
SENATE BILL 5664

State of Washington

69th Legislature

2025 Regular Session

By Senators Fortunato and Lovick

Read first time 02/05/25. Referred to Committee on Law & Justice.

1 AN ACT Relating to impaired driving; amending RCW 46.61.502,
2 46.61.504, 46.61.5055, 46.61.506, 46.20.308, 46.20.3101, 46.25.090,
3 38.38.760, and 79A.60.040; adding a new section to chapter 43.59 RCW;
4 adding a new section to chapter 66.44 RCW; adding a new section to
5 chapter 66.08 RCW; creating a new section; prescribing penalties;
6 providing an effective date; and providing an expiration date.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that a per se
9 0.05 blood alcohol concentration level is the standard throughout
10 most of the world. Norway was the first country to establish a per se
11 blood alcohol concentration limit of 0.05 in 1936. Since then, most
12 countries have adopted blood alcohol concentration limits of 0.05 or
13 lower. Eighty-four percent of the world's population lives in
14 countries with a blood alcohol concentration limit of 0.05 or lower.
15 Studies on the impacts of these laws around the world have found that
16 reducing the limit from 0.08 to 0.05 results in an average reduction
17 of fatalities involving alcohol-impaired driving by 11 percent
18 annually. The national highway traffic safety administration found
19 that a driver's risk of crash involvement at 0.05 is double the rate
20 of a sober driver, which increases to three times the risk at 0.07.

1 (2) The legislature finds and declares that 2023 was the
2 deadliest year on Washington roads since 1990. Washington state saw
3 734 fatal crashes resulting in the death of more than 810 people.
4 Half of all fatal crashes involve a driver impaired by drugs or
5 alcohol, and the state saw a 59 percent increase in crashes involving
6 an impaired driver between 2019 and 2023. This alarming upward trend
7 must be addressed if Washington state is going to meet its goal of
8 target zero.

9 (3) The increase in Washingtonians choosing to drive while
10 impaired points to a need to adjust Washington's impaired driving
11 laws. Utah lowered the blood alcohol concentration limit for
12 operating a motor vehicle from 0.08 to 0.05 in 2018 and found that 22
13 percent of people who drank alcohol said they changed their behavior
14 as a result of the new law. Given the increase in traffic fatalities
15 from impaired driving, the legislature declares that it is time to
16 keep Washington's roads safer and lower the number of fatal crashes
17 caused by impaired drivers by lowering the blood alcohol limit to
18 0.05.

19 **Sec. 2.** RCW 46.61.502 and 2024 c 306 s 30 are each amended to
20 read as follows:

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

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

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

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

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

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

38 (3)(a) It is an affirmative defense to a violation of subsection
39 (1)(a) of this section, which the defendant must prove by a

1 preponderance of the evidence, that the defendant consumed a
2 sufficient quantity of alcohol after the time of driving and before
3 the administration of an analysis of the person's breath or blood to
4 cause the defendant's alcohol concentration to be (~~(0.08)~~) 0.05 or
5 more within two hours after driving. The court shall not admit
6 evidence of this defense unless the defendant notifies the
7 prosecution prior to the omnibus or pretrial hearing in the case of
8 the defendant's intent to assert the affirmative defense.

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

19 (4)(a) Analyses of blood or breath samples obtained more than two
20 hours after the alleged driving may be used as evidence that within
21 two hours of the alleged driving, a person had an alcohol
22 concentration of (~~(0.08)~~) 0.05 or more in violation of subsection
23 (1)(a) of this section, and in any case in which the analysis shows
24 an alcohol concentration above 0.00 may be used as evidence that a
25 person was under the influence of or affected by intoxicating liquor
26 or any drug in violation of subsection (1)(c) or (d) of this section.

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

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

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

38 (a) The person has three or more prior offenses within 15 years
39 as defined in RCW 46.61.5055; or

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

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

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

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

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

8 **Sec. 3.** RCW 46.61.504 and 2024 c 306 s 32 are each amended to
9 read as follows:

10 (1) A person is guilty of being in actual physical control of a
11 motor vehicle while under the influence of intoxicating liquor or any
12 drug if the person has actual physical control of a vehicle within
13 this state:

14 (a) And the person has, within two hours after being in actual
15 physical control of the vehicle, an alcohol concentration of (~~0.08~~)
16 0.05 or higher as shown by analysis of the person's breath or blood
17 made under RCW 46.61.506; or

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

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

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

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

34 (3)(a) It is an affirmative defense to a violation of subsection
35 (1)(a) of this section which the defendant must prove by a
36 preponderance of the evidence that the defendant consumed a
37 sufficient quantity of alcohol after the time of being in actual
38 physical control of the vehicle and before the administration of an
39 analysis of the person's breath or blood to cause the defendant's

1 alcohol concentration to be (~~0.08~~) 0.05 or more within two hours
2 after being in such control. The court shall not admit evidence of
3 this defense unless the defendant notifies the prosecution prior to
4 the omnibus or pretrial hearing in the case of the defendant's intent
5 to assert the affirmative defense.

