whenever the mandatory minimum sentence is suspended, the court shall
34 state in writing the reason for granting the suspension and the facts
35 upon which the suspension is based. In lieu of the mandatory minimum
36 term of imprisonment required under this subsection (1)(a)(i), the
37 court may order not less than fifteen days of electronic home

1 monitoring. The offender shall pay the cost of electronic home
2 monitoring. The county or municipality in which the penalty is being
3 imposed shall determine the cost. The court may also require the
4 offender's electronic home monitoring device or other separate alcohol
5 monitoring device to include an alcohol detection breathalyzer, and the
6 court may restrict the amount of alcohol the offender may consume
7 during the time the offender is on electronic home monitoring; and

8 (ii) By a fine of not less than three hundred fifty dollars nor
9 more than five thousand dollars. Three hundred fifty dollars of the
10 fine may not be suspended unless the court finds the offender to be
11 indigent; or

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

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

33 (ii) By a fine of not less than five hundred dollars nor more than
34 five thousand dollars. Five hundred dollars of the fine may not be
35 suspended unless the court finds the offender to be indigent.

36 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
37 person who is convicted of a violation of RCW 46.61.502 or 46.61.504

1 and who has one prior offense within seven years shall be punished as
2 follows:

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

7 (i) By imprisonment for not less than thirty days nor more than
8 three hundred sixty-four days and sixty days of electronic home
9 monitoring. In lieu of the mandatory minimum term of sixty days
10 electronic home monitoring, the court may order at least an additional
11 four days in jail or, if available in that county or city, a six-month
12 period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300
13 through 36.28A.390, and the court shall order an expanded alcohol
14 assessment and treatment, if deemed appropriate by the assessment. The
15 offender shall pay for the cost of the electronic monitoring. The
16 county or municipality where the penalty is being imposed shall
17 determine the cost. The court may also require the offender's
18 electronic home monitoring device include an alcohol detection
19 breathalyzer or other separate alcohol monitoring device, and may
20 restrict the amount of alcohol the offender may consume during the time
21 the offender is on electronic home monitoring. Thirty days of
22 imprisonment and sixty days of electronic home monitoring may not be
23 suspended unless the court finds that the imposition of this mandatory
24 minimum sentence would impose a substantial risk to the offender's
25 physical or mental well-being. Whenever the mandatory minimum sentence
26 is suspended, the court shall state in writing the reason for granting
27 the suspension and the facts upon which the suspension is based; 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 unless the court finds the offender to be indigent; or

31 (b) In the case of a person whose alcohol concentration was at
32 least 0.15, or for whom by reason of the person's refusal to take a
33 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 forty-five days nor more than
36 three hundred sixty-four days and ninety days of electronic home
37 monitoring. In lieu of the mandatory minimum term of ninety days
38 electronic home monitoring, the court may order at least an additional

1 six days in jail or, if available in that county or city, a six-month
2 period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300
3 through 36.28A.390, and the court shall order an expanded alcohol
4 assessment and treatment, if deemed appropriate by the assessment. The
5 offender shall pay for the cost of the electronic monitoring. The
6 county or municipality where the penalty is being imposed shall
7 determine the cost. The court may also require the offender's
8 electronic home monitoring device include an alcohol detection
9 breathalyzer or other separate alcohol monitoring device, and may
10 restrict the amount of alcohol the offender may consume during the time
11 the offender is on electronic home monitoring. Forty-five days of
12 imprisonment and ninety days of electronic home monitoring may not be
13 suspended unless the court finds that the imposition of this mandatory
14 minimum sentence would impose a substantial risk to the offender's
15 physical or mental well-being. Whenever the mandatory minimum sentence
16 is suspended, the court shall state in writing the reason for granting
17 the suspension and the facts upon which the suspension is based; and

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

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

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

30 (i) By imprisonment for not less than ninety days nor more than
31 three hundred sixty-four days, if available in that county or city, a
32 six-month period of 24/7 sobriety program monitoring pursuant to RCW
33 36.28A.300 through 36.28A.390, and one hundred twenty days of
34 electronic home monitoring. In lieu of the mandatory minimum term of
35 one hundred twenty days of electronic home monitoring, the court may
36 order at least an additional eight days in jail. The court shall order
37 an expanded alcohol assessment and treatment, if deemed appropriate by
38 the assessment. The offender shall pay for the cost of the electronic

