
HOUSE BILL 1614

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By Representatives Goodman, Klippert, Orwall, Hayes, Pellicciotti, Holy, Griffey, Pettigrew, Muri, and Haler

Read first time 01/25/17. Referred to Committee on Public Safety.

1 AN ACT Relating to impaired driving; amending RCW 46.20.385,
2 46.20.720, 46.61.504, 46.61.506, 46.61.517, and 46.64.025; and
3 reenacting and amending RCW 9.96.060 and 10.31.100.

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

5 **Sec. 1.** RCW 9.96.060 and 2014 c 176 s 1 and 2014 c 109 s 1 are
6 each reenacted and amended to read as follows:

7 (1) Every person convicted of a misdemeanor or gross misdemeanor
8 offense who has completed all of the terms of the sentence for the
9 misdemeanor or gross misdemeanor offense may apply to the sentencing
10 court for a vacation of the applicant's record of conviction for the
11 offense. If the court finds the applicant meets the tests prescribed
12 in subsection (2) of this section, the court may in its discretion
13 vacate the record of conviction by: (a)(i) Permitting the applicant
14 to withdraw the applicant's plea of guilty and to enter a plea of not
15 guilty; or (ii) if the applicant has been convicted after a plea of
16 not guilty, the court setting aside the verdict of guilty; and (b)
17 the court dismissing the information, indictment, complaint, or
18 citation against the applicant and vacating the judgment and
19 sentence.

1 (2) An applicant may not have the record of conviction for a
2 misdemeanor or gross misdemeanor offense vacated if any one of the
3 following is present:

4 (a) There are any criminal charges against the applicant pending
5 in any court of this state or another state, or in any federal court;

6 (b) The offense was a violent offense as defined in RCW 9.94A.030
7 or an attempt to commit a violent offense;

8 (c) The offense was a violation of RCW 46.61.502 (driving while
9 under the influence), 46.61.504 (actual physical control while under
10 the influence), 9.91.020 (operating a railroad, etc. while
11 intoxicated), or the offense is considered a "prior offense" under
12 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
13 violation within ten years of the date of arrest for the prior
14 offense or less than ten years has elapsed since the date of the
15 arrest for the prior offense;

16 (d) The offense was any misdemeanor or gross misdemeanor
17 violation, including attempt, of chapter 9.68 RCW (obscenity and
18 pornography), chapter 9.68A RCW (sexual exploitation of children), or
19 chapter 9A.44 RCW (sex offenses);

20 (e) The applicant was convicted of a misdemeanor or gross
21 misdemeanor offense as defined in RCW 10.99.020, or the court
22 determines after a review of the court file that the offense was
23 committed by one family member or household member against another,
24 or the court, after considering the damage to person or property that
25 resulted in the conviction, any prior convictions for crimes defined
26 in RCW 10.99.020, or for comparable offenses in another state or in
27 federal court, and the totality of the records under review by the
28 court regarding the conviction being considered for vacation,
29 determines that the offense involved domestic violence, and any one
30 of the following factors exist:

31 (i) The applicant has not provided written notification of the
32 vacation petition to the prosecuting attorney's office that
33 prosecuted the offense for which vacation is sought, or has not
34 provided that notification to the court;

35 (ii) The applicant has previously had a conviction for domestic
36 violence. For purposes of this subsection, however, if the current
37 application is for more than one conviction that arose out of a
38 single incident, none of those convictions counts as a previous
39 conviction;

1 (iii) The applicant has signed an affidavit under penalty of
2 perjury affirming that the applicant has not previously had a
3 conviction for a domestic violence offense, and a criminal history
4 check reveals that the applicant has had such a conviction; or

5 (iv) Less than five years have elapsed since the person completed
6 the terms of the original conditions of the sentence, including any
7 financial obligations and successful completion of any treatment
8 ordered as a condition of sentencing;

9 (f) For any offense other than those described in (e) of this
10 subsection, less than three years have passed since the person
11 completed the terms of the sentence, including any financial
12 obligations;

13 (g) The offender has been convicted of a new crime in this state,
14 another state, or federal court since the date of conviction;

15 (h) The applicant has ever had the record of another conviction
16 vacated; or

17 (i) The applicant is currently restrained, or has been restrained
18 within five years prior to the vacation application, by a domestic
19 violence protection order, a no-contact order, an antiharassment
20 order, or a civil restraining order which restrains one party from
21 contacting the other party.

