
SENATE BILL 5982

State of Washington

67th Legislature

2022 Regular Session

By Senators Lovick and Lias

1 AN ACT Relating to alcohol concentration; amending RCW 46.61.502,
2 46.61.504, 46.61.5055, and 46.61.506; creating a new section;
3 prescribing penalties; and providing an effective date.

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

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

1 concentration level, 538 to 1,790 lives would be saved each year, and
2 alcohol-related fatalities would decrease by 11.1 percent overall.
3 Given the increase in traffic fatalities from impaired driving, the
4 legislature declares that it is time to keep Washington's roads safer
5 and lower the number of fatal crashes caused by impaired drivers by
6 lowering the blood alcohol limit to .05.

7 **Sec. 2.** RCW 46.61.502 and 2017 c 335 s 1 are each amended to
8 read as follows:

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

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

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

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

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

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

26 (3)(a) It is an affirmative defense to a violation of subsection
27 (1)(a) of this section, which the defendant must prove by a
28 preponderance of the evidence, that the defendant consumed a
29 sufficient quantity of alcohol after the time of driving and before
30 the administration of an analysis of the person's breath or blood to
31 cause the defendant's alcohol concentration to be (~~(0.08)~~) 0.05 or
32 more within two hours after driving. The court shall not admit
33 evidence of this defense unless the defendant notifies the
34 prosecution prior to the omnibus or pretrial hearing in the case of
35 the defendant's intent to assert the affirmative defense.

36 (b) It is an affirmative defense to a violation of subsection
37 (1)(b) of this section, which the defendant must prove by a
38 preponderance of the evidence, that the defendant consumed a
39 sufficient quantity of marijuana after the time of driving and before

1 the administration of an analysis of the person's blood to cause the
2 defendant's THC concentration to be 5.00 or more within two hours
3 after driving. The court shall not admit evidence of this defense
4 unless the defendant notifies the prosecution prior to the omnibus or
5 pretrial hearing in the case of the defendant's intent to assert the
6 affirmative defense.

7 (4) (a) Analyses of blood or breath samples obtained more than two
8 hours after the alleged driving may be used as evidence that within
9 two hours of the alleged driving, a person had an alcohol
10 concentration of (~~0.08~~) 0.05 or more in violation of subsection
11 (1)(a) of this section, and in any case in which the analysis shows
12 an alcohol concentration above 0.00 may be used as evidence that a
13 person was under the influence of or affected by intoxicating liquor
14 or any drug in violation of subsection (1)(c) or (d) of this section.

15 (b) Analyses of blood samples obtained more than two hours after
16 the alleged driving may be used as evidence that within two hours of
17 the alleged driving, a person had a THC concentration of 5.00 or more
18 in violation of subsection (1)(b) of this section, and in any case in
19 which the analysis shows a THC concentration above 0.00 may be used
20 as evidence that a person was under the influence of or affected by
21 marijuana in violation of subsection (1)(c) or (d) of this section.

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

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

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

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

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

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

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

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

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

38 (1) A person is guilty of being in actual physical control of a
39 motor vehicle while under the influence of intoxicating liquor or any

1 drug if the person has actual physical control of a vehicle within
2 this state:

3 (a) And the person has, within two hours after being in actual
4 physical control of the vehicle, an alcohol concentration of (~~0.08~~)
5 0.05 or higher as shown by analysis of the person's breath or blood
6 made under RCW 46.61.506; or

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

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

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

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

23 (3)(a) It is an affirmative defense to a violation of subsection
24 (1)(a) of this section which the defendant must prove by a
25 preponderance of the evidence that the defendant consumed a
26 sufficient quantity of alcohol after the time of being in actual
27 physical control of the vehicle and before the administration of an
28 analysis of the person's breath or blood to cause the defendant's
29 alcohol concentration to be (~~0.08~~) 0.05 or more within two hours
30 after being in such control. The court shall not admit evidence of
31 this defense unless the defendant notifies the prosecution prior to
32 the omnibus or pretrial hearing in the case of the defendant's intent
33 to assert the affirmative defense.

