

2SSB 5002 - S AMD 117

By Senator Padden

NOT CONSIDERED 05/17/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds and declares that
4 2021 was the deadliest year on Washington roads since 2006.
5 Washington state saw 540 fatal crashes resulting in the death of more
6 than 600 people. Half of all serious and fatal crashes are caused by
7 driver impairment from drugs and alcohol, and the state saw a 31.3
8 percent increase in crashes as the result of an impaired driver
9 between 2020 and 2021. This alarming upward trend must be addressed
10 if Washington state is going to meet its goal of target zero. The
11 increase in Washingtonians choosing to drive while impaired points to
12 a need to adjust Washington's impaired driving laws. Utah lowered the
13 blood alcohol concentration limit for operating a motor vehicle
14 from .08 to .05 in 2019 and found that its fatal crash rate dropped
15 by 19.89 percent, and its fatality rate decreased by 18.3 percent.
16 Additionally, 22 percent of people who drank alcohol said they
17 changed their behavior as a result of the new law. The legislature
18 further finds that this is a well calibrated policy based on evidence
19 that shows if all states implemented a .05 blood alcohol
20 concentration level, 538 to 1,790 lives would be saved each year, and
21 alcohol-related fatalities would decrease by 11.1 percent overall.
22 Given the increase in traffic fatalities from impaired driving, the
23 legislature declares that it is time to keep Washington's roads safer
24 and lower the number of fatal crashes caused by impaired drivers by
25 lowering the blood alcohol limit to .06.

26 **Sec. 2.** RCW 46.61.502 and 2022 c 16 s 40 are each amended to
27 read as follows:

28 (1) A person is guilty of driving while under the influence of
29 intoxicating liquor, cannabis, or any drug if the person drives a
30 vehicle within this state:

1 (a) And the person has, within two hours after driving, an
2 alcohol concentration of (~~(0.08)~~) 0.06 or higher as shown by analysis
3 of the person's 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, cannabis, or any drug; or

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

11 (2) The fact that a person charged with a violation of this
12 section is or has been entitled to use a drug under the laws of this
13 state shall not constitute a defense against a charge of violating
14 this 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
18 sufficient quantity of alcohol after the time of driving and before
19 the administration of an analysis of the person's breath or blood to
20 cause the defendant's alcohol concentration to be (~~(0.08)~~) 0.06 or
21 more within two hours after driving. The court shall not admit
22 evidence of this defense unless the defendant notifies the
23 prosecution prior to the omnibus or pretrial hearing in the case of
24 the defendant's intent to 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
28 sufficient quantity of cannabis after the time of driving and before
29 the 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
31 after driving. The court shall not admit evidence of this defense
32 unless the defendant notifies the prosecution prior to the omnibus or
33 pretrial hearing in the case of the defendant's intent to assert the
34 affirmative 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
37 two hours of the alleged driving, a person had an alcohol
38 concentration of (~~(0.08)~~) 0.06 or more in violation of subsection
39 (1)(a) of this section, and in any case in which the analysis shows
40 an alcohol concentration above 0.00 may be used as evidence that a

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

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

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

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

14 (a) The person has three or more prior offenses within (~~ten~~) 10
15 years as defined in RCW 46.61.5055; or

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

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

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

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

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

24 **Sec. 3.** RCW 46.61.504 and 2022 c 16 s 42 are each amended to
25 read as follows:

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

30 (a) And the person has, within two hours after being in actual
31 physical control of the vehicle, an alcohol concentration of (~~0.08~~)
32 0.06 or higher as shown by analysis of the person's breath or blood
33 made under RCW 46.61.506; or

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

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

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

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

11 (3)(a) It is an affirmative defense to a violation of subsection
12 (1)(a) of this section which the defendant must prove by a
13 preponderance of the evidence that the defendant consumed a
14 sufficient quantity of alcohol after the time of being in actual
15 physical control of the vehicle and before the administration of an
16 analysis of the person's breath or blood to cause the defendant's
17 alcohol concentration to be (~~0.08~~) 0.06 or more within two hours
18 after being in such control. The court shall not admit evidence of
19 this defense unless the defendant notifies the prosecution prior to
20 the omnibus or pretrial hearing in the case of the defendant's intent
21 to assert the affirmative defense.

22 (b) It is an affirmative defense to a violation of subsection
23 (1)(b) of this section, which the defendant must prove by a
24 preponderance of the evidence, that the defendant consumed a
25 sufficient quantity of cannabis after the time of being in actual
26 physical control of the vehicle and before the administration of an
27 analysis of the person's blood to cause the defendant's THC
28 concentration to be 5.00 or more within two hours after being in
29 control of the vehicle. The court shall not admit evidence of this
30 defense unless the defendant notifies the prosecution prior to the
31 omnibus or pretrial hearing in the case of the defendant's intent to
32 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~~) 0.06
37 or more in violation of subsection (1)(a) of this section, and in any
38 case in which the analysis shows an alcohol concentration above 0.00
39 may be used as evidence that a person was under the influence of or

1 affected by intoxicating liquor or any drug in violation of
2 subsection (1)(c) or (d) of this section.

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

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

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

15 (a) The person has three or more prior offenses within ~~((ten))~~ 10
16 years as defined in RCW 46.61.5055; or

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

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

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

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

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

25 **Sec. 4.** RCW 46.61.5055 and 2020 c 330 s 15 are each amended to
26 read as follows:

27 (1) **No prior offenses in seven years.** Except as provided in RCW
28 46.61.502(6) or 46.61.504(6), a person who is convicted of a
29 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
30 within seven years shall be punished as follows:

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

36 (i) By imprisonment for not less than ~~((twenty-four))~~ 24
37 consecutive hours nor more than ~~((three-hundred-sixty-four))~~ 364
38 days. In lieu of the mandatory minimum term of imprisonment required
39 under this subsection (1)(a)(i), the court, in its discretion, may

1 order not less than (~~fifteen~~) 15 days of electronic home monitoring
2 or a (~~ninety-day~~) 90-day period of 24/7 sobriety program
3 monitoring. The court may consider the offender's pretrial 24/7
4 sobriety program monitoring as fulfilling a portion of posttrial
5 sentencing. The offender shall pay the cost of electronic home
6 monitoring. The county or municipality in which the penalty is being
7 imposed shall determine the cost. The court may also require the
8 offender's electronic home monitoring device or other separate
9 alcohol monitoring device to include an alcohol detection
10 breathalyzer, and the court may restrict the amount of alcohol the
11 offender may consume during the time the offender is on electronic
12 home monitoring; and