22 (3) Subject to RCW 9.96.070, every person convicted of
23 prostitution under RCW 9A.88.030 who committed the offense as a
24 result of being a victim of trafficking, RCW 9A.40.100, promoting
25 prostitution in the first degree, RCW 9A.88.070, promoting commercial
26 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
27 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
28 7101 et seq. may apply to the sentencing court for vacation of the
29 applicant's record of conviction for the prostitution offense. An
30 applicant may not have the record of conviction for prostitution
31 vacated if any one of the following is present:

32 (a) There are any criminal charges against the applicant pending
33 in any court of this state or another state, or in any federal court,
34 for any crime other than prostitution; or

35 (b) The offender has been convicted of another crime, except
36 prostitution, in this state, another state, or federal court since
37 the date of conviction.

38 (4) Every person convicted prior to January 1, 1975, of violating
39 any statute or rule regarding the regulation of fishing activities,
40 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,

1 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
2 who claimed to be exercising a treaty Indian fishing right, may apply
3 to the sentencing court for vacation of the applicant's record of the
4 misdemeanor, gross misdemeanor, or felony conviction for the offense.
5 If the person is deceased, a member of the person's family or an
6 official representative of the tribe of which the person was a member
7 may apply to the court on behalf of the deceased person.
8 Notwithstanding the requirements of RCW 9.94A.640, the court shall
9 vacate the record of conviction if:

10 (a) The applicant is a member of a tribe that may exercise treaty
11 Indian fishing rights at the location where the offense occurred; and

12 (b) The state has been enjoined from taking enforcement action of
13 the statute or rule to the extent that it interferes with a treaty
14 Indian fishing right as determined under *United States v. Washington*,
15 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
16 899 (D. Oregon 1969), and any posttrial orders of those courts, or
17 any other state supreme court or federal court decision.

18 (5) Once the court vacates a record of conviction under this
19 section, the person shall be released from all penalties and
20 disabilities resulting from the offense and the fact that the person
21 has been convicted of the offense shall not be included in the
22 person's criminal history for purposes of determining a sentence in
23 any subsequent conviction. For all purposes, including responding to
24 questions on employment or housing applications, a person whose
25 conviction has been vacated under this section may state that he or
26 she has never been convicted of that crime. Nothing in this section
27 affects or prevents the use of an offender's prior conviction in a
28 later criminal prosecution.

29 (6) All costs incurred by the court and probation services shall
30 be paid by the person making the motion to vacate the record unless a
31 determination is made pursuant to chapter 10.101 RCW that the person
32 making the motion is indigent, at the time the motion is brought.

33 (7) The clerk of the court in which the vacation order is entered
34 shall immediately transmit the order vacating the conviction to the
35 Washington state patrol identification section and to the local
36 police agency, if any, which holds criminal history information for
37 the person who is the subject of the conviction. The Washington state
38 patrol and any such local police agency shall immediately update
39 their records to reflect the vacation of the conviction, and shall
40 transmit the order vacating the conviction to the federal bureau of

1 investigation. A conviction that has been vacated under this section
2 may not be disseminated or disclosed by the state patrol or local law
3 enforcement agency to any person, except other criminal justice
4 enforcement agencies.

5 **Sec. 2.** RCW 10.31.100 and 2016 c 203 s 9 and 2016 c 113 s 1 are
6 each reenacted and amended to read as follows:

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

14 (1) Any police officer having probable cause to believe that a
15 person has committed or is committing a misdemeanor or gross
16 misdemeanor, involving physical harm or threats of harm to any person
17 or property or the unlawful taking of property or involving the use
18 or possession of cannabis, or involving the acquisition, possession,
19 or consumption of alcohol by a person under the age of twenty-one
20 years under RCW 66.44.270, or involving criminal trespass under RCW
21 9A.52.070 or 9A.52.080, shall have the authority to arrest the
22 person.