34 (b) It is an affirmative defense to a violation of subsection
35 (1)(b) of this section, which the defendant must prove by a
36 preponderance of the evidence, that the defendant consumed a
37 sufficient quantity of marijuana 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 blood to cause the defendant's THC
40 concentration to be 5.00 or more within two hours after being in

1 control of the vehicle. The court shall not admit evidence of this
2 defense unless the defendant notifies the prosecution prior to the
3 omnibus or pretrial hearing in the case of the defendant's intent to
4 assert the affirmative defense.

5 (4) (a) Analyses of blood or breath samples obtained more than two
6 hours after the alleged being in actual physical control of a vehicle
7 may be used as evidence that within two hours of the alleged being in
8 such control, a person had an alcohol concentration of (~~(0.08)~~) 0.05
9 or more in violation of subsection (1) (a) of this section, and in any
10 case in which the analysis shows an alcohol concentration above 0.00
11 may be used as evidence that a person was under the influence of or
12 affected by intoxicating liquor or any drug in violation of
13 subsection (1) (c) or (d) of this section.

14 (b) Analyses of blood samples obtained more than two hours after
15 the alleged being in actual physical control of a vehicle may be used
16 as evidence that within two hours of the alleged being in control of
17 the vehicle, a person had a THC concentration of 5.00 or more in
18 violation of subsection (1) (b) of this section, and in any case in
19 which the analysis shows a THC concentration above 0.00 may be used
20 as evidence that a person was under the influence of or affected by
21 marijuana in violation of subsection (1) (c) or (d) of this section.

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

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

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

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

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

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

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

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

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

38 (1) **No prior offenses in seven years.** Except as provided in RCW
39 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 no prior offense
2 within seven years shall be punished as follows:

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

8 (i) By imprisonment for not less than (~~twenty-four~~) 24
9 consecutive hours nor more than (~~three hundred sixty-four~~) 364
10 days. In lieu of the mandatory minimum term of imprisonment required
11 under this subsection (1)(a)(i), the court, in its discretion, may
12 order not less than (~~fifteen~~) 15 days of electronic home monitoring
13 or a (~~ninety-day~~) 90-day period of 24/7 sobriety program
14 monitoring. The court may consider the offender's pretrial 24/7
15 sobriety program monitoring as fulfilling a portion of posttrial
16 sentencing. The offender shall pay the cost of electronic home
17 monitoring. The county or municipality in which the penalty is being
18 imposed shall determine the cost. The court may also require the
19 offender's electronic home monitoring device or other separate
20 alcohol monitoring device to include an alcohol detection
21 breathalyzer, and the court may restrict the amount of alcohol the
22 offender may consume during the time the offender is on electronic
23 home monitoring; and

24 (ii) By a fine of not less than (~~three hundred fifty dollars~~)
25 \$350 nor more than (~~five thousand dollars~~) \$5,000. (~~Three hundred~~
26 ~~fifty dollars~~) \$350 of the fine may not be suspended unless the
27 court finds the offender to be indigent; or

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

33 (i) By imprisonment for not less than (~~forty-eight~~) 48
34 consecutive hours nor more than (~~three hundred sixty-four days~~)
35 364. In lieu of the mandatory minimum term of imprisonment required
36 under this subsection (1)(b)(i), the court, in its discretion, may
37 order not less than (~~thirty~~) 30 days of electronic home monitoring
38 or a (~~one hundred twenty-day~~) 120-day period of 24/7 sobriety
39 program monitoring. The court may consider the offender's pretrial
40 24/7 sobriety program testing as fulfilling a portion of posttrial

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

9 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor
10 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)
11 \$500 of the fine may not be suspended unless the court finds the
12 offender to be indigent.

