

2 **ESSB 6408** - H COMM AMD **ADOPTED 3/5/98**
3 By Committee on Law & Justice

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5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are
8 each reenacted and amended to read as follows:

9 (1) A person who is convicted of a violation of RCW 46.61.502 or
10 46.61.504 and who has no prior offense within five years shall be
11 punished as follows:

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

16 (i) By imprisonment for not less than one day nor more than one
17 year. Twenty-four consecutive hours of the imprisonment may not be
18 suspended or deferred unless the court finds that the imposition of
19 this mandatory minimum sentence would impose a substantial risk to the
20 offender's physical or mental well-being. Whenever the mandatory
21 minimum sentence is suspended or deferred, the court shall state in
22 writing the reason for granting the suspension or deferral and the
23 facts upon which the suspension or deferral is based; and

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

28 (iii) By suspension of the offender's license or permit to drive,
29 or suspension of any nonresident privilege to drive, for a period of
30 ninety days. The period of license, permit, or privilege suspension
31 may not be suspended. The court shall notify the department of
32 licensing of the conviction, and upon receiving notification of the
33 conviction the department shall suspend the offender's license, permit,
34 or privilege; or

35 (b) In the case of a person whose alcohol concentration was at
36 least 0.15, or for whom by reason of the person's refusal to take a

1 test offered pursuant to RCW 46.20.308 there is no test result
2 indicating the person's alcohol concentration:

3 (i) By imprisonment for not less than two days nor more than one
4 year. Two consecutive days of the imprisonment may not be suspended or
5 deferred unless the court finds that the imposition of this mandatory
6 minimum sentence would impose a substantial risk to the offender's
7 physical or mental well-being. Whenever the mandatory minimum sentence
8 is suspended or deferred, the court shall state in writing the reason
9 for granting the suspension or deferral and the facts upon which the
10 suspension or deferral is based; and

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

15 (iii) By revocation of the offender's license or permit to drive,
16 or suspension of any nonresident privilege to drive, for a period of
17 one year. The period of license, permit, or privilege suspension may
18 not be suspended. The court shall notify the department of licensing
19 of the conviction, and upon receiving notification of the conviction
20 the department shall suspend the offender's license, permit, or
21 privilege.

22 (2) A person who is convicted of a violation of RCW 46.61.502 or
23 46.61.504 and who has one prior offense within five 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 one
30 year. Thirty days of the imprisonment may not be suspended or deferred
31 unless the court finds that the imposition of this mandatory minimum
32 sentence would impose a substantial risk to the offender's physical or
33 mental well-being. Whenever the mandatory minimum sentence is
34 suspended or deferred, the court shall state in writing the reason for
35 granting the suspension or deferral and the facts upon which the
36 suspension or deferral is based; and

37 (ii) By a fine of not less than five hundred dollars nor more than
38 five thousand dollars. Five hundred dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be
2 indigent; and

3 (iii) By revocation of the offender's license or permit to drive,
4 or suspension of any nonresident privilege to drive, for a period of
5 two years. The period of license, permit, or privilege revocation may
6 not be suspended. The court shall notify the department of licensing
7 of the conviction, and upon receiving notification of the conviction
8 the department shall revoke the offender's license, permit, or
9 privilege; or

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

14 (i) By imprisonment for not less than forty-five days nor more than
15 one year. Forty-five days of the imprisonment may not be suspended or
16 deferred unless the court finds that the imposition of this mandatory
17 minimum sentence would impose a substantial risk to the offender's
18 physical or mental well-being. Whenever the mandatory minimum sentence
19 is suspended or deferred, the court shall state in writing the reason
20 for granting the suspension or deferral and the facts upon which the
21 suspension or deferral is based; and

22 (ii) By a fine of not less than seven hundred fifty dollars nor
23 more than five thousand dollars. Seven hundred fifty dollars of the
24 fine may not be suspended or deferred unless the court finds the
25 offender to be indigent; and

26 (iii) By revocation of the offender's license or permit to drive,
27 or suspension of any nonresident privilege to drive, for a period of
28 nine hundred days. The period of license, permit, or privilege
29 revocation may not be suspended. The court shall notify the department
30 of licensing of the conviction, and upon receiving notification of the
31 conviction the department shall revoke the offender's license, permit,
32 or privilege.