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

27 (a) An order has been issued of which the person has knowledge
28 under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09,
29 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the
30 person has violated the terms of the order restraining the person
31 from acts or threats of violence, or restraining the person from
32 going onto the grounds of or entering a residence, workplace, school,
33 or day care, or prohibiting the person from knowingly coming within,
34 or knowingly remaining within, a specified distance of a location or,
35 in the case of an order issued under RCW 26.44.063, imposing any
36 other restrictions or conditions upon the person; or

37 (b) A foreign protection order, as defined in RCW 26.52.010, has
38 been issued of which the person under restraint has knowledge and the
39 person under restraint has violated a provision of the foreign

1 protection order prohibiting the person under restraint from
2 contacting or communicating with another person, or excluding the
3 person under restraint from a residence, workplace, school, or day
4 care, or prohibiting the person from knowingly coming within, or
5 knowingly remaining within, a specified distance of a location, or a
6 violation of any provision for which the foreign protection order
7 specifically indicates that a violation will be a crime; or

8 (c) The person is eighteen years or older and within the
9 preceding four hours has assaulted a family or household member as
10 defined in RCW 10.99.020 and the officer believes: (i) A felonious
11 assault has occurred; (ii) an assault has occurred which has resulted
12 in bodily injury to the victim, whether the injury is observable by
13 the responding officer or not; or (iii) that any physical action has
14 occurred which was intended to cause another person reasonably to
15 fear imminent serious bodily injury or death. Bodily injury means
16 physical pain, illness, or an impairment of physical condition. When
17 the officer has probable cause to believe that family or household
18 members have assaulted each other, the officer is not required to
19 arrest both persons. The officer shall arrest the person whom the
20 officer believes to be the primary physical aggressor. In making this
21 determination, the officer shall make every reasonable effort to
22 consider: (A) The intent to protect victims of domestic violence
23 under RCW 10.99.010; (B) the comparative extent of injuries inflicted
24 or serious threats creating fear of physical injury; and (C) the
25 history of domestic violence of each person involved, including
26 whether the conduct was part of an ongoing pattern of abuse.

27 (3) A police officer shall, at the request of a parent or
28 guardian, arrest the sixteen or seventeen year old child of that
29 parent or guardian if the officer has probable cause to believe that
30 the child has assaulted a family or household member as defined in
31 RCW 10.99.020 in the preceding four hours. Nothing in this subsection
32 removes a police officer's existing authority provided in this
33 section to make an arrest.

34 (4) Any police officer having probable cause to believe that a
35 person has committed or is committing a violation of any of the
36 following traffic laws shall have the authority to arrest the person:

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

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

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

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

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

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

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

11 (5) A law enforcement officer investigating at the scene of a
12 motor vehicle accident may arrest the driver of a motor vehicle
13 involved in the accident if the officer has probable cause to believe
14 that the driver has committed in connection with the accident a
15 violation of any traffic law or regulation.

16 (6)(a) A law enforcement officer investigating at the scene of a
17 motor vessel accident may arrest the operator of a motor vessel
18 involved in the accident if the officer has probable cause to believe
19 that the operator has committed, in connection with the accident, a
20 criminal violation of chapter 79A.60 RCW.

21 (b) A law enforcement officer investigating at the scene of a
22 motor vessel accident may issue a citation for an infraction to the
23 operator of a motor vessel involved in the accident if the officer
24 has probable cause to believe that the operator has committed, in
25 connection with the accident, a violation of any boating safety law
26 of chapter 79A.60 RCW.

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

30 (8) An officer may act upon the request of a law enforcement
31 officer in whose presence a traffic infraction was committed, to
32 stop, detain, arrest, or issue a notice of traffic infraction to the
33 driver who is believed to have committed the infraction. The request
34 by the witnessing officer shall give an officer the authority to take
35 appropriate action under the laws of the state of Washington.

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

39 (10) A police officer may arrest and take into custody, pending
40 release on bail, personal recognizance, or court order, a person

1 without a warrant when the officer has probable cause to believe that
2 an order has been issued of which the person has knowledge under
3 chapter 10.14 RCW and the person has violated the terms of that
4 order.

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

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

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

15 (13) A law enforcement officer having probable cause to believe
16 that a person has committed a violation under RCW 77.15.160(4) may
17 issue a citation for an infraction to the person in connection with
18 the violation.

