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**SENATE BILL 6555**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Senators Muzzall, Rivers, Holy, Sheldon, Padden, Wagoner, Becker, O'Ban, Warnick, and Wilson, L.

Read first time 01/22/20. Referred to Committee on Law & Justice.

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

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

4 **Sec. 1.** RCW 46.61.502 and 2017 c 335 s 1 are each amended to  
5 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  
10 alcohol concentration of 0.08 or higher as shown by analysis of the  
11 person's 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  
18 affected by intoxicating liquor, marijuana, and any drug.

19 (2) The fact that a person charged with a violation of this  
20 section is or has been entitled to use a drug under the laws of this

1 state shall not constitute a defense against a charge of violating  
2 this section.

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

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

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

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

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

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

3 (a) The person has (~~three~~) two or more prior offenses within  
4 (~~ten~~) twenty-five years as defined in RCW 46.61.5055; or

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

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

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

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

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

13 **Sec. 2.** RCW 46.61.5055 and 2018 c 201 s 9009 are each amended to  
14 read as follows:

15 (1) **No prior offenses in seven years.** Except as provided in RCW  
16 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
17 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense  
18 within seven years shall be punished as follows:

19 (a) **Penalty for alcohol concentration less than 0.15.** In the case  
20 of a person whose alcohol concentration was less than 0.15, or for  
21 whom for reasons other than the person's refusal to take a test  
22 offered pursuant to RCW 46.20.308 there is no test result indicating  
23 the person's alcohol concentration:

24 (i) By imprisonment for not less than one day nor more than three  
25 hundred sixty-four days. Twenty-four consecutive hours of the  
26 imprisonment may not be suspended unless the court finds that the  
27 imposition of this mandatory minimum sentence would impose a  
28 substantial risk to the offender's physical or mental well-being.  
29 Whenever the mandatory minimum sentence is suspended, the court shall  
30 state in writing the reason for granting the suspension and the facts  
31 upon which the suspension is based. In lieu of the mandatory minimum  
32 term of imprisonment required under this subsection (1)(a)(i), the  
33 court may order not less than fifteen days of electronic home  
34 monitoring or a ninety-day period of 24/7 sobriety program  
35 monitoring. The court may consider the offender's pretrial 24/7  
36 sobriety program monitoring as fulfilling a portion of posttrial  
37 sentencing. The offender shall pay the cost of electronic home  
38 monitoring. The county or municipality in which the penalty is being  
39 imposed shall determine the cost. The court may also require the

1 offender's electronic home monitoring device or other separate  
2 alcohol monitoring device to include an alcohol detection  
3 breathalyzer, and the court may restrict the amount of alcohol the  
4 offender may consume during the time the offender is on electronic  
5 home monitoring; and

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

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

15 (i) By imprisonment for not less than two days nor more than  
16 three hundred sixty-four days. Forty-eight consecutive hours of the  
17 imprisonment may not be suspended unless the court finds that the  
18 imposition of this mandatory minimum sentence would impose a  
19 substantial risk to the offender's physical or mental well-being.  
20 Whenever the mandatory minimum sentence is suspended, the court shall  
21 state in writing the reason for granting the suspension and the facts  
22 upon which the suspension is based. In lieu of the mandatory minimum  
23 term of imprisonment required under this subsection (1)(b)(i), the  
24 court may order not less than thirty days of electronic home  
25 monitoring or a one hundred twenty day period of 24/7 sobriety  
26 program monitoring. The court may consider the offender's pretrial  
27 24/7 sobriety program testing as fulfilling a portion of posttrial  
28 sentencing. The offender shall pay the cost of electronic home  
29 monitoring. The county or municipality in which the penalty is being  
30 imposed shall determine the cost. The court may also require the  
31 offender's electronic home monitoring device to include an alcohol  
32 detection breathalyzer or other separate alcohol monitoring device,  
33 and the court may restrict the amount of alcohol the offender may  
34 consume during the time the offender is on electronic home  
35 monitoring; and

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

39 (2) **One prior offense in seven years.** Except as provided in RCW  
40 46.61.502(6) or 46.61.504(6), a person who is convicted of a

1 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense  
2 within seven years shall be punished as follows:

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

8 (i) By imprisonment for not less than thirty days nor more than  
9 three hundred sixty-four days and sixty days of electronic home  
10 monitoring. In lieu of the mandatory term of imprisonment and  
11 electronic home monitoring under this subsection (2)(a)(i), the court  
12 may order a minimum of four days in jail and either one hundred  
13 eighty days of electronic home monitoring or a one hundred twenty-day  
14 period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300  
15 through 36.28A.390. The court may consider the offender's pretrial  
16 24/7 sobriety program monitoring as fulfilling a portion of posttrial  
17 sentencing. The court shall order an expanded alcohol assessment and  
18 treatment, if deemed appropriate by the assessment. The offender  
19 shall pay for the cost of the electronic monitoring. The county or  
20 municipality where the penalty is being imposed shall determine the  
21 cost. The court may also require the offender's electronic home  
22 monitoring device include an alcohol detection breathalyzer or other  
23 separate alcohol monitoring device, and may restrict the amount of  
24 alcohol the offender may consume during the time the offender is on  
25 electronic home monitoring. Thirty days of imprisonment and sixty  
26 days of electronic home monitoring may not be suspended unless the  
27 court finds that the imposition of this mandatory minimum sentence  
28 would impose a substantial risk to the offender's physical or mental  
29 well-being. Whenever the mandatory minimum sentence is suspended, the  
30 court shall state in writing the reason for granting the suspension  
31 and the facts upon which the suspension is based; and

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

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

1 (i) By imprisonment for not less than forty-five days nor more  
2 than three hundred sixty-four days and ninety days of electronic home  
3 monitoring. In lieu of the mandatory minimum term of imprisonment and  
4 electronic home monitoring under this subsection (2)(b)(i), the court  
5 may order a minimum of six days in jail and either six months of  
6 electronic home monitoring or a one hundred twenty-day period of 24/7  
7 sobriety program monitoring pursuant to RCW 36.28A.300 through  
8 36.28A.390. The court may consider the offender's pretrial 24/7  
9 sobriety program monitoring as fulfilling a portion of posttrial  
10 sentencing. The court shall order an expanded alcohol assessment and  
11 treatment, if deemed appropriate by the assessment. The offender  
12 shall pay for the cost of the electronic monitoring. The county or  
13 municipality where the penalty is being imposed shall determine the  
14 cost. The court may also require the offender's electronic home  
15 monitoring device include an alcohol detection breathalyzer or other  
16 separate alcohol monitoring device, and may restrict the amount of  
17 alcohol the offender may consume during the time the offender is on  
18 electronic home monitoring. Forty-five days of imprisonment and  
19 ninety days of electronic home monitoring may not be suspended unless  
20 the court finds that the imposition of this mandatory minimum  
21 sentence would impose a substantial risk to the offender's physical  
22 or mental well-being. Whenever the mandatory minimum sentence is  
23 suspended, the court shall state in writing the reason for granting  
24 the suspension and the facts upon which the suspension is based; and

25 (ii) By a fine of not less than seven hundred fifty dollars nor  
26 more than five thousand dollars. Seven hundred fifty dollars of the  
27 fine may not be suspended unless the court finds the offender to be  
28 indigent.

29 (3) ~~Two ((prior offenses in seven years. Except as provided in~~  
30 ~~RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a~~  
31 ~~violation of RCW 46.61.502 or 46.61.504 and who has two prior~~  
32 ~~offenses within seven years shall be punished as follows:~~

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

38 ~~(i) By imprisonment for not less than ninety days nor more than~~  
39 ~~three hundred sixty-four days, if available in that county or city, a~~  
40 ~~six-month period of 24/7 sobriety program monitoring pursuant to RCW~~

1 ~~36.28A.300 through 36.28A.390, and one hundred twenty days of~~  
2 ~~electronic home monitoring. In lieu of the mandatory minimum term of~~  
3 ~~one hundred twenty days of electronic home monitoring, the court may~~  
4 ~~order at least an additional eight days in jail. The court shall~~  
5 ~~order an expanded alcohol assessment and treatment, if deemed~~  
6 ~~appropriate by the assessment. The offender shall pay for the cost of~~  
7 ~~the electronic monitoring. The county or municipality where the~~  
8 ~~penalty is being imposed shall determine the cost. The court may also~~  
9 ~~require the offender's electronic home monitoring device include an~~  
10 ~~alcohol detection breathalyzer or other separate alcohol monitoring~~  
11 ~~device, and may restrict the amount of alcohol the offender may~~  
12 ~~consume during the time the offender is on electronic home~~  
13 ~~monitoring. Ninety days of imprisonment and one hundred twenty days~~  
14 ~~of electronic home monitoring may not be suspended unless the court~~  
15 ~~finds that the imposition of this mandatory minimum sentence would~~  
16 ~~impose a substantial risk to the offender's physical or mental well-~~  
17 ~~being. Whenever the mandatory minimum sentence is suspended, the~~  
18 ~~court shall state in writing the reason for granting the suspension~~  
19 ~~and the facts upon which the suspension is based; and~~

