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**SUBSTITUTE SENATE BILL 6085**

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**State of Washington**

**63rd Legislature**

**2014 Regular Session**

**By Senate Law & Justice** (originally sponsored by Senator O'Ban)

READ FIRST TIME 01/28/14.

1       AN ACT Relating to prior offenses within fifteen years for driving  
2 under the influence or physical control of a vehicle violations; and  
3 amending RCW 10.31.100, 46.61.5055, 46.61.502, and 46.61.504.

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

5       **Sec. 1.** RCW 10.31.100 and 2013 2nd sp.s. c 35 s 22 are each  
6 amended to read as follows:

7       A police officer having probable cause to believe that a person has  
8 committed or is committing a felony shall have the authority to arrest  
9 the person without a warrant. A police officer may arrest a person  
10 without a warrant for committing a misdemeanor or gross misdemeanor  
11 only when the offense is committed in the presence of the officer,  
12 except as provided in subsections (1) through (11) of this section.

13       (1) Any police officer having probable cause to believe that a  
14 person has committed or is committing a misdemeanor or gross  
15 misdemeanor, involving physical harm or threats of harm to any person  
16 or property or the unlawful taking of property or involving the use or  
17 possession of cannabis, or involving the acquisition, possession, or  
18 consumption of alcohol by a person under the age of twenty-one years

1 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070  
2 or 9A.52.080, shall have the authority to arrest the person.

3 (2) A police officer shall arrest and take into custody, pending  
4 release on bail, personal recognizance, or court order, a person  
5 without a warrant when the officer has probable cause to believe that:

6 (a) An order has been issued of which the person has knowledge  
7 under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09, 26.10,  
8 26.26, 26.50, or 74.34 RCW restraining the person and the person has  
9 violated the terms of the order restraining the person from acts or  
10 threats of violence, or restraining the person from going onto the  
11 grounds of or entering a residence, workplace, school, or day care, or  
12 prohibiting the person from knowingly coming within, or knowingly  
13 remaining within, a specified distance of a location or, in the case of  
14 an order issued under RCW 26.44.063, imposing any other restrictions or  
15 conditions upon the person; or

16 (b) A foreign protection order, as defined in RCW 26.52.010, has  
17 been issued of which the person under restraint has knowledge and the  
18 person under restraint has violated a provision of the foreign  
19 protection order prohibiting the person under restraint from contacting  
20 or communicating with another person, or excluding the person under  
21 restraint from a residence, workplace, school, or day care, or  
22 prohibiting the person from knowingly coming within, or knowingly  
23 remaining within, a specified distance of a location, or a violation of  
24 any provision for which the foreign protection order specifically  
25 indicates that a violation will be a crime; or

26 (c) The person is sixteen years or older and within the preceding  
27 four hours has assaulted a family or household member as defined in RCW  
28 10.99.020 and the officer believes: (i) A felonious assault has  
29 occurred; (ii) an assault has occurred which has resulted in bodily  
30 injury to the victim, whether the injury is observable by the  
31 responding officer or not; or (iii) that any physical action has  
32 occurred which was intended to cause another person reasonably to fear  
33 imminent serious bodily injury or death. Bodily injury means physical  
34 pain, illness, or an impairment of physical condition. When the  
35 officer has probable cause to believe that family or household members  
36 have assaulted each other, the officer is not required to arrest both  
37 persons. The officer shall arrest the person whom the officer believes  
38 to be the primary physical aggressor. In making this determination,

1 the officer shall make every reasonable effort to consider: (i) The  
2 intent to protect victims of domestic violence under RCW 10.99.010;  
3 (ii) the comparative extent of injuries inflicted or serious threats  
4 creating fear of physical injury; and (iii) the history of domestic  
5 violence of each person involved, including whether the conduct was  
6 part of an ongoing pattern of abuse; or

7 (d) The person has violated RCW 46.61.502 or 46.61.504 or an  
8 equivalent local ordinance and the police officer has knowledge that  
9 the person has a prior offense as defined in RCW 46.61.5055 within  
10 (~~ten~~) fifteen years.