19 (14) A law enforcement officer having probable cause to believe
20 that a person has committed a criminal violation under RCW 77.15.809
21 or 77.15.811 may arrest the person in connection with the violation.

22 (15) Except as specifically provided in subsections (2), (4),
23 (5), and (8) of this section, nothing in this section extends or
24 otherwise affects the powers of arrest prescribed in Title 46 RCW.

25 (16) No police officer may be held criminally or civilly liable
26 for making an arrest pursuant to subsection (2) or (10) of this
27 section if the police officer acts in good faith and without malice.

28 (17)(a) Except as provided in (b) of this subsection, a police
29 officer shall arrest and keep in custody, until release by a judicial
30 officer on bail, personal recognizance, or court order, a person
31 without a warrant when the officer has probable cause to believe that
32 the person has violated RCW 46.61.502 or 46.61.504 or an equivalent
33 local ordinance and the police officer has knowledge that the person:
34 (i) Has a prior offense as defined in RCW 46.61.5055 within ten
35 years; or (ii) is charged with or is awaiting arraignment for an
36 offense that would qualify as a prior offense as defined in RCW
37 46.61.5055 if it were a conviction.

38 (b) A police officer is not required to keep in custody a person
39 under (a) of this subsection if the person requires immediate medical
40 attention and is admitted to a hospital.

1 (18) A juvenile detention facility shall book into detention any
2 person under age eighteen brought to that detention facility pursuant
3 to an arrest for assaulting a family or household member as defined
4 in RCW 10.99.020.

5 **Sec. 3.** RCW 46.20.385 and 2016 c 203 s 13 are each amended to
6 read as follows:

7 (1)(a) Any person licensed under this chapter or who has a valid
8 driver's license from another state, who is convicted of: (i) A
9 violation of RCW 46.61.502 or 46.61.504 or an equivalent local or
10 out-of-state statute or ordinance, or (ii) a violation of RCW
11 46.61.520(1)(a) or an equivalent local or out-of-state statute or
12 ordinance, or (iii) a conviction for a violation of RCW 46.61.520(1)
13 (b) or (c) if the conviction is the result of a charge that was
14 originally filed as a violation of RCW 46.61.520(1)(a), or (iv) RCW
15 46.61.522(1)(b) or an equivalent local or out-of-state statute or
16 ordinance, or (v) RCW 46.61.522(1) (a) or (c) if the conviction is
17 the result of a charge that was originally filed as a violation of
18 RCW 46.61.522(1)(b) committed while under the influence of
19 intoxicating liquor or any drug, or (vi) who has had or will have his
20 or her license suspended, revoked, or denied under RCW 46.20.3101, or
21 who is otherwise permitted under subsection (8) of this section, may
22 submit to the department an application for an ignition interlock
23 driver's license. The department, upon receipt of the prescribed fee
24 and upon determining that the petitioner is eligible to receive the
25 license, may issue an ignition interlock driver's license.

26 (b) A person may apply for an ignition interlock driver's license
27 anytime, including immediately after receiving the notices under RCW
28 46.20.308 or after his or her license is suspended, revoked, or
29 denied.

30 (c) An applicant under this subsection shall provide proof to the
31 satisfaction of the department that a functioning ignition interlock
32 device has been installed on all vehicles operated by the person.

33 (i) The department shall require the person to maintain the
34 device on all vehicles operated by the person and shall restrict the
35 person to operating only vehicles equipped with the device, for the
36 remainder of the period of suspension, revocation, or denial, unless
37 otherwise permitted under RCW 46.20.720(6).

38 (ii) Subject to any periodic renewal requirements established by
39 the department under this section and subject to any applicable

1 compliance requirements under this chapter or other law, an ignition
2 interlock driver's license granted upon a suspension or revocation
3 under RCW 46.61.5055 or 46.20.3101 extends through the remaining
4 portion of any concurrent or consecutive suspension or revocation
5 that may be imposed as the result of administrative action and
6 criminal conviction arising out of the same incident.

7 (2) An applicant for an ignition interlock driver's license who
8 qualifies under subsection (1) of this section is eligible to receive
9 a license only if the applicant files satisfactory proof of financial
10 responsibility under chapter 46.29 RCW.