20 ~~(ii) By a fine of not less than one thousand dollars nor more~~  
21 ~~than five thousand dollars. One thousand dollars of the fine may not~~  
22 ~~be suspended unless the court finds the offender to be indigent; or~~

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

28 ~~(i) By imprisonment for not less than one hundred twenty days nor~~  
29 ~~more than three hundred sixty-four days, if available in that county~~  
30 ~~or city, a six-month period of 24/7 sobriety program monitoring~~  
31 ~~pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty~~  
32 ~~days of electronic home monitoring. In lieu of the mandatory minimum~~  
33 ~~term of one hundred fifty days of electronic home monitoring, the~~  
34 ~~court may order at least an additional ten days in jail. The offender~~  
35 ~~shall pay for the cost of the electronic monitoring. The court shall~~  
36 ~~order an expanded alcohol assessment and treatment, if deemed~~  
37 ~~appropriate by the assessment. The county or municipality where the~~  
38 ~~penalty is being imposed shall determine the cost. The court may also~~  
39 ~~require the offender's electronic home monitoring device include an~~  
40 ~~alcohol detection breathalyzer or other separate alcohol monitoring~~

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

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

14 ~~(4) Three~~) or more prior offenses in ~~((ten))~~ **twenty-five years**.

15 A person who is convicted of a violation of RCW 46.61.502 or  
16 46.61.504 shall be punished under chapter 9.94A RCW if:

17 (a) The person has ~~((three))~~ two or more prior offenses within  
18 ~~((ten))~~ twenty-five years; or

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

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

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

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

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

27 ~~((5))~~ (4) **Monitoring**. (a) **Ignition interlock device**. The court  
28 shall require any person convicted of a violation of RCW 46.61.502 or  
29 46.61.504 or an equivalent local ordinance to comply with the rules  
30 and requirements of the department regarding the installation and use  
31 of a functioning ignition interlock device installed on all motor  
32 vehicles operated by the person.

33 (b) **Monitoring devices**. If the court orders that a person refrain  
34 from consuming any alcohol, the court may order the person to submit  
35 to alcohol monitoring through an alcohol detection breathalyzer  
36 device, transdermal sensor device, or other technology designed to  
37 detect alcohol in a person's system. The person shall pay for the  
38 cost of the monitoring, unless the court specifies that the cost of  
39 monitoring will be paid with funds that are available from an  
40 alternative source identified by the court. The county or



1 municipality where the penalty is being imposed shall determine the  
2 cost.

3 (c) **24/7 sobriety program monitoring.** In any county or city where  
4 a 24/7 sobriety program is available and verified by the Washington  
5 association of sheriffs and police chiefs, the court shall:

6 (i) Order the person to install and use a functioning ignition  
7 interlock or other device in lieu of such period of 24/7 sobriety  
8 program monitoring;

9 (ii) Order the person to a period of 24/7 sobriety program  
10 monitoring pursuant to subsections (1) (~~((through—(3)))~~) and (2) of  
11 this section; or

12 (iii) Order the person to install and use a functioning ignition  
13 interlock or other device in addition to a period of 24/7 sobriety  
14 program monitoring pursuant to subsections (1) (~~((through—(3)))~~) and  
15 (2) of this section.

16 (~~((+6))~~) (5) **Penalty for having a minor passenger in vehicle.** If a  
17 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
18 committed the offense while a passenger under the age of sixteen was  
19 in the vehicle, the court shall:

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

22 (b) In any case in which the person has no prior offenses within  
23 seven years, and except as provided in RCW 46.61.502(6) or  
24 46.61.504(6), order an additional twenty-four hours of imprisonment  
25 and a fine of not less than one thousand dollars and not more than  
26 five thousand dollars. One thousand dollars of the fine may not be  
27 suspended unless the court finds the offender to be indigent;

28 (c) In any case in which the person has one prior offense within  
29 seven years, and except as provided in RCW 46.61.502(6) or  
30 46.61.504(6), order an additional five days of imprisonment and a  
31 fine of not less than two thousand dollars and not more than five  
32 thousand dollars. One thousand dollars of the fine may not be  
33 suspended unless the court finds the offender to be indigent;

34 (d) In any case in which the person has (~~((two))~~) one prior  
35 offense(~~((s))~~) within seven years, and except as provided in RCW  
36 46.61.502(6) or 46.61.504(6), order an additional ten days of  
37 imprisonment and a fine of not less than three thousand dollars and  
38 not more than ten thousand dollars. One thousand dollars of the fine  
39 may not be suspended unless the court finds the offender to be  
40 indigent.