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

14 (ii) By a fine of not less than one thousand dollars nor more than
15 five thousand dollars. One thousand dollars of the fine may not be
16 suspended unless the court finds the 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 one hundred twenty days nor
22 more than three hundred sixty-four days, if available in that county or
23 city, a six-month period of 24/7 sobriety program monitoring pursuant
24 to RCW 36.28A.300 through 36.28A.390, and one hundred fifty days of
25 electronic home monitoring. In lieu of the mandatory minimum term of
26 one hundred fifty days of electronic home monitoring, the court may
27 order at least an additional ten days in jail. The offender shall pay
28 for the cost of the electronic monitoring. The court shall order an
29 expanded alcohol assessment and treatment, if deemed appropriate by the
30 assessment. The county or municipality where the penalty is being
31 imposed shall determine the cost. The court may also require the
32 offender's electronic home monitoring device include an alcohol
33 detection breathalyzer or other separate alcohol monitoring device, and
34 may restrict the amount of alcohol the offender may consume during the
35 time the offender is on electronic home monitoring. One hundred twenty
36 days of imprisonment and one hundred fifty days of electronic home
37 monitoring may not be suspended unless the court finds that the
38 imposition of this mandatory minimum sentence would impose a

1 substantial risk to the offender's physical or mental well-being.
2 Whenever the mandatory minimum sentence is suspended, the court shall
3 state in writing the reason for granting the suspension and the facts
4 upon which the suspension 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 unless the court finds the offender to
8 be indigent.

9 (4) A person who is convicted of a violation of RCW 46.61.502 or
10 46.61.504 shall be punished under chapter 9.94A RCW if:

11 (a) The person has (~~four~~) three or more prior offenses within ten
12 years; or

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

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

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

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

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

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

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

35 (6) If a person who is convicted of a violation of RCW 46.61.502 or
36 46.61.504 committed the offense while a passenger under the age of
37 sixteen was in the vehicle, the court shall:

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

3 (b) In any case in which the person has no prior offenses within
4 seven years, and except as provided in RCW 46.61.502(6) or
5 46.61.504(6), order an additional twenty-four hours of imprisonment and
6 a fine of not less than one thousand dollars and not more than five
7 thousand dollars. One thousand dollars of the fine may not be
8 suspended unless the court finds the offender to be indigent;

9 (c) In any case in which the person has one prior offense within
10 seven years, and except as provided in RCW 46.61.502(6) or
11 46.61.504(6), order an additional five days of imprisonment and a fine
12 of not less than two thousand dollars and not more than five thousand
13 dollars. One thousand dollars of the fine may not be suspended unless
14 the court finds the offender to be indigent;

15 (d) In any case in which the person has two (~~or three~~) prior
16 offenses within seven years, and except as provided in RCW 46.61.502(6)
17 or 46.61.504(6), order an additional ten days of imprisonment and a
18 fine of not less than three thousand dollars and not more than ten
19 thousand dollars. One thousand dollars of the fine may not be
20 suspended unless the court finds the offender to be indigent.

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

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

26 (b) Whether at the time of the offense the person was driving or in
27 physical control of a vehicle with one or more passengers;

28 (c) Whether the driver was driving in the opposite direction of the
29 normal flow of traffic on a multiple lane highway, as defined by RCW
30 46.04.350, with a posted speed limit of forty-five miles per hour or
31 greater; and

32 (d) Whether a child passenger under the age of sixteen was an
33 occupant in the driver's vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 Upon its own motion or upon motion by a person, a court may find,
32 on the record, that notice to the department under RCW 46.20.270 has
33 been delayed for three years or more as a result of a clerical or court
34 error. If so, the court may order that the person's license, permit,
35 or nonresident privilege shall not be revoked, suspended, or denied for
36 that offense. The court shall send notice of the finding and order to
37 the department and to the person. Upon receipt of the notice from the

1 court, the department shall not revoke, suspend, or deny the license,
2 permit, or nonresident privilege of the person for that offense.

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

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

10 (11)(a) In addition to any nonsuspendable and nondeferrable jail
11 sentence required by this section, whenever the court imposes up to
12 three hundred sixty-four days in jail, the court shall also suspend but
13 shall not defer a period of confinement for a period not exceeding five
14 years. The court shall impose conditions of probation that include:
15 (i) Not driving a motor vehicle within this state without a valid
16 license to drive and proof of liability insurance or other financial
17 responsibility for the future pursuant to RCW 46.30.020; (ii) not
18 driving or being in physical control of a motor vehicle within this
19 state while having an alcohol concentration of 0.08 or more or a THC
20 concentration of 5.00 nanograms per milliliter of whole blood or
21 higher, within two hours after driving; and (iii) not refusing to
22 submit to a test of his or her breath or blood to determine alcohol or
23 drug concentration upon request of a law enforcement officer who has
24 reasonable grounds to believe the person was driving or was in actual
25 physical control of a motor vehicle within this state while under the
26 influence of intoxicating liquor or drug. The court may impose
27 conditions of probation that include nonrepetition, installation of an
28 ignition interlock device on the probationer's motor vehicle, alcohol
29 or drug treatment, supervised probation, or other conditions that may
30 be appropriate. The sentence may be imposed in whole or in part upon
31 violation of a condition of probation during the suspension period.