11 (3) Upon receipt of evidence that a holder of an ignition
12 interlock driver's license granted under this subsection no longer
13 has a functioning ignition interlock device installed on all vehicles
14 operated by the driver, the director shall give written notice by
15 first-class mail to the driver that the ignition interlock driver's
16 license shall be canceled. If at any time before the cancellation
17 goes into effect the driver submits evidence that a functioning
18 ignition interlock device has been installed on all vehicles operated
19 by the driver, the cancellation shall be stayed. If the cancellation
20 becomes effective, the driver may obtain, at no additional charge, a
21 new ignition interlock driver's license upon submittal of evidence
22 that a functioning ignition interlock device has been installed on
23 all vehicles operated by the driver.

24 (4) A person aggrieved by the decision of the department on the
25 application for an ignition interlock driver's license may request a
26 hearing as provided by rule of the department.

27 (5) The director shall cancel an ignition interlock driver's
28 license after receiving notice that the holder thereof has been
29 convicted of operating a motor vehicle in violation of its
30 restrictions, no longer meets the eligibility requirements, or has
31 been convicted of or found to have committed a separate offense or
32 any other act or omission that under this chapter would warrant
33 suspension or revocation of a regular driver's license. The
34 department must give notice of the cancellation as provided under RCW
35 46.20.245. A person whose ignition interlock driver's license has
36 been canceled under this section may reapply for a new ignition
37 interlock driver's license if he or she is otherwise qualified under
38 this section and pays the fee required under RCW 46.20.380.

39 (6)(a) Unless costs are waived by the ignition interlock company
40 or the person is indigent under RCW 10.101.010, the applicant shall

1 pay: (i) The cost of installing, removing, and leasing the ignition
2 interlock device, which shall be paid directly to the ignition
3 interlock company; and ((shall pay)) (ii) an additional fee of twenty
4 dollars per month, which shall be paid directly to the department.
5 ~~((Payments shall be made directly to the ignition interlock company.~~
6 ~~The company shall remit the additional twenty dollar fee to the~~
7 ~~department.))~~

8 (b) The department shall deposit the proceeds of the twenty
9 dollar fee into the ignition interlock device revolving account.
10 Expenditures from the account may be used only to administer and
11 operate the ignition interlock device revolving account program. The
12 department shall adopt rules to provide monetary assistance according
13 to greatest need and when funds are available.

14 (7) The department shall adopt rules to implement ignition
15 interlock licensing. The department shall consult with the
16 administrative office of the courts, the state patrol, the Washington
17 association of sheriffs and police chiefs, ignition interlock
18 companies, and any other organization or entity the department deems
19 appropriate.

20 (8)(a) Any person licensed under this chapter who is convicted of
21 a violation of RCW 46.61.500 when the charge was originally filed as
22 a violation of RCW 46.61.502 or 46.61.504, or an equivalent local
23 ordinance, may submit to the department an application for an
24 ignition interlock driver's license under this section.

25 (b) A person who does not have any driver's license under this
26 chapter, but who would otherwise be eligible under this section to
27 apply for an ignition interlock license, may submit to the department
28 an application for an ignition interlock license. The department may
29 require the person to take any driver's licensing examination under
30 this chapter and may require the person to also apply and qualify for
31 a temporary restricted driver's license under RCW 46.20.391.

32 **Sec. 4.** RCW 46.20.720 and 2016 c 203 s 14 are each amended to
33 read as follows:

34 (1) **Ignition interlock restriction.** The department shall require
35 that a person may drive only a motor vehicle equipped with a
36 functioning ignition interlock device:

37 (a) **Pretrial release.** Upon receipt of notice from a court that an
38 ignition interlock device restriction has been imposed under RCW
39 10.21.055;

1 (b) **Ignition interlock driver's license.** As required for issuance
2 of an ignition interlock driver's license under RCW 46.20.385;

3 (c) **Deferred prosecution.** Upon receipt of notice from a court
4 that the person is participating in a deferred prosecution program
5 under RCW 10.05.020 for a violation of:

6 (i) RCW 46.61.502 or 46.61.504 or an equivalent local ordinance;
7 or

8 (ii) RCW 46.61.5249 or 46.61.500 or an equivalent local ordinance
9 if the person would be required under RCW 46.61.5249(4) or
10 46.61.500(3) (a) or (b) to install an ignition interlock device on
11 all vehicles operated by the person in the event of a conviction;

12 (d) **Post conviction.** After any applicable period of suspension,
13 revocation, or denial of driving privileges:

14 (i) Due to a conviction of a violation of RCW 46.61.502 or
15 46.61.504 or an equivalent local or out-of-state statute or
16 ordinance; or

17 (ii) Due to a conviction of a violation of RCW 46.61.5249 or
18 46.61.500 or an equivalent local ordinance if the person is required
19 under RCW 46.61.5249(4) or 46.61.500(3) (a) or (b) to install an
20 ignition interlock device on all vehicles operated by the person; or

21 (e) **Court order.** Upon receipt of an order by a court having
22 jurisdiction that a person charged or convicted of any offense
23 involving the use, consumption, or possession of alcohol while
24 operating a motor vehicle may drive only a motor vehicle equipped
25 with a functioning ignition interlock. The court shall establish a
26 specific calibration setting at which the ignition interlock will
27 prevent the vehicle from being started. The court shall also
28 establish the period of time for which ignition interlock use will be
29 required.

30 (2) **Calibration.** Unless otherwise specified by the court for a
31 restriction imposed under subsection (1)(e) of this section, the
32 ignition interlock device shall be calibrated to prevent the motor
33 vehicle from being started when the breath sample provided has an
34 alcohol concentration of 0.025 or more.

35 (3) **Duration of restriction.** A restriction imposed under:

36 (a) Subsection (1)(a) of this section shall remain in effect
37 until:

38 (i) The court has authorized the removal of the device under RCW
39 10.21.055; or

1 (ii) The department has imposed a restriction under subsection
2 (1)(b), (c), or (d) of this section arising out of the same incident.

3 (b) Subsection (1)(b) of this section remains in effect during
4 the validity of any ignition interlock driver's license that has been
5 issued to the person.

6 (c) Subsection (1)(c)(i) or (d)(i) of this section shall be for
7 no less than:

8 (i) For a person who has not previously been restricted under
9 this subsection, a period of one year;

10 (ii) For a person who has previously been restricted under (c)(i)
11 of this subsection, a period of five years;

12 (iii) For a person who has previously been restricted under
13 (c)(ii) of this subsection, a period of ten years.

14 The restriction of a person who is convicted of a violation of
15 RCW 46.61.502 or 46.61.504 or an equivalent local ordinance and who
16 committed the offense while a passenger under the age of sixteen was
17 in the vehicle shall be extended for an additional six-month period
18 as required by RCW 46.61.5055(6)(a).

19 (d) Subsection (1)(c)(ii) or (d)(ii) of this section shall be for
20 a period of no less than six months.

21 (e) Subsection (1)(e) of this section shall remain in effect for
22 the period of time specified by the court.

23 The period of restriction under (c) and (d) of this subsection
24 based on incidents occurring on or after June 9, 2016, must be tolled
25 for any period in which the person does not have an ignition
26 interlock device installed on a vehicle owned or operated by the
27 person.

28 (4) **Requirements for removal.** A restriction imposed under
29 subsection (1)(c) or (d) of this section shall remain in effect until
30 the department receives a declaration from the person's ignition
31 interlock device vendor, in a form provided or approved by the
32 department, certifying that there have been none of the following
33 incidents in the ((~~four~~)) one hundred eighty consecutive ((~~months~~))
34 days prior to the date of release:

35 (a) Any attempt to start the vehicle with a breath alcohol
36 concentration of 0.04 or more unless a subsequent test performed
37 within ten minutes registers a breath alcohol concentration lower
38 than 0.04 and the digital image confirms the same person provided
39 both samples;

1 (b) Failure to take any random test unless a review of the
2 digital image confirms that the vehicle was not occupied by the
3 driver at the time of the missed test;

4 (c) Failure to pass any random retest with a breath alcohol
5 concentration of 0.025 or lower unless a subsequent test performed
6 within ten minutes registers a breath alcohol concentration lower
7 than 0.025, and the digital image confirms the same person provided
8 both samples; or

9 (d) Failure of the person to appear at the ignition interlock
10 device vendor when required for maintenance, repair, calibration,
11 monitoring, inspection, or replacement of the device.