1           ~~((7))~~ (6) **Other items courts must consider while setting**  
2 **penalties.** In exercising its discretion in setting penalties within  
3 the limits allowed by this section, the court shall particularly  
4 consider the following:

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

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

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

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

15           ~~((8))~~ (7) **Treatment and information school.** An offender  
16 punishable under this section is subject to the alcohol assessment  
17 and treatment provisions of RCW 46.61.5056.

18           ~~((9))~~ (8) **Driver's license privileges of the defendant.** The  
19 license, permit, or nonresident privilege of a person convicted of  
20 driving or being in physical control of a motor vehicle while under  
21 the influence of intoxicating liquor or drugs must:

22           (a) **Penalty for alcohol concentration less than 0.15.** If the  
23 person's alcohol concentration was less than 0.15, or if for reasons  
24 other than the person's refusal to take a test offered under RCW  
25 46.20.308 there is no test result indicating the person's alcohol  
26 concentration:

27           (i) Where there has been no prior offense within seven years, be  
28 suspended or denied by the department for ninety days or until the  
29 person is evaluated by an alcoholism agency or probation department  
30 pursuant to RCW 46.20.311 and the person completes or is enrolled in  
31 a ninety-day period of 24/7 sobriety program monitoring. In no  
32 circumstances shall the license suspension be for fewer than two  
33 days;

34           (ii) Where there has been one prior offense within seven years,  
35 be revoked or denied by the department for two years or until the  
36 person is evaluated by an alcoholism agency or probation department  
37 pursuant to RCW 46.20.311 and the person completes or is enrolled in  
38 a six-month period of 24/7 sobriety program monitoring. In no  
39 circumstances shall the license suspension be for less than one year;  
40 or

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

3 (b) **Penalty for alcohol concentration at least 0.15.** If the  
4 person's alcohol concentration was at least 0.15:

5 (i) Where there has been no prior offense within seven years, be  
6 revoked or denied by the department for one year or until the person  
7 is evaluated by an alcoholism agency or probation department pursuant  
8 to RCW 46.20.311 and the person completes or is enrolled in a one  
9 hundred twenty day period of 24/7 sobriety program monitoring. In no  
10 circumstances shall the license revocation be for fewer than four  
11 days;

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

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

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

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

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

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

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

30 Upon receipt of a notice from the court under RCW 36.28A.390 that  
31 a participant has been removed from a 24/7 sobriety program, the  
32 department must resume any suspension, revocation, or denial that had  
33 been terminated early under this subsection due to participation in  
34 the program, granting credit on a day-for-day basis for any portion  
35 of a suspension, revocation, or denial already served under RCW  
36 46.20.3101 or this section arising out of the same incident.

37 Upon its own motion or upon motion by a person, a court may find,  
38 on the record, that notice to the department under RCW 46.20.270 has  
39 been delayed for three years or more as a result of a clerical or  
40 court error. If so, the court may order that the person's license,

1 permit, or nonresident privilege shall not be revoked, suspended, or  
2 denied for that offense. The court shall send notice of the finding  
3 and order to the department and to the person. Upon receipt of the  
4 notice from the court, the department shall not revoke, suspend, or  
5 deny the license, permit, or nonresident privilege of the person for  
6 that offense.

7 For purposes of this subsection (~~((9))~~) (8), the department shall  
8 refer to the driver's record maintained under RCW 46.52.120 when  
9 determining the existence of prior offenses.

10 (~~((10))~~) (9) **Probation of driving privilege.** After expiration of  
11 any period of suspension, revocation, or denial of the offender's  
12 license, permit, or privilege to drive required by this section, the  
13 department shall place the offender's driving privilege in  
14 probationary status pursuant to RCW 46.20.355.