13 (2) **One prior offense 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 one prior offense
16 within seven years shall be punished as follows:

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

22 (i) By imprisonment for not less than (~~thirty~~) 30 days nor more
23 than (~~three hundred sixty four~~) 364 days and (~~sixty~~) 60 days of
24 electronic home monitoring. Thirty days of imprisonment and (~~sixty~~)
25 60 days of electronic home monitoring may not be suspended or
26 converted unless the court finds that the imposition of this
27 mandatory minimum sentence would impose a substantial risk to the
28 offender's physical or mental well-being. If the offender shows that
29 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 term of imprisonment and electronic home
32 monitoring under this subsection (2)(a)(i), the court may order a
33 minimum of either (~~one hundred eighty~~) 180 days of electronic home
34 monitoring or a (~~one hundred twenty day~~) 120-day period of 24/7
35 sobriety program monitoring pursuant to RCW 36.28A.300 through
36 36.28A.390. Whenever the mandatory minimum sentence is suspended or
37 converted, the court shall state in writing the reason for granting
38 the suspension or conversion and the facts upon which the suspension
39 or conversion is based. The court may consider the offender's
40 pretrial 24/7 sobriety program monitoring as fulfilling a portion of

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

10 (ii) By a fine of not less than (~~five hundred dollars~~) \$500 nor
11 more than (~~five thousand dollars~~) \$5,000. (~~Five hundred dollars~~)
12 \$500 of the fine may not be suspended unless the court finds the
13 offender to be indigent; or

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

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

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

7 (ii) By a fine of not less than (~~seven hundred fifty dollars~~)
8 \$750 nor more than (~~five thousand dollars~~) \$5,000. (~~Seven hundred~~
9 ~~fifty dollars~~) \$750 of the fine may not be suspended unless the
10 court finds the offender to be indigent.

11 (3) **Two prior offenses in seven years.** Except as provided in RCW
12 46.61.502(6) or 46.61.504(6), a person who is convicted of a
13 violation of RCW 46.61.502 or 46.61.504 and who has two prior
14 offenses within seven years shall be punished as follows:

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

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

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

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

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

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

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

7 (ii) By a fine of not less than (~~one thousand five hundred~~
8 ~~dollars~~) \$1,500 nor more than (~~five thousand dollars~~) \$5,000.
9 (~~One thousand five hundred~~) \$1,500 dollars of the fine may not be
10 suspended unless the court finds the offender to be indigent.

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

14 (a) The person has three or more prior offenses within (~~ten~~) 10
15 years; or

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

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

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

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

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

24 (5) **Monitoring.** (a) **Ignition interlock device.** The court shall
25 require any person convicted of a violation of RCW 46.61.502 or
26 46.61.504 or an equivalent local ordinance to comply with the rules
27 and requirements of the department regarding the installation and use
28 of a functioning ignition interlock device installed on all motor
29 vehicles operated by the person.

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

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

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

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

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

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

18 (a) Order the use of an ignition interlock or other device for an
19 additional (~~twelve~~) 12 months for each passenger under the age of
20 (~~sixteen~~) 16 when the person is subject to the penalties under
21 subsection (1)(a), (2)(a), or (3)(a) of this section; and order the
22 use of an ignition interlock device for an additional (~~eighteen~~) 18
23 months for each passenger under the age of (~~sixteen~~) 16 when the
24 person is subject to the penalties under subsection (1)(b), (2)(b),
25 (3)(b), or (4) of this section;

26 (b) In any case in which the person has no prior offenses within
27 seven years, and except as provided in RCW 46.61.502(6) or
28 46.61.504(6), order an additional (~~twenty-four~~) 24 hours of
29 imprisonment to be served consecutively for each passenger under the
30 age of (~~sixteen~~) 16, and a fine of not less than (~~one thousand~~
31 ~~dollars~~) \$1,000 and not more than (~~five thousand dollars~~) \$5,000
32 for each passenger under the age of (~~sixteen~~) 16. (~~One thousand~~
33 ~~dollars~~) \$1,000 of the fine for each passenger under the age of
34 (~~sixteen~~) 16 may not be suspended unless the court finds the
35 offender to be indigent;

36 (c) In any case in which the person has one prior offense within
37 seven years, and except as provided in RCW 46.61.502(6) or
38 46.61.504(6), order an additional five days of imprisonment to be
39 served consecutively for each passenger under the age of (~~sixteen~~)
40 16, and a fine of not less than (~~two thousand dollars~~) \$2,000 and