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

17 (4) (a) Analyses of blood or breath samples obtained more than two
18 hours after the alleged being in actual physical control of a vehicle
19 may be used as evidence that within two hours of the alleged being in
20 such control, a person had an alcohol concentration of (~~0.08~~) 0.05
21 or more in violation of subsection (1)(a) of this section, and in any
22 case in which the analysis shows an alcohol concentration above 0.00
23 may be used as evidence that a person was under the influence of or
24 affected by intoxicating liquor or any drug in violation of
25 subsection (1)(c) or (d) of this section.

26 (b) Analyses of blood samples obtained more than two hours after
27 the alleged being in actual physical control of a vehicle may be used
28 as evidence that within two hours of the alleged being in control of
29 the vehicle, a person had a THC concentration of 5.00 or more in
30 violation of subsection (1)(b) of this section, and in any case in
31 which the analysis shows a THC concentration above 0.00 may be used
32 as evidence that a person was under the influence of or affected by
33 cannabis in violation of subsection (1)(c) or (d) of this section.

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

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

38 (a) The person has three or more prior offenses within 15 years
39 as defined in RCW 46.61.5055; or

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

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

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

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

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

8 **Sec. 4.** RCW 46.61.5055 and 2024 c 306 s 31 are each amended to
9 read as follows:

10 (1) **No prior offenses in seven years.** Except as provided in RCW
11 46.61.502(6) or 46.61.504(6), a person who is convicted of a
12 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense
13 within seven years shall be punished as follows:

14 (a) **Penalty for alcohol concentration less than (~~0.15~~) 0.10.** In
15 the case of a person whose alcohol concentration was less than
16 (~~0.15~~) 0.10, or for whom for reasons other than the person's
17 refusal to take a test offered pursuant to RCW 46.20.308 there is no
18 test result indicating the person's alcohol concentration:

19 (i) By imprisonment for not less than 24 consecutive hours nor
20 more than 364 days. In lieu of the mandatory minimum term of
21 imprisonment required under this subsection (1)(a)(i), the court, in
22 its discretion, may order not less than 15 days of electronic home
23 monitoring or a 90-day period of 24/7 sobriety program monitoring.
24 The court may consider the offender's pretrial 24/7 sobriety program
25 monitoring as fulfilling a portion of posttrial sentencing. The
26 offender shall pay the cost of electronic home monitoring. The county
27 or municipality in which the penalty is being imposed shall determine
28 the cost. The court may also require the offender's electronic home
29 monitoring device or other separate alcohol monitoring device to
30 include an alcohol detection breathalyzer, and the court may restrict
31 the amount of alcohol the offender may consume during the time the
32 offender is on electronic home monitoring; and

33 (ii) By a fine of not less than \$350 nor more than \$5,000. \$350
34 of the fine may not be suspended unless the court finds the offender
35 to be indigent; (~~or~~)

36 (b) **Penalty for alcohol concentration at least 0.10.** In the case
37 of a person whose alcohol concentration was at least 0.10:

38 (i) By imprisonment for not less than 48 consecutive hours nor
39 more than 364 days. In lieu of the mandatory minimum term of

1 imprisonment required under this subsection (1)(b)(i), the court, in
2 its discretion, may order not less than 30 days of electronic home
3 monitoring or a 120-day period of 24/7 sobriety program monitoring.
4 The court may consider the offender's pretrial 24/7 sobriety program
5 testing as fulfilling a portion of posttrial sentencing. The offender
6 shall pay the cost of electronic home monitoring. The county or
7 municipality in which the penalty is being imposed shall determine
8 the cost. The county or municipality may also require the offender's
9 electronic home monitoring device to include an alcohol detection
10 breathalyzer or other separate alcohol monitoring device, and the
11 court may restrict the amount of alcohol the offender may consume
12 during the time the offender is on electronic home monitoring; and

13 (ii) By a fine of not less than \$500 nor more than \$5,000. \$500
14 of the fine may not be suspended unless the court finds the offender
15 to be indigent; or

16 (c) **Penalty for alcohol concentration at least ((0.15)) 0.12.** In
17 the case of a person whose alcohol concentration was at least
18 ((0.15)) 0.12, or for whom by reason of the person's refusal to take
19 a test offered pursuant to RCW 46.20.308 there is no test result
20 indicating the person's alcohol concentration:

21 (i) By imprisonment for not less than 48 consecutive hours nor
22 more than 364 days. In lieu of the mandatory minimum term of
23 imprisonment required under this subsection (1)~~((b))~~ (c)(i), the
24 court, in its discretion, may order not less than 30 days of
25 electronic home monitoring or a 120-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 \$500 nor more than \$5,000. \$500
37 of the fine may not be suspended unless the court finds the offender
38 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~~) 0.10.** In
4 the case of a person whose alcohol concentration was less than
5 (~~0.15~~) 0.10, or for whom for reasons other than the person's
6 refusal to take a test offered pursuant to RCW 46.20.308 there is no
7 test result indicating the person's alcohol concentration:

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

35 (ii) By a fine of not less than \$500 nor more than \$5,000. \$500
36 of the fine may not be suspended unless the court finds the offender
37 to be indigent; (~~or~~)

38 (b) **Penalty for alcohol concentration at least 0.10.** In the case
39 of a person whose alcohol concentration was at least 0.10:

1 (i) By imprisonment for not less than 40 days nor more than 364
2 days. In lieu of the mandatory minimum term of imprisonment required
3 under this subsection (2)(b)(i), the court, in its discretion, may
4 order not less than 40 days of electronic home monitoring or a 120-
5 day period of 24/7 sobriety program monitoring. The court may
6 consider the offender's pretrial 24/7 sobriety program testing as
7 fulfilling a portion of posttrial sentencing. The offender shall pay
8 the cost of electronic home monitoring. The county or municipality in
9 which the penalty is being imposed shall determine the cost. The
10 county or municipality may also require the offender's electronic
11 home monitoring device to include an alcohol detection breathalyzer
12 or other separate alcohol monitoring device, and the court may
13 restrict the amount of alcohol the offender may consume during the
14 time the offender is on electronic home monitoring; and

15 (ii) By a fine of not less than \$600 nor more than \$5,000. \$600
16 of the fine may not be suspended unless the court finds the offender
17 to be indigent; or

18 (c) **Penalty for alcohol concentration at least ((0.15)) 0.12.** In
19 the case of a person whose alcohol concentration was at least
20 ((0.15)) 0.12, or for whom by reason of the person's refusal to take
21 a test offered pursuant to RCW 46.20.308 there is no test result
22 indicating the person's alcohol concentration:

23 (i) By imprisonment for not less than 45 days nor more than 364
24 days and 90 days of electronic home monitoring. Forty-five days of
25 imprisonment and 90 days of electronic home monitoring may not be
26 suspended or converted unless the court finds that the imposition of
27 this mandatory minimum sentence would impose a substantial risk to
28 the offender's physical or mental well-being. If the offender shows
29 that the imposition of this mandatory minimum sentence would impose a
30 substantial risk to the offender's physical or mental well-being, in
31 lieu of the mandatory minimum term of imprisonment and electronic
32 home monitoring under this subsection (2)~~((b))~~ (c)(i), the court
33 may order a minimum of either six months of electronic home
34 monitoring or a 120-day period of 24/7 sobriety program monitoring
35 pursuant to RCW 36.28A.300 through 36.28A.390. Whenever the mandatory
36 minimum sentence is suspended or converted, the court shall state in
37 writing the reason for granting the suspension or conversion and the
38 facts upon which the suspension or conversion is based. The court may
39 consider the offender's pretrial 24/7 sobriety program monitoring as
40 fulfilling a portion of posttrial sentencing. The court shall order

1 an expanded substance use disorder assessment and treatment, if
2 deemed appropriate by the assessment. The offender shall pay for the
3 cost of the electronic monitoring. The county or municipality where
4 the penalty is being imposed shall determine the cost. The court may
5 also require the offender's electronic home monitoring device include
6 an alcohol detection breathalyzer or other separate alcohol
7 monitoring device, and may restrict the amount of alcohol the
8 offender may consume during the time the offender is on electronic
9 home monitoring; and

10 (ii) By a fine of not less than \$750 nor more than \$5,000. \$750
11 of the fine may not be suspended unless the court finds the offender
12 to be indigent.

13 (3) **Two prior offenses in seven years.** Except as provided in RCW
14 46.61.502(6) or 46.61.504(6), a person who is convicted of a
15 violation of RCW 46.61.502 or 46.61.504 and who has two prior
16 offenses within seven years shall be punished as follows:

17 (a) **Penalty for alcohol concentration less than ((0.15)) 0.10.** In
18 the case of a person whose alcohol concentration was less than
19 ((0.15)) 0.10, or for whom for reasons other than the person's
20 refusal to take a test offered pursuant to RCW 46.20.308 there is no
21 test result indicating the person's alcohol concentration:

22 (i) By imprisonment for not less than 90 days nor more than 364
23 days, if available in that county or city, a six-month period of 24/7
24 sobriety program monitoring pursuant to RCW 36.28A.300 through
25 36.28A.390, and 120 days of electronic home monitoring. Ninety days
26 of imprisonment and 120 days of electronic home monitoring may not be
27 suspended or converted unless the court finds that the imposition of
28 this mandatory minimum sentence would impose a substantial risk to
29 the offender's physical or mental well-being. If the offender shows
30 that the imposition of this mandatory minimum sentence would impose a
31 substantial risk to the offender's physical or mental well-being, in
32 lieu of the mandatory minimum term of 90 days of imprisonment and 120
33 days of electronic home monitoring, the court may order 360 days of
34 electronic home monitoring or a 360-day period of 24/7 sobriety
35 monitoring pursuant to RCW 36.28A.300 through 36.28A.390. Whenever
36 the mandatory minimum sentence is suspended or converted, the court
37 shall state in writing the reason for granting the suspension or
38 conversion and the facts upon which the suspension or conversion is
39 based. The court shall order an expanded substance use disorder
40 assessment and treatment, if deemed appropriate by the assessment.

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

8 (ii) By a fine of not less than \$1,000 nor more than \$5,000.
9 \$1,000 of the fine may not be suspended unless the court finds the
10 offender to be indigent; (~~or~~)

11 (b) **Penalty for alcohol concentration at least (~~0.15~~) 0.10**. In
12 the case of a person whose alcohol concentration was at least
13 (~~0.15~~) 0.10, or for whom by reason of the person's refusal to take
14 a test offered pursuant to RCW 46.20.308 there is no test result
15 indicating the person's alcohol concentration:

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

1 and may restrict the amount of alcohol the offender may consume
2 during the time the offender is on electronic home monitoring; and

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

6 (c) **Penalty for alcohol concentration at least 0.12.** In the case
7 of a person whose alcohol concentration was at least 0.12, or for
8 whom by reason of the person's refusal to take a test offered
9 pursuant to RCW 46.20.308, there is no test result indicating the
10 person's alcohol concentration:

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

37 (ii) By a fine of not less than \$1,500 nor more than \$5,000.
38 \$1,500 of the fine may not be suspended unless the court finds the
39 offender to be indigent.

1 (4) **Three or more prior offenses in ((15)) 10 years.** A person who
2 is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be
3 punished under chapter 9.94A RCW if:

4 (a) The person has three or more prior offenses within ((15)) 10
5 years; or

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

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

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

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

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

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

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

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

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

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

39 (iii) Order the person to install and use a functioning ignition
40 interlock or other device in addition to a period of 24/7 sobriety

1 program monitoring pursuant to subsections (1) through (3) of this
2 section.

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

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

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

22 (c) In any case in which the person has one prior offense within
23 seven years, and except as provided in RCW 46.61.502(6) or
24 46.61.504(6), order an additional five days of imprisonment to be
25 served consecutively for each passenger under the age of 16, and a
26 fine of not less than \$2,000 and not more than \$5,000 for each
27 passenger under the age of 16. One thousand dollars of the fine for
28 each passenger under the age of 16 may not be suspended unless the
29 court finds the offender to be indigent;

30 (d) In any case in which the person has two prior offenses within
31 seven years, and except as provided in RCW 46.61.502(6) or
32 46.61.504(6), order an additional ten days of imprisonment to be
33 served consecutively for each passenger under the age of 16, and a
34 fine of not less than \$3,000 and not more than \$10,000 for each
35 passenger under the age of 16. \$1,000 of the fine for each passenger
36 under the age of 16 may not be suspended unless the court finds the
37 offender to be indigent.

38 (7) **Other items courts must consider while setting penalties.** In
39 exercising its discretion in setting penalties within the limits

1 allowed by this section, the court shall particularly consider the
2 following:

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

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

7 (c) Whether the driver was driving in the opposite direction of
8 the normal flow of traffic on a multiple lane highway, as defined by
9 RCW 46.04.350, with a posted speed limit of 45 miles per hour or
10 greater; and

11 (d) Whether a child passenger under the age of 16 was an occupant
12 in the driver's vehicle.

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

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

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

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

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

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

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

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

10 (B) Where there has been one prior offense within seven years, be
11 revoked or denied by the department for 900 days; or

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

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

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

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

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

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

27 (ii) If a person has already served a suspension, revocation, or
28 denial under RCW 46.20.3101 for a period equal to or greater than the
29 period imposed under this subsection (9), the department shall
30 provide notice of full credit, shall provide for no further
31 suspension or revocation under this subsection provided the person
32 has completed the requirements under RCW 46.20.311 and paid the
33 probationary license fee under RCW 46.20.355 by the date specified in
34 the notice under RCW 46.20.245, and shall impose no additional
35 reissue fees for this credit.

36 (c) Upon receipt of a notice from the court under RCW 36.28A.390
37 that a participant has been removed from a 24/7 sobriety program, the
38 department must resume any suspension, revocation, or denial that had
39 been terminated early under this subsection due to participation in
40 the program, granting credit on a day-for-day basis for any portion

1 of a suspension, revocation, or denial already served under RCW
2 46.20.3101 or this section arising out of the same incident.