11 (3) Any police officer having probable cause to believe that a  
12 person has committed or is committing a violation of any of the  
13 following traffic laws shall have the authority to arrest the person:

14 (a) RCW 46.52.010, relating to duty on striking an unattended car  
15 or other property;

16 (b) RCW 46.52.020, relating to duty in case of injury to or death  
17 of a person or damage to an attended vehicle;

18 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or  
19 racing of vehicles;

20 (d) RCW 46.61.502 or 46.61.504, relating to persons under the  
21 influence of intoxicating liquor or drugs;

22 (e) RCW 46.61.503 or 46.25.110, relating to persons having alcohol  
23 or THC in their system;

24 (f) RCW 46.20.342, relating to driving a motor vehicle while  
25 operator's license is suspended or revoked;

26 (g) RCW 46.61.5249, relating to operating a motor vehicle in a  
27 negligent manner.

28 (4) A law enforcement officer investigating at the scene of a motor  
29 vehicle accident may arrest the driver of a motor vehicle involved in  
30 the accident if the officer has probable cause to believe that the  
31 driver has committed in connection with the accident a violation of any  
32 traffic law or regulation.

33 (5)(a) A law enforcement officer investigating at the scene of a  
34 motor vessel accident may arrest the operator of a motor vessel  
35 involved in the accident if the officer has probable cause to believe  
36 that the operator has committed, in connection with the accident, a  
37 criminal violation of chapter 79A.60 RCW.

1 (b) A law enforcement officer investigating at the scene of a motor  
2 vessel accident may issue a citation for an infraction to the operator  
3 of a motor vessel involved in the accident if the officer has probable  
4 cause to believe that the operator has committed, in connection with  
5 the accident, a violation of any boating safety law of chapter 79A.60  
6 RCW.

7 (6) Any police officer having probable cause to believe that a  
8 person has committed or is committing a violation of RCW 79A.60.040  
9 shall have the authority to arrest the person.

10 (7) An officer may act upon the request of a law enforcement  
11 officer in whose presence a traffic infraction was committed, to stop,  
12 detain, arrest, or issue a notice of traffic infraction to the driver  
13 who is believed to have committed the infraction. The request by the  
14 witnessing officer shall give an officer the authority to take  
15 appropriate action under the laws of the state of Washington.

16 (8) Any police officer having probable cause to believe that a  
17 person has committed or is committing any act of indecent exposure, as  
18 defined in RCW 9A.88.010, may arrest the person.

19 (9) A police officer may arrest and take into custody, pending  
20 release on bail, personal recognizance, or court order, a person  
21 without a warrant when the officer has probable cause to believe that  
22 an order has been issued of which the person has knowledge under  
23 chapter 10.14 RCW and the person has violated the terms of that order.

24 (10) Any police officer having probable cause to believe that a  
25 person has, within twenty-four hours of the alleged violation,  
26 committed a violation of RCW 9A.50.020 may arrest such person.

27 (11) A police officer having probable cause to believe that a  
28 person illegally possesses or illegally has possessed a firearm or  
29 other dangerous weapon on private or public elementary or secondary  
30 school premises shall have the authority to arrest the person.

31 For purposes of this subsection, the term "firearm" has the meaning  
32 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning  
33 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

34 (12) Except as specifically provided in subsections (2), (3), (4),  
35 and (7) of this section, nothing in this section extends or otherwise  
36 affects the powers of arrest prescribed in Title 46 RCW.

37 (13) No police officer may be held criminally or civilly liable for

1 making an arrest pursuant to subsection (2) or (9) of this section if  
2 the police officer acts in good faith and without malice.