1 not more than (~~five thousand dollars~~) \$5,000 for each passenger
2 under the age of (~~sixteen~~) 16. One thousand dollars of the fine for
3 each passenger under the age of (~~sixteen~~) 16 may not be suspended
4 unless the court finds the offender to be indigent;

5 (d) In any case in which the person has two prior offenses within
6 seven years, and except as provided in RCW 46.61.502(6) or
7 46.61.504(6), order an additional ten days of imprisonment to be
8 served consecutively for each passenger under the age of (~~sixteen~~)
9 16, and a fine of not less than (~~three thousand dollars~~) \$3,000 and
10 not more than (~~ten thousand dollars~~) \$10,000 for each passenger
11 under the age of (~~sixteen~~) 16. (~~One thousand dollars~~) \$1,000 of
12 the fine for each passenger under the age of (~~sixteen~~) 16 may not
13 be suspended unless the court finds the offender to be indigent.

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

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

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

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

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

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

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

35 (i) **Penalty for alcohol concentration less than 0.15.** If the
36 person's alcohol concentration was less than 0.15, or if for reasons
37 other than the person's refusal to take a test offered under RCW
38 46.20.308 there is no test result indicating the person's alcohol
39 concentration:

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

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

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

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

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

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

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

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

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

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

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

39 (b) (i) The department shall grant credit on a day-for-day basis
40 for a suspension, revocation, or denial imposed under this subsection

1 (9) for any portion of a suspension, revocation, or denial already
2 served under RCW 46.20.3101 arising out of the same incident.

3 (ii) If a person has already served a suspension, revocation, or
4 denial under RCW 46.20.3101 for a period equal to or greater than the
5 period imposed under this subsection (9), the department shall
6 provide notice of full credit, shall provide for no further
7 suspension or revocation under this subsection provided the person
8 has completed the requirements under RCW 46.20.311 and paid the
9 probationary license fee under RCW 46.20.355 by the date specified in
10 the notice under RCW 46.20.245, and shall impose no additional
11 reissue fees for this credit.

12 (c) Upon receipt of a notice from the court under RCW 36.28A.390
13 that a participant has been removed from a 24/7 sobriety program, the
14 department must resume any suspension, revocation, or denial that had
15 been terminated early under this subsection due to participation in
16 the program, granting credit on a day-for-day basis for any portion
17 of a suspension, revocation, or denial already served under RCW
18 46.20.3101 or this section arising out of the same incident.

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

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

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

37 (11) **Conditions of probation.** (a) In addition to any
38 nonsuspendable and nondeferrable jail sentence required by this
39 section, whenever the court imposes up to (~~three hundred sixty-~~
40 ~~four~~) 364 days in jail, the court shall also suspend but shall not

1 defer a period of confinement for a period not exceeding five years.
2 The court shall impose conditions of probation that include: (i) Not
3 driving a motor vehicle within this state without a valid license to
4 drive; (ii) not driving a motor vehicle within this state without
5 proof of liability insurance or other financial responsibility for
6 the future pursuant to RCW 46.30.020; (iii) not driving or being in
7 physical control of a motor vehicle within this state while having an
8 alcohol concentration of (~~(0.08)~~) 0.05 or more or a THC concentration
9 of 5.00 nanograms per milliliter of whole blood or higher, within two
10 hours after driving; (iv) not refusing to submit to a test of his or
11 her breath or blood to determine alcohol or drug concentration upon
12 request of a law enforcement officer who has reasonable grounds to
13 believe the person was driving or was in actual physical control of a
14 motor vehicle within this state while under the influence of
15 intoxicating liquor or drug; and (v) not driving a motor vehicle in
16 this state without a functioning ignition interlock device as
17 required by the department under RCW 46.20.720. The court may impose
18 conditions of probation that include nonrepetition, installation of
19 an ignition interlock device on the probationer's motor vehicle,
20 substance use disorder treatment, supervised probation, or other
21 conditions that may be appropriate. The sentence may be imposed in
22 whole or in part upon violation of a condition of probation during
23 the suspension period.