3 (d) Upon its own motion or upon motion by a person, a court may
4 find, on the record, that notice to the department under RCW
5 46.20.270 has been delayed for three years or more as a result of a
6 clerical or court error. If so, the court may order that the person's
7 license, permit, or nonresident privilege shall not be revoked,
8 suspended, or denied for that offense. The court shall send notice of
9 the finding and order to the department and to the person. Upon
10 receipt of the notice from the court, the department shall not
11 revoke, suspend, or deny the license, permit, or nonresident
12 privilege of the person for that offense.

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

16 (10) **Probation of driving privilege.** After expiration of any
17 period of suspension, revocation, or denial of the offender's
18 license, permit, or privilege to drive required by this section, the
19 department shall place the offender's driving privilege in
20 probationary status pursuant to RCW 46.20.355.

21 (11) **Conditions of probation.** (a) In addition to any
22 nonsuspendable and nondeferrable jail sentence required by this
23 section, whenever the court imposes up to 364 days in jail, the court
24 shall also suspend but shall not defer a period of confinement for a
25 period not exceeding five years. The court shall impose conditions of
26 probation that include: (i) Not driving a motor vehicle within this
27 state without a valid license to drive; (ii) not driving a motor
28 vehicle within this state without proof of liability insurance or
29 other financial responsibility for the future pursuant to RCW
30 46.30.020; (iii) not driving or being in physical control of a motor
31 vehicle within this state while having an alcohol concentration of
32 ~~((0.08))~~ 0.05 or more or a THC concentration of 5.00 nanograms per
33 milliliter of whole blood or higher, within two hours after driving;
34 (iv) not refusing to submit to a test of his or her breath or blood
35 to determine alcohol or drug concentration upon request of a law
36 enforcement officer who has reasonable grounds to believe the person
37 was driving or was in actual physical control of a motor vehicle
38 within this state while under the influence of intoxicating liquor or
39 drug; and (v) not driving a motor vehicle in this state without a
40 functioning ignition interlock device as required by the department

1 under RCW 46.20.720. The court may impose conditions of probation
2 that include nonrepetition, installation of an ignition interlock
3 device on the probationer's motor vehicle, substance use disorder
4 treatment, supervised probation, or other conditions that may be
5 appropriate. The sentence may be imposed in whole or in part upon
6 violation of a condition of probation during the suspension period.

7 (b) For each violation of mandatory conditions of probation under
8 (a)(i), (ii), (iii), (iv), or (v) of this subsection, the court shall
9 order the convicted person to be confined for 30 days, which shall
10 not be suspended or deferred.

11 (c)(i) Except as provided in (c)(ii) of this subsection, for each
12 incident involving a violation of a mandatory condition of probation
13 imposed under this subsection, the license, permit, or privilege to
14 drive of the person shall be suspended by the court for 30 days or,
15 if such license, permit, or privilege to drive already is suspended,
16 revoked, or denied at the time the finding of probation violation is
17 made, the suspension, revocation, or denial then in effect shall be
18 extended by 30 days. The court shall notify the department of any
19 suspension, revocation, or denial or any extension of a suspension,
20 revocation, or denial imposed under this subsection. The person may
21 apply for an ignition interlock driver's license under RCW 46.20.385
22 during the suspension period.

23 (ii) For each incident involving a violation of RCW
24 46.20.342(1)(c), the court has discretion not to impose a suspension
25 when the person provides the court with proof that the violation has
26 been cured within 30 days. The court is not required to notify the
27 department of the violation unless it is not cured within 30 days.

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

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

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

37 (c) The court determines that there is reason to believe that the
38 offender would violate the conditions of the electronic home
39 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 364 days, the
10 offender shall serve the jail portion of the sentence first, and the
11 electronic home monitoring or alternative portion of the sentence
12 shall be reduced so that the combination does not exceed 364 days.

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

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

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

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

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

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

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

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

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

36 (vii) A conviction for a violation of RCW 47.68.220 or an
37 equivalent local ordinance committed in a careless or reckless manner
38 if the conviction is the result of a charge that was originally filed
39 as a violation of RCW 47.68.220 or an equivalent local ordinance
40 while under the influence of intoxicating liquor or any drug;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (d) "Within 15 years" means that the arrest for a prior offense
19 occurred within 15 years before or after the arrest for the current
20 offense.

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

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

25 (1) Upon the trial of any civil or criminal action or proceeding
26 arising out of acts alleged to have been committed by any person
27 while driving or in actual physical control of a vehicle while under
28 the influence of intoxicating liquor or any drug, if the person's
29 alcohol concentration is less than (~~(0.08)~~) 0.05 or the person's THC
30 concentration is less than 5.00, it is evidence that may be
31 considered with other competent evidence in determining whether the
32 person was under the influence of intoxicating liquor or any drug.