15 (~~((11))~~) (10) **Conditions of probation.** (a) In addition to any  
16 nonsuspendable and nondeferrable jail sentence required by this  
17 section, whenever the court imposes up to three hundred sixty-four  
18 days in jail, the court shall also suspend but shall not defer a  
19 period of confinement for a period not exceeding five years. The  
20 court shall impose conditions of probation that include: (i) Not  
21 driving a motor vehicle within this state without a valid license to  
22 drive; (ii) not driving a motor vehicle within this state without  
23 proof of liability insurance or other financial responsibility for  
24 the future pursuant to RCW 46.30.020; (iii) not driving or being in  
25 physical control of a motor vehicle within this state while having an  
26 alcohol concentration of 0.08 or more or a THC concentration of 5.00  
27 nanograms per milliliter of whole blood or higher, within two hours  
28 after driving; (iv) not refusing to submit to a test of his or her  
29 breath or blood to determine alcohol or drug concentration upon  
30 request of a law enforcement officer who has reasonable grounds to  
31 believe the person was driving or was in actual physical control of a  
32 motor vehicle within this state while under the influence of  
33 intoxicating liquor or drug; and (v) not driving a motor vehicle in  
34 this state without a functioning ignition interlock device as  
35 required by the department under RCW 46.20.720. The court may impose  
36 conditions of probation that include nonrepetition, installation of  
37 an ignition interlock device on the probationer's motor vehicle,  
38 alcohol or drug treatment, supervised probation, or other conditions  
39 that may be appropriate. The sentence may be imposed in whole or in

1 part upon violation of a condition of probation during the suspension  
2 period.

3 (b) For each violation of mandatory conditions of probation under  
4 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall  
5 order the convicted person to be confined for thirty days, which  
6 shall not be suspended or deferred.

7 (c) For each incident involving a violation of a mandatory  
8 condition of probation imposed under this subsection, the license,  
9 permit, or privilege to drive of the person shall be suspended by the  
10 court for thirty days or, if such license, permit, or privilege to  
11 drive already is suspended, revoked, or denied at the time the  
12 finding of probation violation is made, the suspension, revocation,  
13 or denial then in effect shall be extended by thirty days. The court  
14 shall notify the department of any suspension, revocation, or denial  
15 or any extension of a suspension, revocation, or denial imposed under  
16 this subsection.

17 (~~(12)~~) (11) **Waiver of electronic home monitoring.** A court may  
18 waive the electronic home monitoring requirements of this chapter  
19 when:

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

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

27 (c) The court determines that there is reason to believe that the  
28 offender would violate the conditions of the electronic home  
29 monitoring penalty.

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

37 Whenever the combination of jail time and electronic home  
38 monitoring or alternative sentence would exceed three hundred sixty-  
39 four days, the offender shall serve the jail portion of the sentence  
40 first, and the electronic home monitoring or alternative portion of

1 the sentence shall be reduced so that the combination does not exceed  
2 three hundred sixty-four days.

3 ~~((13))~~ (12) **Extraordinary medical placement.** An offender  
4 serving a sentence under this section, whether or not a mandatory  
5 minimum term has expired, may be granted an extraordinary medical  
6 placement by the jail administrator subject to the standards and  
7 limitations set forth in RCW 9.94A.728(1)(c).

8 ~~((14))~~ (13) **Definitions.** For purposes of this section and RCW  
9 46.61.502 and 46.61.504:

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

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

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

15 (iii) A conviction for a violation of RCW 46.25.110 or an  
16 equivalent local ordinance;

17 (iv) A conviction for a violation of RCW 79A.60.040(2) or an  
18 equivalent local ordinance;

19 (v) A conviction for a violation of RCW 79A.60.040(1) or an  
20 equivalent local ordinance committed in a reckless manner if the  
21 conviction is the result of a charge that was originally filed as a  
22 violation of RCW 79A.60.040(2) or an equivalent local ordinance;

23 (vi) A conviction for a violation of RCW 47.68.220 or an  
24 equivalent local ordinance committed while under the influence of  
25 intoxicating liquor or any drug;

26 (vii) A conviction for a violation of RCW 47.68.220 or an  
27 equivalent local ordinance committed in a careless or reckless manner  
28 if the conviction is the result of a charge that was originally filed  
29 as a violation of RCW 47.68.220 or an equivalent local ordinance  
30 while under the influence of intoxicating liquor or any drug;

31 (viii) A conviction for a violation of RCW 46.09.470(2) or an  
32 equivalent local ordinance;

33 (ix) A conviction for a violation of RCW 46.10.490(2) or an  
34 equivalent local ordinance;