12 (5) **Day-for-day credit.** (a) The time period during which a person
13 has an ignition interlock device installed in order to meet the
14 requirements of subsection (1)(b) of this section shall apply on a
15 day-for-day basis toward satisfying the period of time the ignition
16 interlock device restriction is imposed under subsection (1)(c) or
17 (d) of this section arising out of the same incident.

18 (b) The department must also give the person a day-for-day credit
19 for any time period, beginning from the date of the incident, during
20 which the person kept an ignition interlock device installed on all
21 vehicles the person operates, other than those subject to the
22 employer exemption under subsection (6) of this section.

23 (c) If the day-for-day credit granted under this subsection
24 equals or exceeds the period of time the ignition interlock device
25 restriction is imposed under subsection (1)(c) or (d) of this section
26 arising out of the same incident, and the person has already met the
27 requirements for removal of the device under subsection (4) of this
28 section, the department may waive the requirement that a device be
29 installed or that the person again meet the requirements for removal.

30 (6) **Employer exemption.** (a) Except as provided in (b) of this
31 subsection, the installation of an ignition interlock device is not
32 necessary on vehicles owned, leased, or rented by a person's employer
33 and on those vehicles whose care and/or maintenance is the temporary
34 responsibility of the employer, and driven at the direction of a
35 person's employer as a requirement of employment during working
36 hours. The person must provide the department with a declaration
37 pursuant to RCW 9A.72.085 from his or her employer stating that the
38 person's employment requires the person to operate a vehicle owned by
39 the employer or other persons during working hours.

1 (b) The employer exemption does not apply when the employer's
2 vehicle is assigned exclusively to the restricted driver and used
3 solely for commuting to and from employment.

4 (7) **Ignition interlock device revolving account.** In addition to
5 any other costs associated with the use of an ignition interlock
6 device imposed on the person restricted under this section, the
7 person shall pay an additional fee of twenty dollars per month.
8 Payments for the additional twenty dollar monthly fee must be made
9 directly to the (~~ignition interlock company. The company shall remit~~
10 ~~the additional twenty dollar fee to the~~) department to be deposited
11 into the ignition interlock device revolving account. The department
12 may waive the monthly fee if the person is indigent under RCW
13 10.101.010.

14 (8) **Foreign jurisdiction.** For a person restricted under this
15 section who is residing outside of the state of Washington, the
16 department may accept verification of installation of an ignition
17 interlock device by an ignition interlock company authorized to do
18 business in the jurisdiction in which the person resides, provided
19 the device meets any applicable requirements of that jurisdiction.
20 The department may waive the monthly fee required by subsection (7)
21 of this section if collection of the fee would be impractical in the
22 case of a person residing in another jurisdiction.

23 **Sec. 5.** RCW 46.61.504 and 2015 2nd sp.s. c 3 s 24 are each
24 amended to read as follows:

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

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

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

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

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

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

12 (a) The driver is removed from the driver's seat;

13 (b) The vehicle is parked in an area that is not a sidewalk, bike
14 path, or driving lane;

15 (c) The vehicle's engine is off; and

16 (d) The vehicle's transmission is in park, if a car, or in gear,
17 if a motorcycle or manual vehicle.

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

29 (b) It is an affirmative defense to a violation of subsection
30 (1)(b) of this section, which the defendant must prove by a
31 preponderance of the evidence, that the defendant consumed a
32 sufficient quantity of marijuana after the time of being in actual
33 physical control of the vehicle and before the administration of an
34 analysis of the person's blood to cause the defendant's THC
35 concentration to be 5.00 or more within two hours after being in
36 control of the vehicle. The court shall not admit evidence of this
37 defense unless the defendant notifies the prosecution prior to the
38 omnibus or pretrial hearing in the case of the defendant's intent to
39 assert the affirmative defense.