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

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

38 (c) The foregoing provisions of this section shall not be
39 construed as limiting the introduction of any other competent

1 evidence bearing upon the question whether the person was under the
2 influence of intoxicating liquor or any drug.

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

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

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

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

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

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

31 (v) The internal standard test resulted in the message
32 "verified";

33 (vi) The two breath samples agree to within plus or minus (~~(ten))~~
34 10 percent of their mean to be determined by the method approved by
35 the state toxicologist;

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

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

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

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

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

36 (6) When a venous blood sample is performed by a forensic
37 phlebotomist certified under chapter 18.360 RCW, it must be done
38 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~~) 0.05 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)~~) 0.05 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~~) 0.05 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)~~) 0.05 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)~~) 0.05 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 **Sec. 8.** RCW 46.25.090 and 2023 c 35 s 6 are each amended to read
7 as follows:

8 (1) A person is disqualified from driving a commercial motor
9 vehicle for a period of not less than one year if a report has been
10 received by the department pursuant to RCW 46.20.308 or 46.25.120, or
11 if the person has been convicted of a first violation, within this or
12 any other jurisdiction, of:

13 (a) Driving a motor vehicle under the influence of alcohol or any
14 drug;

15 (b) Driving a commercial motor vehicle while the alcohol
16 concentration in the person's system is 0.04 or more or any
17 measurable amount of THC concentration, or driving a noncommercial
18 motor vehicle while the alcohol concentration in the person's system
19 is (~~0.08~~) 0.05 or more, or is 0.02 or more if the person is under
20 age 21, or with a THC concentration of 5.00 nanograms per milliliter
21 of whole blood or more, or a THC concentration above 0.00 if the
22 person is under the age of 21, as determined by any testing methods
23 approved by law in this state or any other state or jurisdiction;

24 (c) Leaving the scene of an accident involving a motor vehicle
25 driven by the person;

26 (d) Using a motor vehicle in the commission of a felony;

27 (e) Refusing to submit to a test or tests to determine the
28 driver's alcohol concentration or the presence of any drug while
29 driving a motor vehicle;

30 (f) Driving a commercial motor vehicle when, as a result of prior
31 violations committed while operating a commercial motor vehicle, the
32 driver's commercial driver's license is revoked, suspended, or
33 canceled, or the driver is disqualified from operating a commercial
34 motor vehicle;

35 (g) Causing a fatality through the negligent operation of a
36 commercial motor vehicle, including but not limited to the crimes of
37 vehicular homicide and negligent homicide.

1 If any of the violations set forth in this subsection occurred
2 while transporting hazardous material, the person is disqualified for
3 a period of not less than three years.

4 (2) A person is disqualified for life if it has been determined
5 that the person has committed or has been convicted of two or more
6 violations of any of the offenses specified in subsection (1) of this
7 section, or any combination of those offenses, arising from two or
8 more separate incidents.

9 (3) The department may adopt rules, in accordance with federal
10 regulations, establishing guidelines, including conditions, under
11 which a disqualification for life under subsection (2) of this
12 section may be reduced to a period of not less than 10 years.

13 (4) A person is disqualified from driving a commercial motor
14 vehicle for life who:

15 (a) Uses a motor vehicle in the commission of a felony involving
16 the manufacture, distribution, or dispensing of a controlled
17 substance, as defined by chapter 69.50 RCW, or possession with intent
18 to manufacture, distribute, or dispense a controlled substance, as
19 defined by chapter 69.50 RCW; or

20 (b) Uses a motor vehicle in the commission of any trafficking
21 offense under RCW 9A.40.100, which offenses are deemed consistent
22 with felonies involving severe forms of trafficking in persons as
23 described by the federal motor carrier safety administration.

24 (5)(a) A person is disqualified from driving a commercial motor
25 vehicle for a period of:

26 (i) Not less than 60 days if:

27 (A) Convicted of or found to have committed a second serious
28 traffic violation while driving a commercial motor vehicle; or

29 (B) Convicted of reckless driving, where there has been a prior
30 serious traffic violation; or

31 (ii) Not less than 120 days if:

32 (A) Convicted of or found to have committed a third or subsequent
33 serious traffic violation while driving a commercial motor vehicle;

34 or

35 (B) Convicted of reckless driving, where there has been two or
36 more prior serious traffic violations.

37 (b) The disqualification period under (a)(ii) of this subsection
38 must be in addition to any other previous period of disqualification.

39 (c) For purposes of determining prior serious traffic violations
40 under this subsection, each conviction of or finding that a driver

1 has committed a serious traffic violation while driving a commercial
2 motor vehicle or noncommercial motor vehicle, arising from a separate
3 incident occurring within a three-year period, must be counted.