13 (ii) By a fine of not less than (~~three hundred fifty dollars~~)
14 \$350 nor more than (~~five thousand dollars~~) \$5,000. (~~Three hundred~~
15 ~~fifty dollars~~) \$350 of the fine may not be suspended unless the
16 court finds the offender to be indigent; or

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

22 (i) By imprisonment for not less than (~~forty-eight~~) 48
23 consecutive hours nor more than (~~three hundred sixty-four days~~)
24 364. In lieu of the mandatory minimum term of imprisonment required
25 under this subsection (1)(b)(i), the court, in its discretion, may
26 order not less than (~~thirty~~) 30 days of electronic home monitoring
27 or a (~~one hundred twenty day~~) 120-day period of 24/7 sobriety
28 program monitoring. The court may consider the offender's pretrial
29 24/7 sobriety program testing as fulfilling a portion of posttrial
30 sentencing. The offender shall pay the cost of electronic home
31 monitoring. The county or municipality in which the penalty is being
32 imposed shall determine the cost. The court may also require the
33 offender's electronic home monitoring device to include an alcohol
34 detection breathalyzer or other separate alcohol monitoring device,
35 and the court may restrict the amount of alcohol the offender may
36 consume during the time the offender is on electronic home
37 monitoring; and

38 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor
39 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)

1 \$500 of the fine may not be suspended unless the court finds the
2 offender to be indigent.

3 (2) **One prior offense in seven years.** Except as provided in RCW
4 46.61.502(6) or 46.61.504(6), a person who is convicted of a
5 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense
6 within seven years shall be punished as follows:

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

12 (i) By imprisonment for not less than (~~(thirty)~~) 30 days nor more
13 than (~~(three hundred sixty-four)~~) 364 days and (~~(sixty)~~) 60 days of
14 electronic home monitoring. Thirty days of imprisonment and (~~(sixty)~~)
15 60 days of electronic home monitoring may not be suspended or
16 converted unless the court finds that the imposition of this
17 mandatory minimum sentence would impose a substantial risk to the
18 offender's physical or mental well-being. If the offender shows that
19 the imposition of this mandatory minimum sentence would impose a
20 substantial risk to the offender's physical or mental well-being, in
21 lieu of the mandatory term of imprisonment and electronic home
22 monitoring under this subsection (2)(a)(i), the court may order a
23 minimum of either (~~(one hundred eighty)~~) 180 days of electronic home
24 monitoring or a (~~(one hundred twenty-day)~~) 120-day period of 24/7
25 sobriety program monitoring pursuant to RCW 36.28A.300 through
26 36.28A.390. Whenever the mandatory minimum sentence is suspended or
27 converted, the court shall state in writing the reason for granting
28 the suspension or conversion and the facts upon which the suspension
29 or conversion is based. The court may consider the offender's
30 pretrial 24/7 sobriety program monitoring as fulfilling a portion of
31 posttrial sentencing. The court shall order an expanded substance use
32 disorder assessment and treatment, if deemed appropriate by the
33 assessment. The offender shall pay for the cost of the electronic
34 monitoring. The county or municipality where the penalty is being
35 imposed shall determine the cost. The court may also require the
36 offender's electronic home monitoring device include an alcohol
37 detection breathalyzer or other separate alcohol monitoring device,
38 and may restrict the amount of alcohol the offender may consume
39 during the time the offender is on electronic home monitoring; and

1 (ii) By a fine of not less than (~~(five hundred dollars)~~) \$500 nor
2 more than (~~(five thousand dollars)~~) \$5,000. (~~(Five hundred dollars)~~)
3 \$500 of the fine may not be suspended unless the court finds the
4 offender to be indigent; or

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

10 (i) By imprisonment for not less than (~~(forty-five)~~) 45 days nor
11 more than (~~(three hundred sixty-four)~~) 364 days and (~~(ninety)~~) 90
12 days of electronic home monitoring. Forty-five days of imprisonment
13 and (~~(ninety)~~) 90 days of electronic home monitoring may not be
14 suspended or converted unless the court finds that the imposition of
15 this mandatory minimum sentence would impose a substantial risk to
16 the offender's physical or mental well-being. If the offender shows
17 that the imposition of this mandatory minimum sentence would impose a
18 substantial risk to the offender's physical or mental well-being, in
19 lieu of the mandatory minimum term of imprisonment and electronic
20 home monitoring under this subsection (2)(b)(i), the court may order
21 a minimum of either six months of electronic home monitoring or a
22 (~~(one hundred twenty-day)~~) 120-day period of 24/7 sobriety program
23 monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever
24 the mandatory minimum sentence is suspended or converted, the court
25 shall state in writing the reason for granting the suspension or
26 conversion and the facts upon which the suspension or conversion is
27 based. The court may consider the offender's pretrial 24/7 sobriety
28 program monitoring as fulfilling a portion of posttrial sentencing.
29 The court shall order an expanded substance use disorder assessment
30 and treatment, if deemed appropriate by the assessment. The offender
31 shall pay for the cost of the electronic monitoring. The county or
32 municipality where the penalty is being imposed shall determine the
33 cost. The court may also require the offender's electronic home
34 monitoring device include an alcohol detection breathalyzer or other
35 separate alcohol monitoring device, and may restrict the amount of
36 alcohol the offender may consume during the time the offender is on
37 electronic home monitoring; and

38 (ii) By a fine of not less than (~~(seven hundred fifty dollars)~~)
39 \$750 nor more than (~~(five thousand dollars)~~) \$5,000. (~~(Seven hundred~~

1 ~~fifty dollars~~) \$750 of the fine may not be suspended unless the
2 court finds the offender to be indigent.

3 (3) **Two prior offenses in seven years.** Except as provided in RCW
4 46.61.502(6) or 46.61.504(6), a person who is convicted of a
5 violation of RCW 46.61.502 or 46.61.504 and who has two prior
6 offenses within seven years shall be punished as follows:

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

12 (i) By imprisonment for not less than (~~ninety~~) 90 days nor more
13 than (~~three hundred sixty-four~~) 364 days, if available in that
14 county or city, a six-month period of 24/7 sobriety program
15 monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and (~~one~~
16 ~~hundred twenty~~) 120 days of electronic home monitoring. Ninety days
17 of imprisonment and (~~one hundred twenty~~) 120 days of electronic
18 home monitoring may not be suspended or converted unless the court
19 finds that the imposition of this mandatory minimum sentence would
20 impose a substantial risk to the offender's physical or mental well-
21 being. If the offender shows that the imposition of this mandatory
22 minimum sentence would impose a substantial risk to the offender's
23 physical or mental well-being, in lieu of the mandatory minimum term
24 of (~~ninety~~) 90 days of imprisonment and (~~one hundred twenty~~) 120
25 days of electronic home monitoring, the court may order (~~three~~
26 ~~hundred sixty~~) 360 days of electronic home monitoring or a (~~three~~
27 ~~hundred sixty-day~~) 360-day period of 24/7 sobriety monitoring
28 pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory
29 minimum sentence is suspended or converted, the court shall state in
30 writing the reason for granting the suspension or conversion and the
31 facts upon which the suspension or conversion is based. The court
32 shall order an expanded substance use disorder assessment and
33 treatment, if deemed appropriate by the assessment. The offender
34 shall pay for the cost of the electronic monitoring. The county or
35 municipality where the penalty is being imposed shall determine the
36 cost. The court may also require the offender's electronic home
37 monitoring device include an alcohol detection breathalyzer or other
38 separate alcohol monitoring device, and may restrict the amount of
39 alcohol the offender may consume during the time the offender is on
40 electronic home monitoring; and

1 (ii) By a fine of not less than (~~one thousand dollars~~) \$1,000
2 nor more than (~~five thousand dollars~~) \$5,000. (~~One thousand~~
3 ~~dollars~~) \$1,000 of the fine may not be suspended unless the court
4 finds the offender to be indigent; or

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

10 (i) By imprisonment for not less than (~~one hundred twenty~~) 120
11 days nor more than (~~three hundred sixty four~~) 364 days, if
12 available in that county or city, a six-month period of 24/7 sobriety
13 program monitoring pursuant to RCW 36.28A.300 through 36.28A.390, and
14 (~~one hundred fifty~~) 150 days of electronic home monitoring. One
15 hundred twenty days of imprisonment and (~~one hundred fifty~~) 150
16 days of electronic home monitoring may not be suspended or converted
17 unless the court finds that the imposition of this mandatory minimum
18 sentence would impose a substantial risk to the offender's physical
19 or mental well-being. If the offender shows that the imposition of
20 this mandatory minimum sentence would impose a substantial risk to
21 the offender's physical or mental well-being, in lieu of the
22 mandatory minimum term of (~~one hundred twenty~~) 120 days of
23 imprisonment and (~~one hundred fifty~~) 150 days of electronic home
24 monitoring, the court may order (~~three hundred sixty~~) 360 days of
25 electronic home monitoring or a (~~three hundred sixty day~~) 360-day
26 period of 24/7 sobriety monitoring pursuant to RCW 36.28A.300 through
27 36.28A.390. Whenever the mandatory minimum sentence is suspended or
28 converted, the court shall state in writing the reason for granting
29 the suspension or conversion and the facts upon which the suspension
30 or conversion is based. The offender shall pay for the cost of the
31 electronic monitoring. The court shall order an expanded substance
32 use disorder assessment and treatment, if deemed appropriate by the
33 assessment. The county or municipality where the penalty is being
34 imposed shall determine the cost. The court may also require the
35 offender's electronic home monitoring device include an alcohol
36 detection breathalyzer or other separate alcohol monitoring device,
37 and may restrict the amount of alcohol the offender may consume
38 during the time the offender is on electronic home monitoring; and

39 (ii) By a fine of not less than (~~one thousand five hundred~~
40 ~~dollars~~) \$1,500 nor more than (~~five thousand dollars~~) \$5,000.

1 ((One thousand five hundred)) \$1,500 dollars of the fine may not be
2 suspended unless the court finds the offender to be indigent.

3 (4) **Three or more prior offenses in ((ten)) 10 years.** A person
4 who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall
5 be punished under chapter 9.94A RCW if:

6 (a) The person has three or more prior offenses within ((ten)) 10
7 years; or

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

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

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

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

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

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

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

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

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

38 (ii) Order the person to a period of 24/7 sobriety program
39 monitoring pursuant to subsections (1) through (3) of this section;
40 or

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

5 (6) **Penalty for having a minor passenger in vehicle.** If a person
6 who is convicted of a violation of RCW 46.61.502 or 46.61.504
7 committed the offense while one or more passengers under the age of
8 (~~sixteen~~) 16 were in the vehicle, the court shall:

9 (a) Order the use of an ignition interlock or other device for an
10 additional (~~twelve~~) 12 months for each passenger under the age of
11 (~~sixteen~~) 16 when the person is subject to the penalties under
12 subsection (1)(a), (2)(a), or (3)(a) of this section; and order the
13 use of an ignition interlock device for an additional (~~eighteen~~) 18
14 months for each passenger under the age of (~~sixteen~~) 16 when the
15 person is subject to the penalties under subsection (1)(b), (2)(b),
16 (3)(b), or (4) of this section;

17 (b) In any case in which the person has no prior offenses within
18 seven years, and except as provided in RCW 46.61.502(6) or
19 46.61.504(6), order an additional (~~twenty-four~~) 24 hours of
20 imprisonment to be served consecutively for each passenger under the
21 age of (~~sixteen~~) 16, and a fine of not less than (~~one-thousand~~
22 ~~dollars~~) \$1,000 and not more than (~~five-thousand-dollars~~) \$5,000
23 for each passenger under the age of (~~sixteen~~) 16. (~~One-thousand~~
24 ~~dollars~~) \$1,000 of the fine for each passenger under the age of
25 (~~sixteen~~) 16 may not be suspended unless the court finds the
26 offender to be indigent;

27 (c) In any case in which the person has one prior offense within
28 seven years, and except as provided in RCW 46.61.502(6) or
29 46.61.504(6), order an additional five days of imprisonment to be
30 served consecutively for each passenger under the age of (~~sixteen~~)
31 16, and a fine of not less than (~~two-thousand-dollars~~) \$2,000 and
32 not more than (~~five-thousand-dollars~~) \$5,000 for each passenger
33 under the age of (~~sixteen~~) 16. One thousand dollars of the fine for
34 each passenger under the age of (~~sixteen~~) 16 may not be suspended
35 unless the court finds the offender to be indigent;

36 (d) In any case in which the person has two prior offenses within
37 seven years, and except as provided in RCW 46.61.502(6) or
38 46.61.504(6), order an additional ten days of imprisonment to be
39 served consecutively for each passenger under the age of (~~sixteen~~)
40 16, and a fine of not less than (~~three-thousand-dollars~~) \$3,000 and

1 not more than (~~ten thousand dollars~~) \$10,000 for each passenger
2 under the age of (~~sixteen~~) 16. (~~One thousand dollars~~) \$1,000 of
3 the fine for each passenger under the age of (~~sixteen~~) 16 may not
4 be suspended unless the court finds the offender to be indigent.