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

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

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

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

22 (a) The person has four or more prior offenses within ten years
23 as defined in RCW 46.61.5055; or

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

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

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

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

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

32 **Sec. 6.** RCW 46.61.506 and 2016 c 203 s 8 are each amended to
33 read as follows:

34 (1) Upon the trial of any civil or criminal action or proceeding
35 arising out of acts alleged to have been committed by any person
36 while driving or in actual physical control of a vehicle while under
37 the influence of intoxicating liquor or any drug, if the person's
38 alcohol concentration is less than 0.08 or the person's THC
39 concentration is less than 5.00, it is evidence that may be

1 considered with other competent evidence in determining whether the
2 person was under the influence of intoxicating liquor or any drug.

3 (2)(a) The breath analysis of the person's alcohol concentration
4 shall be based upon grams of alcohol per two hundred ten liters of
5 breath.

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

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

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

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

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

28 (ii) The person being tested did not vomit or have anything to
29 eat, drink, or smoke for at least fifteen minutes prior to
30 administration of the test;

31 (iii) The person being tested did not have any foreign
32 substances, not to include dental work or piercings, fixed or
33 removable, in his or her mouth at the beginning of the fifteen-minute
34 observation period;

35 (iv) Prior to the start of the test, the temperature of any
36 liquid simulator solution utilized as an external standard, as
37 measured by a thermometer approved of by the state toxicologist was
38 thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

39 (v) The internal standard test resulted in the message
40 "verified";

1 (vi) The two breath samples agree to within plus or minus ten
2 percent of their mean to be determined by the method approved by the
3 state toxicologist;

4 (vii) The result of the test of the liquid simulator solution
5 external standard or dry gas external standard result did lie
6 between .072 to .088 inclusive; and

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

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

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

23 (5) When a blood test is administered under the provisions of RCW
24 46.20.308, the withdrawal of blood for the purpose of determining its
25 alcoholic or drug content may be performed only by a physician
26 licensed under chapter 18.71 RCW; an osteopathic physician licensed
27 under chapter 18.57 RCW; a registered nurse, licensed practical
28 nurse, or advanced registered nurse practitioner licensed under
29 chapter 18.79 RCW; a physician assistant licensed under chapter
30 18.71A RCW; an osteopathic physician assistant licensed under chapter
31 18.57A RCW; a physician's trained advanced emergency medical
32 technician and paramedic certified under chapter 18.71 RCW; an
33 advanced emergency medical technician or paramedic licensed under
34 chapter 18.73 RCW; until July 1, 2016, a health care assistant
35 certified under chapter 18.135 RCW; or a medical assistant-certified
36 or medical assistant-phlebotomist certified under chapter 18.360 RCW.
37 Proof of qualification to draw blood may be established through the
38 department of health's provider credential search. ((This)) When
39 withdrawal of blood for the purpose of determining its alcoholic or
40 drug content is performed outside Washington state, the withdrawal

1 may be performed by any qualified person. These limitations shall not
2 apply to the taking of breath specimens.

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

13 (7) Upon the request of the person who shall submit to a test or
14 tests at the request of a law enforcement officer, full information
15 concerning the test or tests shall be made available to him or her or
16 his or her attorney.

17 **Sec. 7.** RCW 46.61.517 and 2001 c 142 s 1 are each amended to
18 read as follows:

19 The refusal of a person to submit to a test of the alcohol or
20 drug concentration in the person's (~~blood or~~) breath under RCW
21 46.20.308 is admissible into evidence at a subsequent criminal trial.
22 The refusal of a person to submit to a test of the person's blood is
23 admissible into evidence at a subsequent criminal trial when a search
24 warrant, or an exception to the search warrant, authorized the
25 seizure.

26 **Sec. 8.** RCW 46.64.025 and 2016 c 203 s 4 are each amended to
27 read as follows:

28 Whenever any person served with a traffic citation or provided
29 notice of a traffic-related criminal complaint willfully fails to
30 appear at a requested hearing for a moving violation or fails to
31 comply with the terms of a notice of traffic citation for a moving
32 violation or a traffic-related criminal complaint, the court in which
33 the defendant failed to appear shall promptly give notice of such
34 fact to the department of licensing. Whenever thereafter the case in
35 which the defendant failed to appear is adjudicated, the court
36 hearing the case shall promptly file with the department a
37 certificate showing that the case has been adjudicated. For the

1 purposes of this section, "moving violation" is defined by rule
2 pursuant to RCW 46.20.2891.

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