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

36 (c) For each incident involving a violation of a mandatory
37 condition of probation imposed under this subsection, the license,
38 permit, or privilege to drive of the person shall be suspended by the

1 court for thirty days or, if such license, permit, or privilege to
2 drive already is suspended, revoked, or denied at the time the finding
3 of probation violation is made, the suspension, revocation, or denial
4 then in effect shall be extended by thirty days. The court shall
5 notify the department of any suspension, revocation, or denial or any
6 extension of a suspension, revocation, or denial imposed under this
7 subsection.

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

10 (a) The offender does not have a dwelling, telephone service, or
11 any other necessity to operate an electronic home monitoring system.
12 However, if a court determines that an alcohol monitoring device
13 utilizing wireless reporting technology is reasonably available, the
14 court may require the person to obtain such a device during the period
15 of required electronic home monitoring;

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

17 (c) The court determines that there is reason to believe that the
18 offender would violate the conditions of the electronic home monitoring
19 penalty.

20 Whenever the mandatory minimum term of electronic home monitoring
21 is waived, the court shall state in writing the reason for granting the
22 waiver and the facts upon which the waiver is based, and shall impose
23 an alternative sentence with similar punitive consequences. The
24 alternative sentence may include, but is not limited to, use of an
25 ignition interlock device, the 24/7 sobriety program monitoring,
26 additional jail time, work crew, or work camp.

27 Whenever the combination of jail time and electronic home
28 monitoring or alternative sentence would exceed three hundred sixty-
29 four days, the offender shall serve the jail portion of the sentence
30 first, and the electronic home monitoring or alternative portion of the
31 sentence shall be reduced so that the combination does not exceed three
32 hundred sixty-four days.

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

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

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

- 1 (i) A conviction for a violation of RCW 46.61.502 or an equivalent
2 local ordinance;
- 3 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent
4 local ordinance;
- 5 (iii) A conviction for a violation of RCW 46.61.520 committed while
6 under the influence of intoxicating liquor or any drug, or a conviction
7 for a violation of RCW 46.61.520 committed in a reckless manner or with
8 the disregard for the safety of others if the conviction is the result
9 of a charge that was originally filed as a violation of RCW 46.61.520
10 committed while under the influence of intoxicating liquor or any drug;
- 11 (iv) A conviction for a violation of RCW 46.61.522 committed while
12 under the influence of intoxicating liquor or any drug, or a conviction
13 for a violation of RCW 46.61.522 committed in a reckless manner or with
14 the disregard for the safety of others if the conviction is the result
15 of a charge that was originally filed as a violation of RCW 46.61.522
16 committed while under the influence of intoxicating liquor or any drug;
- 17 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
18 9A.36.050 or an equivalent local ordinance, if the conviction is the
19 result of a charge that was originally filed as a violation of RCW
20 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
21 46.61.520 or 46.61.522;
- 22 (vi) An out-of-state conviction for a violation that would have
23 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this
24 subsection if committed in this state;
- 25 (vii) A deferred prosecution under chapter 10.05 RCW granted in a
26 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
27 equivalent local ordinance;
- 28 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
29 prosecution for a violation of RCW 46.61.5249, or an equivalent local
30 ordinance, if the charge under which the deferred prosecution was
31 granted was originally filed as a violation of RCW 46.61.502 or
32 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
33 46.61.522;
- 34 (ix) A deferred prosecution granted in another state for a
35 violation of driving or having physical control of a vehicle while
36 under the influence of intoxicating liquor or any drug if the out-of-
37 state deferred prosecution is equivalent to the deferred prosecution

1 under chapter 10.05 RCW, including a requirement that the defendant
2 participate in a chemical dependency treatment program; or

3 (x) A deferred sentence imposed in a prosecution for a violation of
4 RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent local
5 ordinance, if the charge under which the deferred sentence was imposed
6 was originally filed as a violation of RCW 46.61.502 or 46.61.504, or
7 an equivalent local ordinance, or a violation of RCW 46.61.520 or
8 46.61.522;

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

13 (b) "Treatment" means alcohol or drug treatment approved by the
14 department of social and health services;

15 (c) "Within seven years" means that the arrest for a prior offense
16 occurred within seven years before or after the arrest for the current
17 offense; and

18 (d) "Within ten years" means that the arrest for a prior offense
19 occurred within ten years before or after the arrest for the current
20 offense.

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