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

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

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

13 (c) Whether the driver was driving in the opposite direction of
14 the normal flow of traffic on a multiple lane highway, as defined by
15 RCW 46.04.350, with a posted speed limit of (~~forty-five~~) 45 miles
16 per hour or greater; and

17 (d) Whether a child passenger under the age of (~~sixteen~~) 16 was
18 an occupant in the driver's vehicle.

19 (8) **Treatment and information school.** An offender punishable
20 under this section is subject to the substance use disorder
21 assessment and treatment provisions of RCW 46.61.5056.

22 (9) **Driver's license privileges of the defendant.** (a) The
23 license, permit, or nonresident privilege of a person convicted of
24 driving or being in physical control of a motor vehicle while under
25 the influence of intoxicating liquor or drugs must:

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

31 (A) Where there has been no prior offense within seven years, be
32 suspended or denied by the department for (~~ninety~~) 90 days or until
33 the person is evaluated by a substance use disorder agency or
34 probation department pursuant to RCW 46.20.311 and the person
35 completes or is enrolled in a (~~ninety-day~~) 90-day period of 24/7
36 sobriety program monitoring. In no circumstances shall the license
37 suspension be for fewer than two days;

38 (B) Where there has been one prior offense within seven years, be
39 revoked or denied by the department for two years or until the person
40 is evaluated by a substance use disorder agency or probation

1 department pursuant to RCW 46.20.311 and the person completes or is
2 enrolled in a six-month period of 24/7 sobriety program monitoring.
3 In no circumstances shall the license suspension be for less than one
4 year; or

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

7 (ii) **Penalty for alcohol concentration at least 0.15.** If the
8 person's alcohol concentration was at least 0.15:

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

16 (B) Where there has been one prior offense within seven years, be
17 revoked or denied by the department for (~~nine hundred~~) 900 days; or

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

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

23 (A) Where there have been no prior offenses within seven years,
24 be revoked or denied by the department for two years;

25 (B) Where there has been one prior offense within seven years, be
26 revoked or denied by the department for three years; or

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

29 (b) (i) The department shall grant credit on a day-for-day basis
30 for a suspension, revocation, or denial imposed under this subsection
31 (9) for any portion of a suspension, revocation, or denial already
32 served under RCW 46.20.3101 arising out of the same incident.

33 (ii) If a person has already served a suspension, revocation, or
34 denial under RCW 46.20.3101 for a period equal to or greater than the
35 period imposed under this subsection (9), the department shall
36 provide notice of full credit, shall provide for no further
37 suspension or revocation under this subsection provided the person
38 has completed the requirements under RCW 46.20.311 and paid the
39 probationary license fee under RCW 46.20.355 by the date specified in

1 the notice under RCW 46.20.245, and shall impose no additional
2 reissue fees for this credit.

3 (c) Upon receipt of a notice from the court under RCW 36.28A.390
4 that a participant has been removed from a 24/7 sobriety program, the
5 department must resume any suspension, revocation, or denial that had
6 been terminated early under this subsection due to participation in
7 the program, granting credit on a day-for-day basis for any portion
8 of a suspension, revocation, or denial already served under RCW
9 46.20.3101 or this section arising out of the same incident.

10 (d) Upon its own motion or upon motion by a person, a court may
11 find, on the record, that notice to the department under RCW
12 46.20.270 has been delayed for three years or more as a result of a
13 clerical or court error. If so, the court may order that the person's
14 license, permit, or nonresident privilege shall not be revoked,
15 suspended, or denied for that offense. The court shall send notice of
16 the finding and order to the department and to the person. Upon
17 receipt of the notice from the court, the department shall not
18 revoke, suspend, or deny the license, permit, or nonresident
19 privilege of the person for that offense.

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

23 (10) **Probation of driving privilege.** After expiration of any
24 period of suspension, revocation, or denial of the offender's
25 license, permit, or privilege to drive required by this section, the
26 department shall place the offender's driving privilege in
27 probationary status pursuant to RCW 46.20.355.

28 (11) **Conditions of probation.** (a) In addition to any
29 nonsuspendable and nondeferrable jail sentence required by this
30 section, whenever the court imposes up to (~~three hundred sixty~~
31 ~~four~~) 364 days in jail, the court shall also suspend but shall not
32 defer a period of confinement for a period not exceeding five years.
33 The court shall impose conditions of probation that include: (i) Not
34 driving a motor vehicle within this state without a valid license to
35 drive; (ii) not driving a motor vehicle within this state without
36 proof of liability insurance or other financial responsibility for
37 the future pursuant to RCW 46.30.020; (iii) not driving or being in
38 physical control of a motor vehicle within this state while having an
39 alcohol concentration of (~~0.08~~) 0.06 or more or a THC concentration
40 of 5.00 nanograms per milliliter of whole blood or higher, within two

1 hours after driving; (iv) not refusing to submit to a test of his or
2 her breath or blood to determine alcohol or drug concentration upon
3 request of a law enforcement officer who has reasonable grounds to
4 believe the person was driving or was in actual physical control of a
5 motor vehicle within this state while under the influence of
6 intoxicating liquor or drug; and (v) not driving a motor vehicle in
7 this state without a functioning ignition interlock device as
8 required by the department under RCW 46.20.720. The court may impose
9 conditions of probation that include nonrepetition, installation of
10 an ignition interlock device on the probationer's motor vehicle,
11 substance use disorder treatment, supervised probation, or other
12 conditions that may be appropriate. The sentence may be imposed in
13 whole or in part upon violation of a condition of probation during
14 the suspension period.

15 (b) For each violation of mandatory conditions of probation under
16 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall
17 order the convicted person to be confined for (~~(thirty)~~) 30 days,
18 which shall not be suspended or deferred.

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

29 (12) **Waiver of electronic home monitoring.** A court may waive the
30 electronic home monitoring requirements of this chapter when:

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

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

38 (c) The court determines that there is reason to believe that the
39 offender would violate the conditions of the electronic home
40 monitoring penalty.

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

8 Whenever the combination of jail time and electronic home
9 monitoring or alternative sentence would exceed (~~three hundred~~
10 ~~sixty-four~~) 364 days, the offender shall serve the jail portion of
11 the sentence first, and the electronic home monitoring or alternative
12 portion of the sentence shall be reduced so that the combination does
13 not exceed (~~three hundred sixty-four~~) 364 days.