35 (x) A conviction for a violation of RCW 46.61.520 committed while  
36 under the influence of intoxicating liquor or any drug, or a  
37 conviction for a violation of RCW 46.61.520 committed in a reckless  
38 manner or with the disregard for the safety of others if the  
39 conviction is the result of a charge that was originally filed as a

1 violation of RCW 46.61.520 committed while under the influence of  
2 intoxicating liquor or any drug;

3 (xi) A conviction for a violation of RCW 46.61.522 committed  
4 while under the influence of intoxicating liquor or any drug, or a  
5 conviction for a violation of RCW 46.61.522 committed in a reckless  
6 manner or with the disregard for the safety of others if the  
7 conviction is the result of a charge that was originally filed as a  
8 violation of RCW 46.61.522 committed while under the influence of  
9 intoxicating liquor or any drug;

10 (xii) A conviction for a violation of RCW 46.61.5249, 46.61.500,  
11 or 9A.36.050 or an equivalent local ordinance, if the conviction is  
12 the result of a charge that was originally filed as a violation of  
13 RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of  
14 RCW 46.61.520 or 46.61.522;

15 (xiii) An out-of-state conviction for a violation that would have  
16 been a violation of (a)(i), (ii), (x), (xi), or (xii) of this  
17 subsection if committed in this state;

18 (xiv) A deferred prosecution under chapter 10.05 RCW granted in a  
19 prosecution for a violation of RCW 46.61.502, 46.61.504, or an  
20 equivalent local ordinance;

21 (xv) A deferred prosecution under chapter 10.05 RCW granted in a  
22 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
23 ordinance, if the charge under which the deferred prosecution was  
24 granted was originally filed as a violation of RCW 46.61.502 or  
25 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
26 46.61.522;

27 (xvi) A deferred prosecution granted in another state for a  
28 violation of driving or having physical control of a vehicle while  
29 under the influence of intoxicating liquor or any drug if the out-of-  
30 state deferred prosecution is equivalent to the deferred prosecution  
31 under chapter 10.05 RCW, including a requirement that the defendant  
32 participate in a chemical dependency treatment program; or

33 (xvii) A deferred sentence imposed in a prosecution for a  
34 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an  
35 equivalent local ordinance, if the charge under which the deferred  
36 sentence was imposed was originally filed as a violation of RCW  
37 46.61.502 or 46.61.504, or an equivalent local ordinance, or a  
38 violation of RCW 46.61.520 or 46.61.522;

39 If a deferred prosecution is revoked based on a subsequent  
40 conviction for an offense listed in this subsection (~~((14))~~) (13)(a),

1 the subsequent conviction shall not be treated as a prior offense of  
2 the revoked deferred prosecution for the purposes of sentencing;

3 (b) "Treatment" means substance use disorder treatment licensed  
4 or certified by the department of health;

5 (c) "Within seven years" means that the arrest for a prior  
6 offense occurred within seven years before or after the arrest for  
7 the current offense; and

8 (d) "Within ~~((ten))~~ twenty-five years" means that the arrest for  
9 a prior offense occurred within ~~((ten))~~ twenty-five years before or  
10 after the arrest for the current offense.

11 ~~((15))~~ (14) All fines imposed by this section apply to adult  
12 offenders only.

13 **Sec. 3.** RCW 46.61.504 and 2017 c 335 s 2 are each amended to  
14 read as follows:

15 (1) A person is guilty of being in actual physical control of a  
16 motor vehicle while under the influence of intoxicating liquor or any  
17 drug if the person has actual physical control of a vehicle within  
18 this state:

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

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

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

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

31 (2) The fact that a person charged with a violation of this  
32 section is or has been entitled to use a drug under the laws of this  
33 state does not constitute a defense against any charge of violating  
34 this section. No person may be convicted under this section and it is  
35 an affirmative defense to any action pursuant to RCW 46.20.308 to  
36 suspend, revoke, or deny the privilege to drive if, prior to being  
37 pursued by a law enforcement officer, the person has moved the  
38 vehicle safely off the roadway.



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

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

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

32           (b) Analyses of blood samples obtained more than two hours after  
33 the alleged being in actual physical control of a vehicle may be used  
34 as evidence that within two hours of the alleged being in control of  
35 the vehicle, a person had a THC concentration of 5.00 or more in  
36 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  
38 as evidence that a person was under the influence of or affected by  
39 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

5           (a) The person has (~~three~~) two or more prior offenses within  
6 (~~ten~~) twenty-five years as defined in RCW 46.61.5055; or

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

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

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

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 this subsection (6) or RCW 46.61.502(6).

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