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

28 (c) For each incident involving a violation of a mandatory
29 condition of probation imposed under this subsection, the license,
30 permit, or privilege to drive of the person shall be suspended by the
31 court for (~~(thirty)~~) 30 days or, if such license, permit, or
32 privilege to drive already is suspended, revoked, or denied at the
33 time the finding of probation violation is made, the suspension,
34 revocation, or denial then in effect shall be extended by (~~(thirty)~~)
35 30 days. The court shall notify the department of any suspension,
36 revocation, or denial or any extension of a suspension, revocation,
37 or denial imposed under this subsection.

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

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

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

8 (c) The court determines that there is reason to believe that the
9 offender would violate the conditions of the electronic home
10 monitoring penalty.

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

18 Whenever the combination of jail time and electronic home
19 monitoring or alternative sentence would exceed (~~three hundred~~
20 ~~sixty-four~~) 364 days, the offender shall serve the jail portion of
21 the sentence first, and the electronic home monitoring or alternative
22 portion of the sentence shall be reduced so that the combination does
23 not exceed (~~three hundred sixty-four~~) 364 days.

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

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

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

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

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

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

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

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

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

8 (vii) A conviction for a violation of RCW 47.68.220 or an
9 equivalent local ordinance committed in a careless or reckless manner
10 if the conviction is the result of a charge that was originally filed
11 as a violation of RCW 47.68.220 or an equivalent local ordinance
12 while under the influence of intoxicating liquor or any drug;

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

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

17 (x) A conviction for a violation of RCW 46.61.520 committed while
18 under the influence of intoxicating liquor or any drug, or a
19 conviction for a violation of RCW 46.61.520 committed in a reckless
20 manner or with the disregard for the safety of others if the
21 conviction is the result of a charge that was originally filed as a
22 violation of RCW 46.61.520 committed while under the influence of
23 intoxicating liquor or any drug;

24 (xi) A conviction for a violation of RCW 46.61.522 committed
25 while under the influence of intoxicating liquor or any drug, or a
26 conviction for a violation of RCW 46.61.522 committed in a reckless
27 manner or with the disregard for the safety of others if the
28 conviction is the result of a charge that was originally filed as a
29 violation of RCW 46.61.522 committed while under the influence of
30 intoxicating liquor or any drug;

31 (xii) A conviction for a violation of RCW 46.61.5249, 46.61.500,
32 or 9A.36.050 or an equivalent local ordinance, if the conviction is
33 the result of a charge that was originally filed as a violation of
34 RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of
35 RCW 46.61.520 or 46.61.522;

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

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

4 (xv) A deferred prosecution under chapter 10.05 RCW granted in a
5 prosecution for a violation of RCW 46.61.5249, or an equivalent local
6 ordinance, if the charge under which the deferred prosecution was
7 granted was originally filed as a violation of RCW 46.61.502 or
8 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
9 46.61.522;

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

16 (xvii) A deferred sentence imposed in a prosecution for a
17 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
18 equivalent local ordinance, if the charge under which the deferred
19 sentence was imposed was originally filed as a violation of RCW
20 46.61.502 or 46.61.504, or an equivalent local ordinance, or a
21 violation of RCW 46.61.520 or 46.61.522;

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

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

28 (c) "Within seven years" means that the arrest for a prior
29 offense occurred within seven years before or after the arrest for
30 the current offense; and

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

34 (15) All fines imposed by this section apply to adult offenders
35 only.

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

38 (1) Upon the trial of any civil or criminal action or proceeding
39 arising out of acts alleged to have been committed by any person

1 while driving or in actual physical control of a vehicle while under
2 the influence of intoxicating liquor or any drug, if the person's
3 alcohol concentration is less than (~~(0.08)~~) 0.05 or the person's THC
4 concentration is less than 5.00, it is evidence that may be
5 considered with other competent evidence in determining whether the
6 person was under the influence of intoxicating liquor or any drug.