4 (6) A person is disqualified from driving a commercial motor
5 vehicle for a period of:

6 (a) Not less than 180 days nor more than one year if convicted of
7 or found to have committed a first violation of an out-of-service
8 order while driving a commercial vehicle;

9 (b) Not less than two years nor more than five years if, during a
10 10-year period, the person is convicted of or is found to have
11 committed two violations of out-of-service orders while driving a
12 commercial motor vehicle in separate incidents;

13 (c) Not less than three years nor more than five years if, during
14 a 10-year period, the person is convicted of or is found to have
15 committed three or more violations of out-of-service orders while
16 driving commercial motor vehicles in separate incidents;

17 (d) Not less than 180 days nor more than two years if the person
18 is convicted of or is found to have committed a first violation of an
19 out-of-service order while transporting hazardous materials, or while
20 operating motor vehicles designed to transport 16 or more passengers,
21 including the driver. A person is disqualified for a period of not
22 less than three years nor more than five years if, during a 10-year
23 period, the person is convicted of or is found to have committed
24 subsequent violations of out-of-service orders, in separate
25 incidents, while transporting hazardous materials, or while operating
26 motor vehicles designed to transport ((~~sixteen~~)) 16 or more
27 passengers, including the driver.

28 (7)(a) A person is disqualified from driving a commercial motor
29 vehicle for the period of time specified in (b) of this subsection if
30 he or she is convicted of or is found to have committed one of the
31 following six offenses at a railroad-highway grade crossing while
32 operating a commercial motor vehicle in violation of a federal,
33 state, or local law or regulation:

34 (i) For drivers who are not required to always stop, failing to
35 slow down and check that the tracks are clear of an approaching train
36 or other on-track equipment;

37 (ii) For drivers who are not required to always stop, failing to
38 stop before reaching the crossing, if the tracks are not clear;

39 (iii) For drivers who are always required to stop, failing to
40 stop before driving onto the crossing;

1 (iv) For all drivers, failing to have sufficient space to drive
2 completely through the crossing without stopping;

3 (v) For all drivers, failing to obey a traffic control device or
4 the directions of an enforcement officer at the crossing;

5 (vi) For all drivers, failing to negotiate a crossing because of
6 insufficient undercarriage clearance.

7 (b) A person is disqualified from driving a commercial motor
8 vehicle for a period of:

9 (i) Not less than 60 days if the driver is convicted of or is
10 found to have committed a first violation of a railroad-highway grade
11 crossing violation;

12 (ii) Not less than 120 days if the driver is convicted of or is
13 found to have committed a second railroad-highway grade crossing
14 violation in separate incidents within a three-year period;

15 (iii) Not less than one year if the driver is convicted of or is
16 found to have committed a third or subsequent railroad-highway grade
17 crossing violation in separate incidents within a three-year period.

18 (8) A person is disqualified from driving a commercial motor
19 vehicle for not more than one year if a report has been received by
20 the department from the federal motor carrier safety administration
21 that the person's driving has been determined to constitute an
22 imminent hazard as defined by 49 C.F.R. 383.5. A person who is
23 simultaneously disqualified from driving a commercial motor vehicle
24 under this subsection and under other provisions of this chapter, or
25 under 49 C.F.R. 383.52, shall serve those disqualification periods
26 concurrently.

27 (9) Within 10 days after suspending, revoking, or canceling a
28 commercial driver's license or disqualifying a driver from operating
29 a commercial motor vehicle, the department shall update its records
30 to reflect that action.

31 **Sec. 9.** RCW 38.38.760 and 2009 c 378 s 24 are each amended to
32 read as follows:

33 (1) Any person subject to this code who:

34 (a) Operates or physically controls any vehicle, aircraft, or
35 vessel in a reckless or wanton manner or while impaired by a
36 substance described in RCW 38.38.762; or

37 (b) Operates or is in actual physical control of any vehicle,
38 aircraft, or vessel while drunk or when the alcohol concentration in

1 the person's blood or breath is equal to or exceeds the applicable
2 limit under subsection (2) of this section; or

3 (c) Operates or is in actual physical control of any vehicle,
4 aircraft, or vessel in a reckless or wanton manner
5 shall be punished as a court-martial may direct.

6 (2) For purposes of subsection (1) of this section, the blood
7 alcohol content limit with respect to alcohol concentration in a
8 person's blood is (~~(0.08)~~) 0.05 grams of alcohol per (~~(one hundred)~~)
9 100 milliliters of blood and with respect to alcohol concentration in
10 a person's breath is (~~(0.08)~~) 0.05 grams of alcohol per (~~(two hundred~~
11 ~~ten)~~) 210 liters of breath, as shown by chemical analysis.