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

19 (14) **Definitions.** For purposes of this section and RCW 46.61.502
20 and 46.61.504:

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

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

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

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

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

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

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

37 (vii) A conviction for a violation of RCW 47.68.220 or an
38 equivalent local ordinance committed in a careless or reckless manner
39 if the conviction is the result of a charge that was originally filed

1 as a violation of RCW 47.68.220 or an equivalent local ordinance
2 while under the influence of intoxicating liquor or any drug;

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

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

7 (x) A conviction for a violation of RCW 46.61.520 committed while
8 under the influence of intoxicating liquor or any drug, or a
9 conviction for a violation of RCW 46.61.520 committed in a reckless
10 manner or with the disregard for the safety of others if the
11 conviction is the result of a charge that was originally filed as a
12 violation of RCW 46.61.520 committed while under the influence of
13 intoxicating liquor or any drug;

14 (xi) A conviction for a violation of RCW 46.61.522 committed
15 while under the influence of intoxicating liquor or any drug, or a
16 conviction for a violation of RCW 46.61.522 committed in a reckless
17 manner or with the disregard for the safety of others if the
18 conviction is the result of a charge that was originally filed as a
19 violation of RCW 46.61.522 committed while under the influence of
20 intoxicating liquor or any drug;

21 (xii) A conviction for a violation of RCW 46.61.5249, 46.61.500,
22 or 9A.36.050 or an equivalent local ordinance, if the conviction is
23 the result of a charge that was originally filed as a violation of
24 RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of
25 RCW 46.61.520 or 46.61.522;

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

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

32 (xv) A deferred prosecution under chapter 10.05 RCW granted in a
33 prosecution for a violation of RCW 46.61.5249, or an equivalent local
34 ordinance, if the charge under which the deferred prosecution was
35 granted was originally filed as a violation of RCW 46.61.502 or
36 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
37 46.61.522;

38 (xvi) A deferred prosecution granted in another state for a
39 violation of driving or having physical control of a vehicle while
40 under the influence of intoxicating liquor or any drug if the out-of-

1 state deferred prosecution is equivalent to the deferred prosecution
2 under chapter 10.05 RCW, including a requirement that the defendant
3 participate in a chemical dependency treatment program; or

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

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

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

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

19 (d) "Within ~~((ten))~~ 10 years" means that the arrest for a prior
20 offense occurred within ~~((ten))~~ 10 years before or after the arrest
21 for the current offense.

22 (15) All fines imposed by this section apply to adult offenders
23 only.

24 **Sec. 5.** RCW 46.61.506 and 2020 c 80 s 33 are each amended to
25 read as follows:

26 (1) Upon the trial of any civil or criminal action or proceeding
27 arising out of acts alleged to have been committed by any person
28 while driving or in actual physical control of a vehicle while under
29 the influence of intoxicating liquor or any drug, if the person's
30 alcohol concentration is less than ~~((0.08))~~ 0.06 or the person's THC
31 concentration is less than 5.00, it is evidence that may be
32 considered with other competent evidence in determining whether the
33 person was under the influence of intoxicating liquor or any drug.

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

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

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

5 (3) Analysis of the person's blood or breath to be considered
6 valid under the provisions of this section or RCW 46.61.502 or
7 46.61.504 shall have been performed according to methods approved by
8 the state toxicologist and by an individual possessing a valid permit
9 issued by the state toxicologist for this purpose. The state
10 toxicologist is directed to approve satisfactory techniques or
11 methods, to supervise the examination of individuals to ascertain
12 their qualifications and competence to conduct such analyses, and to
13 issue permits which shall be subject to termination or revocation at
14 the discretion of the state toxicologist.

15 (4)(a) A breath test performed by any instrument approved by the
16 state toxicologist shall be admissible at trial or in an
17 administrative proceeding if the prosecution or department produces
18 prima facie evidence of the following:

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

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

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

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

33 (v) The internal standard test resulted in the message
34 "verified";

35 (vi) The two breath samples agree to within plus or minus (~~(ten))~~
36 10 percent of their mean to be determined by the method approved by
37 the state toxicologist;

38 (vii) The result of the test of the liquid simulator solution
39 external standard or dry gas external standard result did lie between
40 (~~(.072 to .088))~~ .045 to .055 inclusive; and

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

2 (b) For purposes of this section, "prima facie evidence" is
3 evidence of sufficient circumstances that would support a logical and
4 reasonable inference of the facts sought to be proved. In assessing
5 whether there is sufficient evidence of the foundational facts, the
6 court or administrative tribunal is to assume the truth of the
7 prosecution's or department's evidence and all reasonable inferences
8 from it in a light most favorable to the prosecution or department.

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

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

37 (6) When a venous blood sample is performed by a forensic
38 phlebotomist certified under chapter 18.360 RCW, it must be done
39 under the following conditions:

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

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

6 (c) The blood sample must be collected using sterile equipment
7 and the skin area of puncture must be thoroughly cleansed and
8 disinfected.

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

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

21 (8) Upon the request of the person who shall submit to a test or
22 tests at the request of a law enforcement officer, full information
23 concerning the test or tests shall be made available to him or her or
24 his or her attorney.

25 **Sec. 6.** RCW 46.20.308 and 2022 c 16 s 38 are each amended to
26 read as follows:

27 (1) Any person who operates a motor vehicle within this state is
28 deemed to have given consent, subject to the provisions of RCW
29 46.61.506, to a test or tests of his or her breath for the purpose of
30 determining the alcohol concentration in his or her breath if
31 arrested for any offense where, at the time of the arrest, the
32 arresting officer has reasonable grounds to believe the person had
33 been driving or was in actual physical control of a motor vehicle
34 while under the influence of intoxicating liquor or any drug or was
35 in violation of RCW 46.61.503.

36 (2) The test or tests of breath shall be administered at the
37 direction of a law enforcement officer having reasonable grounds to
38 believe the person to have been driving or in actual physical control
39 of a motor vehicle within this state while under the influence of

1 intoxicating liquor or any drug or the person to have been driving or
2 in actual physical control of a motor vehicle while having alcohol in
3 a concentration in violation of RCW 46.61.503 in his or her system
4 and being under the age of (~~twenty-one~~) 21. Prior to administering
5 a breath test pursuant to this section, the officer shall inform the
6 person of his or her right under this section to refuse the breath
7 test, and of his or her right to have additional tests administered
8 by any qualified person of his or her choosing as provided in RCW
9 46.61.506. The officer shall warn the driver, in substantially the
10 following language, that:

11 (a) If the driver refuses to take the test, the driver's license,
12 permit, or privilege to drive will be revoked or denied for at least
13 one year; and

14 (b) If the driver refuses to take the test, the driver's refusal
15 to take the test may be used in a criminal trial; and

16 (c) If the driver submits to the test and the test is
17 administered, the driver's license, permit, or privilege to drive
18 will be suspended, revoked, or denied for at least (~~ninety~~) 90 days
19 if:

20 (i) The driver is age (~~twenty-one~~) 21 or over and the test
21 indicates either that the alcohol concentration of the driver's
22 breath is (~~0.08~~) 0.06 or more; or

23 (ii) The driver is under age (~~twenty-one~~) 21 and the test
24 indicates either that the alcohol concentration of the driver's
25 breath is 0.02 or more; or

26 (iii) The driver is under age (~~twenty-one~~) 21 and the driver is
27 in violation of RCW 46.61.502 or 46.61.504; and

28 (d) If the driver's license, permit, or privilege to drive is
29 suspended, revoked, or denied the driver may be eligible to
30 immediately apply for an ignition interlock driver's license.

