RCW 46.61.502 Driving under the influence. (1) A person is guilty of driving while under the influence of intoxicating liquor, cannabis, or any drug if the person drives a vehicle within this state:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) A violation of this subsection (6) or RCW 46.61.504(6). [2024 c 306 s 30; 2022 c 16 s 40; 2017 c 335 s 1; 2016 c 87 s 1; 2013 c 3 s 33 (Initiative Measure No. 502, approved November 6, 2012); 2011 c 293 s 2; 2008 c 282 s 20; 2006 c 73 s 1; 1998 c 213 s 3; 1994 c 275 s 2; 1993 c 328 s 1; 1987 c 373 s 2; 1986 c 153 s 2; 1979 ex.s. c 176 s 1.]

Rules of court: *Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

Effective date—2024 c 306: See note following RCW 9.94A.661.

Intent—Finding—2022 c 16: See note following RCW 69.50.101.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

Effective date—2011 c 293 ss 1-9: See note following RCW 46.20.385.

Effective date—2006 c 73: "This act takes effect July 1, 2007." [2006 c 73 s 19.]

Effective date—1998 c 213: See note following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Legislative finding, purpose—1987 c 373: "The legislature finds the existing statutes that establish the criteria for determining when a person is guilty of driving a motor vehicle under the influence of intoxicating liquor or drugs are constitutional and do not require any additional criteria to ensure their legality. The purpose of this act is to provide an additional method of defining the crime of driving while intoxicated. This act is not an acknowledgment that the existing breath alcohol standard is legally improper or invalid." [1987 c 373 s 1.]

Severability—1987 c 373: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 373 s 8.]

Severability—1979 ex.s. c 176: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 176 s 8.]

Business operation of vessel or vehicle while intoxicated: RCW 9.91.020.

Criminal history and driving record: RCW 46.61.513.

Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.

Use of vessel in reckless manner or while under influence of alcohol or drugs prohibited: RCW 79A.60.040.