12 (3) For purposes of this section, "blood alcohol content limit"
13 means the amount of alcohol concentration in a person's blood or
14 breath at which operation or control of a vehicle, aircraft, or
15 vessel is prohibited.

16 **Sec. 10.** RCW 79A.60.040 and 2022 c 16 s 136 are each amended to
17 read as follows:

18 (1) It is unlawful for any person to operate a vessel in a
19 reckless manner.

20 (2) It is unlawful for a person to operate a vessel while under
21 the influence of intoxicating liquor, cannabis, or any drug. A person
22 is considered to be under the influence of intoxicating liquor,
23 cannabis, or any drug if, within two hours of operating a vessel:

24 (a) The person has an alcohol concentration of (~~(0.08)~~) 0.05 or
25 higher as shown by analysis of the person's breath or blood made
26 under RCW 46.61.506; or

27 (b) The person has a THC concentration of 5.00 or higher as shown
28 by analysis of the person's blood made under RCW 46.61.506; or

29 (c) The person is under the influence of or affected by
30 intoxicating liquor, cannabis, or any drug; or

31 (d) The person is under the combined influence of or affected by
32 intoxicating liquor, cannabis, and any drug.

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

37 (4)(a) Any person who operates a vessel within this state is
38 deemed to have given consent, subject to the provisions of RCW
39 46.61.506, to a test or tests of the person's breath for the purpose

1 of determining the alcohol concentration in the person's breath if
2 arrested for any offense where, at the time of the arrest, the
3 arresting officer has reasonable grounds to believe the person was
4 operating a vessel while under the influence of intoxicating liquor
5 or a combination of intoxicating liquor and any other drug.

6 (b) When an arrest results from an accident in which there has
7 been serious bodily injury to another person or death or the
8 arresting officer has reasonable grounds to believe the person was
9 operating a vessel while under the influence of THC or any other
10 drug, a blood test may be administered with the consent of the
11 arrested person and a valid waiver of the warrant requirement or
12 without the consent of the person so arrested pursuant to a search
13 warrant or when exigent circumstances exist.

14 (c) Neither consent nor this section precludes a police officer
15 from obtaining a search warrant for a person's breath or blood.

16 (d) An arresting officer may administer field sobriety tests when
17 circumstances permit.

18 (5) The test or tests of breath must be administered pursuant to
19 RCW 46.20.308. The officer shall warn the person that if the person
20 refuses to take the test, the person will be issued a class 1 civil
21 infraction under RCW 7.80.120.

22 (6) A violation of subsection (1) of this section is a
23 misdemeanor. A violation of subsection (2) of this section is a gross
24 misdemeanor. In addition to the statutory penalties imposed, the
25 court may order the defendant to pay restitution for any damages or
26 injuries resulting from the offense.

27 (7) For the purposes of this subsection, "cannabis" has the
28 meaning provided in RCW 69.50.101.

29 NEW SECTION. **Sec. 11.** A new section is added to chapter 43.59
30 RCW to read as follows:

31 The Washington traffic safety commission shall develop and
32 implement a public information campaign related to this act. In
33 developing and implementing the public information campaign, the
34 commission must:

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

37 (2) Include multiple print advertisements in the largest
38 newspapers in each county;

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

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

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

10 NEW SECTION. **Sec. 12.** A new section is added to chapter 66.44
11 RCW to read as follows:

12 The legislature finds that current civil law relating to civil
13 liability is that a licensed commercial vendor or quasi-commercial
14 vendor owes a duty to third persons not to sell, serve, or furnish
15 alcohol to a person who is apparently under the influence of alcohol,
16 or who is obviously intoxicated. This current civil law is both
17 statutory and also developed in case law. The legislature further
18 finds that civil liability to third persons under the civil law does
19 not depend upon a finding of the blood or breath alcohol
20 concentration. Therefore, nothing in this act shall be construed to
21 change current civil law for civil liability of a licensed commercial
22 vendor or quasi-commercial vendor.

23 NEW SECTION. **Sec. 13.** A new section is added to chapter 66.08
24 RCW to read as follows:

25 (1) The Washington state institute for public policy must conduct
26 an evaluation of the impacts of this act during the first two years
27 of implementation. By March 1, 2029, the institute must submit a
28 report to the appropriate committees of the legislature detailing the
29 results of its evaluation. The evaluation must include, but is not
30 limited to, the impact of this act on:

31 (a) The number of serious and fatal traffic crashes;

32 (b) Driving under the influence arrests and adjudications for
33 driving under the influence offenses;

34 (c) Equity outcomes on overburdened communities as defined in RCW
35 70A.02.010;

36 (d) Sales and other business effects on the hospitality industry
37 in the state; and

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

3 (2) This section expires November 1, 2029.

4 NEW SECTION. **Sec. 14.** This act takes effect July 1, 2026.

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