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

5 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
6 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
7 and who has no prior offense within (~~seven~~) fifteen years shall be  
8 punished as follows:

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

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

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

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

1 (i) By imprisonment for not less than two days nor more than three  
2 hundred sixty-four days. Forty-eight consecutive hours of the  
3 imprisonment may not be suspended unless the court finds that the  
4 imposition of this mandatory minimum sentence would impose a  
5 substantial risk to the offender's physical or mental well-being.  
6 Whenever the mandatory minimum sentence is suspended, the court shall  
7 state in writing the reason for granting the suspension and the facts  
8 upon which the suspension is based. In lieu of the mandatory minimum  
9 term of imprisonment required under this subsection (1)(b)(i), the  
10 court may order not less than thirty days of electronic home  
11 monitoring. The offender shall pay the cost of electronic home  
12 monitoring. The county or municipality in which the penalty is being  
13 imposed shall determine the cost. The court may also require the  
14 offender's electronic home monitoring device to include an alcohol  
15 detection breathalyzer or other separate alcohol monitoring device, and  
16 the court may restrict the amount of alcohol the offender may consume  
17 during the time the offender is on electronic home monitoring; and

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

21 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
22 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
23 and who has one prior offense within (~~seven~~) fifteen years shall be  
24 punished as follows:

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

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

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

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

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

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

1 is suspended, the court shall state in writing the reason for granting  
2 the suspension and the facts upon which the suspension is based; and

3 (ii) By a fine of not less than seven hundred fifty dollars nor  
4 more than five thousand dollars. Seven hundred fifty dollars of the  
5 fine may not be suspended unless the court finds the offender to be  
6 indigent.

7 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
8 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
9 and who has two or three prior offenses within (~~seven~~) fifteen years  
10 shall be punished as follows:

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

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

37 (ii) By a fine of not less than one thousand dollars nor more than

1 five thousand dollars. One thousand dollars of the fine may not be  
2 suspended unless the court finds the offender to be indigent; or

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

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

29 (ii) By a fine of not less than one thousand five hundred dollars  
30 nor more than five thousand dollars. One thousand five hundred dollars  
31 of the fine may not be suspended unless the court finds the offender to  
32 be indigent.

33 (4) A person who is convicted of a violation of RCW 46.61.502 or  
34 46.61.504 shall be punished under chapter 9.94A RCW if:

35 (a) The person has four or more prior offenses within ~~((ten))~~  
36 fifteen years; or

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

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

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

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 RCW 46.61.502(6) or 46.61.504(6).

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

13 (b) If the court orders that a person refrain from consuming any  
14 alcohol, the court may order the person to submit to alcohol monitoring  
15 through an alcohol detection breathalyzer device, transdermal sensor  
16 device, or other technology designed to detect alcohol in a person's  
17 system. The person shall pay for the cost of the monitoring, unless  
18 the court specifies that the cost of monitoring will be paid with funds  
19 that are available from an alternative source identified by the court.  
20 The county or municipality where the penalty is being imposed shall  
21 determine the cost.

22 (6) If a person who is convicted of a violation of RCW 46.61.502 or  
23 46.61.504 committed the offense while a passenger under the age of  
24 sixteen was in the vehicle, the court shall:

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

27 (b) In any case in which the person has no prior offenses within  
28 (~~seven~~) fifteen years, and except as provided in RCW 46.61.502(6) or  
29 46.61.504(6), order an additional twenty-four hours of imprisonment and  
30 a fine of not less than one thousand dollars and not more than five  
31 thousand dollars. One thousand dollars of the fine may not be  
32 suspended unless the court finds the offender to be indigent;

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

1 (d) In any case in which the person has two or three prior offenses  
2 within ((~~seven~~)) fifteen years, and except as provided in RCW  
3 46.61.502(6) or 46.61.504(6), order an additional ten days of  
4 imprisonment and a fine of not less than three thousand dollars and not  
5 more than ten thousand dollars. One thousand dollars of the fine may  
6 not be suspended unless the court finds the offender to be indigent.