31 (3) If, following his or her arrest and receipt of warnings under
32 subsection (2) of this section, the person arrested exercises the
33 right, granted herein, by refusing upon the request of a law
34 enforcement officer to submit to a test or tests of his or her
35 breath, no test shall be given except as otherwise authorized by law.

36 (4) Nothing in subsection (1), (2), or (3) of this section
37 precludes a law enforcement officer from obtaining a person's blood
38 to test for alcohol, cannabis, or any drug, pursuant to a search
39 warrant, a valid waiver of the warrant requirement, when exigent
40 circumstances exist, or under any other authority of law. Any blood

1 drawn for the purpose of determining the person's alcohol, cannabis
2 levels, or any drug, is drawn pursuant to this section when the
3 officer has reasonable grounds to believe that the person is in
4 physical control or driving a vehicle under the influence or in
5 violation of RCW 46.61.503.

6 (5) If, after arrest and after any other applicable conditions
7 and requirements of this section have been satisfied, a test or tests
8 of the person's blood or breath is administered and the test results
9 indicate that the alcohol concentration of the person's breath or
10 blood is (~~(0.08)~~) 0.06 or more, or the THC concentration of the
11 person's blood is 5.00 or more, if the person is age (~~(twenty-one)~~)
12 21 or over, or that the alcohol concentration of the person's breath
13 or blood is 0.02 or more, or the THC concentration of the person's
14 blood is above 0.00, if the person is under the age of (~~(twenty-one)~~)
15 21, or the person refuses to submit to a test, the arresting officer
16 or other law enforcement officer at whose direction any test has been
17 given, or the department, where applicable, if the arrest results in
18 a test of the person's blood, shall:

19 (a) Serve notice in writing on the person on behalf of the
20 department of its intention to suspend, revoke, or deny the person's
21 license, permit, or privilege to drive as required by subsection (6)
22 of this section;

23 (b) Serve notice in writing on the person on behalf of the
24 department of his or her right to a hearing, specifying the steps he
25 or she must take to obtain a hearing as provided by subsection (7) of
26 this section;

27 (c) Serve notice in writing that the license or permit, if any,
28 is a temporary license that is valid for (~~(thirty)~~) 30 days from the
29 date of arrest or from the date notice has been given in the event
30 notice is given by the department following a blood test, or until
31 the suspension, revocation, or denial of the person's license,
32 permit, or privilege to drive is sustained at a hearing pursuant to
33 subsection (7) of this section, whichever occurs first. No temporary
34 license is valid to any greater degree than the license or permit
35 that it replaces; and

36 (d) Immediately notify the department of the arrest and transmit
37 to the department within (~~(seventy-two)~~) 72 hours, except as delayed
38 as the result of a blood test, a sworn report or report under a
39 declaration authorized by chapter 5.50 RCW that states:

1 (i) That the officer had reasonable grounds to believe the
2 arrested person had been driving or was in actual physical control of
3 a motor vehicle within this state while under the influence of
4 intoxicating liquor or drugs, or both, or was under the age of
5 (~~twenty-one~~) 21 years and had been driving or was in actual
6 physical control of a motor vehicle while having an alcohol or THC
7 concentration in violation of RCW 46.61.503;

8 (ii) That after receipt of any applicable warnings required by
9 subsection (2) of this section the person refused to submit to a test
10 of his or her breath, or a test was administered and the results
11 indicated that the alcohol concentration of the person's breath or
12 blood was (~~0.08~~) 0.06 or more, or the THC concentration of the
13 person's blood was 5.00 or more, if the person is age (~~twenty-one~~)
14 21 or over, or that the alcohol concentration of the person's breath
15 or blood was 0.02 or more, or the THC concentration of the person's
16 blood was above 0.00, if the person is under the age of (~~twenty-~~
17 ~~one~~) 21; and

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

20 (6) The department of licensing, upon the receipt of a sworn
21 report or report under a declaration authorized by chapter 5.50 RCW
22 under subsection (5)(d) of this section, shall suspend, revoke, or
23 deny the person's license, permit, or privilege to drive or any
24 nonresident operating privilege, as provided in RCW 46.20.3101, such
25 suspension, revocation, or denial to be effective beginning thirty
26 days from the date of arrest or from the date notice has been given
27 in the event notice is given by the department following a blood
28 test, or when sustained at a hearing pursuant to subsection (7) of
29 this section, whichever occurs first.

30 (7) A person receiving notification under subsection (5)(b) of
31 this section may, within seven days after the notice has been given,
32 request in writing a formal hearing before the department. The person
33 shall pay a fee of (~~three hundred seventy-five dollars~~) \$375 as
34 part of the request. If the request is mailed, it must be postmarked
35 within seven days after receipt of the notification. Upon timely
36 receipt of such a request for a formal hearing, including receipt of
37 the required (~~three hundred seventy-five dollar~~) \$375 fee, the
38 department shall afford the person an opportunity for a hearing. The
39 department may waive the required (~~three hundred seventy-five~~
40 ~~dollar~~) \$375 fee if the person is an indigent as defined in RCW