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

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

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

16 (3) Analysis of the person's blood or breath to be considered
17 valid under the provisions of this section or RCW 46.61.502 or
18 46.61.504 shall have been performed according to methods approved by
19 the state toxicologist and by an individual possessing a valid permit
20 issued by the state toxicologist for this purpose. The state
21 toxicologist is directed to approve satisfactory techniques or
22 methods, to supervise the examination of individuals to ascertain
23 their qualifications and competence to conduct such analyses, and to
24 issue permits which shall be subject to termination or revocation at
25 the discretion of the state toxicologist.

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

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

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

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

39 (iv) Prior to the start of the test, the temperature of any
40 liquid simulator solution utilized as an external standard, as

1 measured by a thermometer approved of by the state toxicologist was
2 (~~thirty-four~~) 34 degrees centigrade plus or minus 0.3 degrees
3 centigrade;

4 (v) The internal standard test resulted in the message
5 "verified";

6 (vi) The two breath samples agree to within plus or minus (~~ten~~)
7 10 percent of their mean to be determined by the method approved by
8 the state toxicologist;

9 (vii) The result of the test of the liquid simulator solution
10 external standard or dry gas external standard result did lie between
11 (~~.072 to .088~~) .045 to .055 inclusive; and

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

13 (b) For purposes of this section, "prima facie evidence" is
14 evidence of sufficient circumstances that would support a logical and
15 reasonable inference of the facts sought to be proved. In assessing
16 whether there is sufficient evidence of the foundational facts, the
17 court or administrative tribunal is to assume the truth of the
18 prosecution's or department's evidence and all reasonable inferences
19 from it in a light most favorable to the prosecution or department.

20 (c) Nothing in this section shall be deemed to prevent the
21 subject of the test from challenging the reliability or accuracy of
22 the test, the reliability or functioning of the instrument, or any
23 maintenance procedures. Such challenges, however, shall not preclude
24 the admissibility of the test once the prosecution or department has
25 made a prima facie showing of the requirements contained in (a) of
26 this subsection. Instead, such challenges may be considered by the
27 trier of fact in determining what weight to give to the test result.

28 (5) When a blood test is administered under the provisions of RCW
29 46.20.308, the withdrawal of blood for the purpose of determining its
30 alcohol or drug content may be performed only by a physician licensed
31 under chapter 18.71 RCW; an osteopathic physician licensed under
32 chapter 18.57 RCW; a registered nurse, licensed practical nurse, or
33 advanced registered nurse practitioner licensed under chapter 18.79
34 RCW; a physician assistant licensed under chapter 18.71A RCW; an
35 advanced emergency medical technician or paramedic certified under
36 chapter 18.71 RCW; or a medical assistant-certified or medical
37 assistant-phlebotomist certified under chapter 18.360 RCW, a person
38 holding another credential under Title 18 RCW whose scope of practice
39 includes performing venous blood draws, or a forensic phlebotomist
40 certified under chapter 18.360 RCW. When the blood test is performed

1 outside the state of Washington, the withdrawal of blood for the
2 purpose of determining its alcohol or drug content may be performed
3 by any person who is authorized by the out-of-state jurisdiction to
4 perform venous blood draws. Proof of qualification to draw blood may
5 be established through the department of health's provider credential
6 search. This limitation shall not apply to the taking of breath
7 specimens.

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

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

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

16 (c) The blood sample must be collected using sterile equipment
17 and the skin area of puncture must be thoroughly cleansed and
18 disinfected.

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

21 (7) The person tested may have a licensed or certified health
22 care provider listed in subsection (5) of this section, or a
23 qualified technician, chemist, or other qualified person of his or
24 her own choosing administer one or more tests in addition to any
25 administered at the direction of a law enforcement officer. The test
26 will be admissible if the person establishes the general
27 acceptability of the testing technique or method. The failure or
28 inability to obtain an additional test by a person shall not preclude
29 the admission of evidence relating to the test or tests taken at the
30 direction of a law enforcement officer.

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

35 NEW SECTION. **Sec. 6.** This act takes effect July 1, 2022.

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