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

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

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

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

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

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

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

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

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

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

33 (iii) Where there have been two or more prior offenses within  
34 ((~~seven~~)) fifteen years, be revoked or denied by the department for  
35 three years;

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

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

1 (ii) Where there has been one prior offense within (~~seven~~)  
2 fifteen years, be revoked or denied by the department for nine hundred  
3 days; or

4 (iii) Where there have been two or more prior offenses within  
5 (~~seven~~) fifteen years, be revoked or denied by the department for  
6 four years; or

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

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

12 (ii) Where there has been one prior offense within (~~seven~~)  
13 fifteen years, be revoked or denied by the department for three years;  
14 or

15 (iii) Where there have been two or more previous offenses within  
16 (~~seven~~) fifteen years, be revoked or denied by the department for  
17 four years.

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

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

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

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

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

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

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

37 (12) A court may waive the electronic home monitoring requirements  
38 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 period  
6 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 monitoring  
10 penalty.

11 Whenever the mandatory minimum term of electronic home monitoring  
12 is waived, the court shall state in writing the reason for granting the  
13 waiver and the facts upon which the waiver is based, and shall impose  
14 an alternative sentence with similar punitive consequences. The  
15 alternative sentence may include, but is not limited to, use of an  
16 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 sixty-  
20 four days, the offender shall serve the jail portion of the sentence  
21 first, and the electronic home monitoring or alternative portion of the  
22 sentence shall be reduced so that the combination does not exceed three  
23 hundred sixty-four days.

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

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

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

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

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

34 (iii) A conviction for a violation of RCW 46.61.520 committed while  
35 under the influence of intoxicating liquor or any drug, or a conviction  
36 for a violation of RCW 46.61.520 committed in a reckless manner or with  
37 the disregard for the safety of others if the conviction is the result

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

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

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

7 (c) "Within ((seven)) fifteen years" means that the arrest for a  
8 prior offense occurred within ((seven)) fifteen years before or after  
9 the arrest for the current offense(~~(/and~~

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

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

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

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

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

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

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

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

32 (3)(a) It is an affirmative defense to a violation of subsection  
33 (1)(a) of this section, which the defendant must prove by a  
34 preponderance of the evidence, that the defendant consumed a sufficient  
35 quantity of alcohol after the time of driving and before the  
36 administration of an analysis of the person's breath or blood to cause  
37 the defendant's alcohol concentration to be 0.08 or more within two

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

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

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

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

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

34 (a) The person has four or more prior offenses within (~~ten~~)  
35 fifteen years as defined in RCW 46.61.5055; or

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

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

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

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

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

6 **Sec. 4.** RCW 46.61.504 and 2013 c 3 s 35 (Initiative Measure No.  
7 502) are each amended to read as follows:

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

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

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

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

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

23 (2) The fact that a person charged with a violation of this section  
24 is or has been entitled to use a drug under the laws of this state does  
25 not constitute a defense against any charge of violating this section.  
26 No person may be convicted under this section if, prior to being  
27 pursued by a law enforcement officer, the person has moved the vehicle  
28 safely off the roadway.

29 (3)(a) It is an affirmative defense to a violation of subsection  
30 (1)(a) of this section which the defendant must prove by a  
31 preponderance of the evidence that the defendant consumed a sufficient  
32 quantity of alcohol after the time of being in actual physical control  
33 of the vehicle and before the administration of an analysis of the  
34 person's breath or blood to cause the defendant's alcohol concentration  
35 to be 0.08 or more within two hours after being in such control. The  
36 court shall not admit evidence of this defense unless the defendant

1 notifies the prosecution prior to the omnibus or pretrial hearing in  
2 the case of the defendant's intent to assert the affirmative defense.

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

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

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

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

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

34 (a) The person has four or more prior offenses within (~~ten~~)  
35 fifteen years as defined in RCW 46.61.5055; or

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

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

1           (ii) Vehicular assault while under the influence of intoxicating  
2 liquor or any drug, RCW 46.61.522(1)(b);  
3           (iii) An out-of-state offense comparable to the offense specified  
4 in (b)(i) or (ii) of this subsection; or  
5           (iv) A violation of this subsection (6) or RCW 46.61.502(6).

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