1 10.101.010. Except as otherwise provided in this section, the hearing
2 is subject to and shall be scheduled and conducted in accordance with
3 RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the
4 county of the arrest, except that all or part of the hearing may, at
5 the discretion of the department, be conducted by telephone or other
6 electronic means. The hearing shall be held within (~~(thirty)~~) 30
7 days, excluding Saturdays, Sundays, and legal holidays, following the
8 date of timely receipt of such request for a formal hearing before
9 the department or (~~(thirty)~~) 30 days, excluding Saturdays, Sundays,
10 and legal holidays following the date notice has been given in the
11 event notice is given by the department following a blood test,
12 unless otherwise agreed to by the department and the person, in which
13 case the action by the department shall be stayed, and any valid
14 temporary license under subsection (5) of this section extended, if
15 the person is otherwise eligible for licensing. Unless otherwise
16 agreed to by the department and the person, the department must give
17 five days notice of the hearing to the person. For the purposes of
18 this section, the scope of the hearing shall cover the issues of
19 whether a law enforcement officer had reasonable grounds to believe
20 the person had been driving or was in actual physical control of a
21 motor vehicle within this state while under the influence of
22 intoxicating liquor or any drug or had been driving or was in actual
23 physical control of a motor vehicle within this state while having
24 alcohol in his or her system in a concentration of 0.02 or more, or
25 THC in his or her system in a concentration above 0.00, if the person
26 was under the age of (~~(twenty-one)~~) 21, whether the person was placed
27 under arrest, and (a) whether the person refused to submit to the
28 test or tests upon request of the officer after having been informed
29 that such refusal would result in the revocation of the person's
30 license, permit, or privilege to drive, or (b) if a test or tests
31 were administered, whether the applicable requirements of this
32 section were satisfied before the administration of the test or
33 tests, whether the person submitted to the test or tests, or whether
34 a test was administered pursuant to a search warrant, a valid waiver
35 of the warrant requirement, when exigent circumstances exist, or
36 under any other authority of law as permitted under this section, and
37 whether the test or tests indicated that the alcohol concentration of
38 the person's breath or blood was (~~(0.08)~~) 0.06 or more, or the THC
39 concentration of the person's blood was 5.00 or more, if the person
40 was age (~~(twenty-one)~~) 21 or over at the time of the arrest, or that

1 the alcohol concentration of the person's breath or blood was 0.02 or
2 more, or the THC concentration of the person's blood was above 0.00,
3 if the person was under the age of (~~twenty-one~~) 21 at the time of
4 the arrest. Where a person is found to be in actual physical control
5 of a motor vehicle while under the influence of intoxicating liquor
6 or any drug or was under the age of (~~twenty-one~~) 21 at the time of
7 the arrest and was in physical control of a motor vehicle while
8 having alcohol in his or her system in a concentration of 0.02 or THC
9 concentration above 0.00, the person may petition the hearing officer
10 to apply the affirmative defense found in RCW 46.61.504(3) and
11 46.61.503(2). The driver has the burden to prove the affirmative
12 defense by a preponderance of the evidence. The sworn report or
13 report under a declaration authorized by chapter 5.50 RCW submitted
14 by a law enforcement officer is prima facie evidence that the officer
15 had reasonable grounds to believe the person had been driving or was
16 in actual physical control of a motor vehicle within this state while
17 under the influence of intoxicating liquor or drugs, or both, or the
18 person had been driving or was in actual physical control of a motor
19 vehicle within this state while having alcohol in his or her system
20 in a concentration of 0.02 or more, or THC in his or her system in a
21 concentration above 0.00, and was under the age of (~~twenty-one~~) 21
22 and that the officer complied with the requirements of this section.

23 A hearing officer shall conduct the hearing, may issue subpoenas
24 for the attendance of witnesses and the production of documents, and
25 shall administer oaths to witnesses. The hearing officer shall not
26 issue a subpoena for the attendance of a witness at the request of
27 the person unless the request is accompanied by the fee required by
28 RCW 5.56.010 for a witness in district court. The sworn report or
29 report under a declaration authorized by chapter 5.50 RCW of the law
30 enforcement officer and any other evidence accompanying the report
31 shall be admissible without further evidentiary foundation and the
32 certifications authorized by the criminal rules for courts of limited
33 jurisdiction shall be admissible without further evidentiary
34 foundation. The person may be represented by counsel, may question
35 witnesses, may present evidence, and may testify. The department
36 shall order that the suspension, revocation, or denial either be
37 rescinded or sustained.

38 (8) If the suspension, revocation, or denial is sustained after
39 such a hearing, the person whose license, privilege, or permit is
40 suspended, revoked, or denied has the right to file a petition in the

1 superior court of the county of arrest to review the final order of
2 revocation by the department in the same manner as an appeal from a
3 decision of a court of limited jurisdiction. Notice of appeal must be
4 filed within (~~thirty~~) 30 days after the date the final order is
5 served or the right to appeal is waived. Notwithstanding RCW
6 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo
7 review, the appeal shall be limited to a review of the record of the
8 administrative hearing. The appellant must pay the costs associated
9 with obtaining the record of the hearing before the hearing officer.
10 The filing of the appeal does not stay the effective date of the
11 suspension, revocation, or denial. A petition filed under this
12 subsection must include the petitioner's grounds for requesting
13 review. Upon granting petitioner's request for review, the court
14 shall review the department's final order of suspension, revocation,
15 or denial as expeditiously as possible. The review must be limited to
16 a determination of whether the department has committed any errors of
17 law. The superior court shall accept those factual determinations
18 supported by substantial evidence in the record: (a) That were
19 expressly made by the department; or (b) that may reasonably be
20 inferred from the final order of the department. The superior court
21 may reverse, affirm, or modify the decision of the department or
22 remand the case back to the department for further proceedings. The
23 decision of the superior court must be in writing and filed in the
24 clerk's office with the other papers in the case. The court shall
25 state the reasons for the decision. If judicial relief is sought for
26 a stay or other temporary remedy from the department's action, the
27 court shall not grant such relief unless the court finds that the
28 appellant is likely to prevail in the appeal and that without a stay
29 the appellant will suffer irreparable injury. If the court stays the
30 suspension, revocation, or denial it may impose conditions on such
31 stay.

32 (9) (a) If a person whose driver's license, permit, or privilege
33 to drive has been or will be suspended, revoked, or denied under
34 subsection (6) of this section, other than as a result of a breath
35 test refusal, and who has not committed an offense for which he or
36 she was granted a deferred prosecution under chapter 10.05 RCW,
37 petitions a court for a deferred prosecution on criminal charges
38 arising out of the arrest for which action has been or will be taken
39 under subsection (6) of this section, or notifies the department of
40 licensing of the intent to seek such a deferred prosecution, then the

1 license suspension or revocation shall be stayed pending entry of the
2 deferred prosecution. The stay shall not be longer than (~~one hundred~~
3 ~~fifty~~) 150 days after the date charges are filed, or two years after
4 the date of the arrest, whichever time period is shorter. If the
5 court stays the suspension, revocation, or denial, it may impose
6 conditions on such stay. If the person is otherwise eligible for
7 licensing, the department shall issue a temporary license, or extend
8 any valid temporary license under subsection (5) of this section, for
9 the period of the stay. If a deferred prosecution treatment plan is
10 not recommended in the report made under RCW 10.05.050, or if
11 treatment is rejected by the court, or if the person declines to
12 accept an offered treatment plan, or if the person violates any
13 condition imposed by the court, then the court shall immediately
14 direct the department to cancel the stay and any temporary license or
15 extension of a temporary license issued under this subsection.

16 (b) A suspension, revocation, or denial imposed under this
17 section, other than as a result of a breath test refusal, shall be
18 stayed if the person is accepted for deferred prosecution as provided
19 in chapter 10.05 RCW for the incident upon which the suspension,
20 revocation, or denial is based. If the deferred prosecution is
21 terminated, the stay shall be lifted and the suspension, revocation,
22 or denial reinstated. If the deferred prosecution is completed, the
23 stay shall be lifted and the suspension, revocation, or denial
24 canceled.

25 (c) The provisions of (b) of this subsection relating to a stay
26 of a suspension, revocation, or denial and the cancellation of any
27 suspension, revocation, or denial do not apply to the suspension,
28 revocation, denial, or disqualification of a person's commercial
29 driver's license or privilege to operate a commercial motor vehicle.

30 (10) When it has been finally determined under the procedures of
31 this section that a nonresident's privilege to operate a motor
32 vehicle in this state has been suspended, revoked, or denied, the
33 department shall give information in writing of the action taken to
34 the motor vehicle administrator of the state of the person's
35 residence and of any state in which he or she has a license.

36 **Sec. 7.** RCW 46.20.3101 and 2020 c 330 s 6 are each amended to
37 read as follows:

1 Pursuant to RCW 46.20.308, the department shall suspend, revoke,
2 or deny the arrested person's license, permit, or privilege to drive
3 as follows:

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

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

9 (b) For a second or subsequent refusal within seven years, or for
10 a first refusal where there has been one or more previous incidents
11 within seven years that have resulted in administrative action under
12 this section, revocation or denial for two years or until the person
13 reaches age (~~(twenty-one)~~) 21, whichever is longer.

14 (2) In the case of an incident where a person has submitted to or
15 been administered a test or tests indicating that the alcohol
16 concentration of the person's breath or blood was (~~(0.08)~~) 0.06 or
17 more, or that the THC concentration of the person's blood was 5.00 or
18 more:

19 (a) For a first incident within seven years, where there has not
20 been a previous incident within seven years that resulted in
21 administrative action under this section, suspension for (~~(ninety)~~)
22 90 days, unless the person successfully completes or is enrolled in a
23 pretrial 24/7 sobriety program;

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

26 (3) In the case of an incident where a person under age (~~(twenty-~~
27 ~~one)~~) 21 has submitted to or been administered a test or tests
28 indicating that the alcohol concentration of the person's breath or
29 blood was 0.02 or more, or that the THC concentration of the person's
30 blood was above 0.00:

31 (a) For a first incident within seven years, suspension or denial
32 for (~~(ninety)~~) 90 days;

33 (b) For a second or subsequent incident within seven years,
34 revocation or denial for one year or until the person reaches age
35 (~~(twenty-one)~~) 21, whichever is longer.

36 (4) The department shall grant credit on a day-for-day basis for
37 a suspension, revocation, or denial imposed under this section for
38 any portion of a suspension, revocation, or denial already served
39 under RCW 46.61.5055 arising out of the same incident. If a person
40 has already served a suspension, revocation, or denial under RCW

1 46.61.5055 for a period equal to or greater than the period imposed
2 under this section, the department shall provide notice of full
3 credit, shall provide for no further suspension or revocation under
4 this section, and shall impose no additional reissue fees for this
5 credit.

6 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.59
7 RCW to read as follows:

8 The Washington traffic safety commission shall develop and
9 implement a public information campaign related to this act. In
10 developing and implementing the public information campaign, the
11 commission must:

12 (1) Ensure television, radio, and online advertisements are
13 provided in all areas of the state;

14 (2) Include multiple print advertisements in the largest
15 newspapers in each county;

16 (3) Provide content of the public information campaign in the top
17 nine most significant non-English-speaking languages spoken in the
18 state;

19 (4) Consider equity outcomes on overburdened communities as
20 defined in RCW 70A.02.010; and

21 (5) Ensure that at least 10 percent of the advertisements are
22 developed in conjunction with in-state hospitality stakeholders and
23 educate drivers about safe alternatives to driving while patronizing
24 hospitality businesses.

25 NEW SECTION. **Sec. 9.** A new section is added to chapter 66.44
26 RCW to read as follows:

27 The legislature finds that current civil law relating to civil
28 liability is that a licensed commercial vendor or quasi-commercial
29 vendor owes a duty to third persons not to sell, serve, or furnish
30 alcohol to a person who is apparently under the influence of alcohol,
31 or who is obviously intoxicated. This current civil law is both
32 statutory and also developed in case law. The legislature further
33 finds that civil liability to third persons under the civil law does
34 not depend upon a finding of the blood or breath alcohol
35 concentration. Therefore, nothing in this act shall be construed to
36 change current civil law for civil liability of a licensed commercial
37 vendor or quasi-commercial vendor.

1 NEW SECTION. **Sec. 10.** A new section is added to chapter 66.08
2 RCW to read as follows:

3 (1) The Washington state institute for public policy must conduct
4 an evaluation of the impacts of this act during the first two years
5 of implementation. By October 1, 2026, the institute must submit a
6 report to the appropriate committees of the legislature detailing the
7 results of its evaluation. The evaluation must include, but is not
8 limited to, the impact of this act on:

9 (a) The number of serious and fatal traffic accidents;

10 (b) Driving under the influence arrests and adjudications for
11 driving under the influence offenses;

12 (c) Equity outcomes on overburdened communities as defined in RCW
13 70A.02.010;

14 (d) Sales and other business effects on the hospitality industry
15 in the state; and

16 (e) Sales and other business effects on breweries, wineries, and
17 distilleries in the state.

18 (2) This section expires November 1, 2026.

19 NEW SECTION. **Sec. 11.** This act takes effect July 1, 2024."

2SSB 5002 - S AMD 117
By Senator Padden

NOT CONSIDERED 05/17/2023

20 On page 1, line 1 of the title, after "concentration;" strike the
21 remainder of the title and insert "amending RCW 46.61.502, 46.61.504,
22 46.61.5055, 46.61.506, 46.20.308, and 46.20.3101; adding a new
23 section to chapter 43.59 RCW; adding a new section to chapter 66.44
24 RCW; adding a new section to chapter 66.08 RCW; creating a new
25 section; prescribing penalties; providing an effective date; and
26 providing an expiration date."

EFFECT: Makes the new alcohol concentration 0.06.

--- END ---