33 (3) A person who is convicted of a violation of RCW 46.61.502 or
34 46.61.504 and who has two or more prior offenses within five years
35 shall be punished as follows:

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

1 (i) By imprisonment for not less than ninety days nor more than one
2 year. Ninety days of the imprisonment may not be suspended or deferred
3 unless the court finds that the imposition of this mandatory minimum
4 sentence would impose a substantial risk to the offender's physical or
5 mental well-being. Whenever the mandatory minimum sentence is
6 suspended or deferred, the court shall state in writing the reason for
7 granting the suspension or deferral and the facts upon which the
8 suspension or deferral is based; and

9 (ii) By a fine of not less than one thousand dollars nor more than
10 five thousand dollars. One thousand dollars of the fine may not be
11 suspended or deferred unless the court finds the offender to be
12 indigent; and

13 (iii) By revocation of the offender's license or permit to drive,
14 or suspension of any nonresident privilege to drive, for a period of
15 three years. The period of license, permit, or privilege revocation
16 may not be suspended. The court shall notify the department of
17 licensing of the conviction, and upon receiving notification of the
18 conviction the department shall revoke the offender's license, permit,
19 or privilege; or

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

24 (i) By imprisonment for not less than one hundred twenty days nor
25 more than one year. One hundred twenty days of the imprisonment may
26 not be suspended or deferred unless the court finds that the imposition
27 of this mandatory minimum sentence would impose a substantial risk to
28 the offender's physical or mental well-being. Whenever the mandatory
29 minimum sentence is suspended or deferred, the court shall state in
30 writing the reason for granting the suspension or deferral and the
31 facts upon which the suspension or deferral is based; and

32 (ii) By a fine of not less than one thousand five hundred dollars
33 nor more than five thousand dollars. One thousand five hundred dollars
34 of the fine may not be suspended or deferred unless the court finds the
35 offender to be indigent; and

36 (iii) By revocation of the offender's license or permit to drive,
37 or suspension of any nonresident privilege to drive, for a period of
38 four years. The period of license, permit, or privilege revocation may
39 not be suspended. The court shall notify the department of licensing

1 of the conviction, and upon receiving notification of the conviction
2 the department shall revoke the offender's license, permit, or
3 privilege.

4 (4) Any minimum nonsuspendable and nondeferrable jail sentence
5 required by this section shall be doubled for any offender convicted of
6 a violation of RCW 46.61.502 or 46.61.504 who committed the offense
7 with another person or persons in the motor vehicle.

8 (5) In exercising its discretion in setting penalties within the
9 limits allowed by this section, the court shall particularly consider
10 whether the person's driving at the time of the offense was responsible
11 for injury or damage to another or another's property.

12 ((+5)) (6) An offender punishable under this section is subject to
13 the alcohol assessment and treatment provisions of RCW 46.61.5056.

14 ((+6)) (7) After expiration of any period of suspension or
15 revocation of the offender's license, permit, or privilege to drive
16 required by this section, the department shall place the offender's
17 driving privilege in probationary status pursuant to RCW 46.20.355.

18 ((+7)) (8)(a) In addition to any nonsuspendable and nondeferrable
19 jail sentence required by this section, whenever the court imposes less
20 than one year in jail, the court shall also suspend but shall not defer
21 a period of confinement for a period not exceeding two years. The
22 court shall impose conditions of probation that include: (i) Not
23 driving a motor vehicle within this state without a valid license to
24 drive and proof of financial responsibility for the future; (ii) not
25 driving a motor vehicle within this state while having an alcohol
26 concentration of 0.08 or more within two hours after driving; and (iii)
27 not refusing to submit to a test of his or her breath or blood to
28 determine alcohol concentration upon request of a law enforcement
29 officer who has reasonable grounds to believe the person was driving or
30 was in actual physical control of a motor vehicle within this state
31 while under the influence of intoxicating liquor. The court may impose
32 conditions of probation that include nonrepetition, installation of an
33 ignition interlock or other biological or technical device on the
34 probationer's motor vehicle, alcohol or drug treatment, supervised
35 probation, or other conditions that may be appropriate. The sentence
36 may be imposed in whole or in part upon violation of a condition of
37 probation during the suspension period.

38 (b) For each violation of mandatory conditions of probation under
39 (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall

1 order the convicted person to be confined for thirty days, which shall
2 not be suspended or deferred.

3 (c) For each incident involving a violation of a mandatory
4 condition of probation imposed under this subsection, the license,
5 permit, or privilege to drive of the person shall be suspended by the
6 court for thirty days or, if such license, permit, or privilege to
7 drive already is suspended, revoked, or denied at the time the finding
8 of probation violation is made, the suspension, revocation, or denial
9 then in effect shall be extended by thirty days. The court shall
10 notify the department of any suspension, revocation, or denial or any
11 extension of a suspension, revocation, or denial imposed under this
12 subsection.

13 ~~((+8))~~ (9)(a) A "prior offense" means any of the following:

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

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

18 (iii) A conviction for a violation of RCW 46.61.520 committed while
19 under the influence of intoxicating liquor or any drug;

20 (iv) A conviction for a violation of RCW 46.61.522 committed while
21 under the influence of intoxicating liquor or any drug;

22 (v) A conviction for a violation of RCW 46.61.5249 or an equivalent
23 local ordinance, if the conviction is the result of a charge that was
24 originally filed as a violation of RCW 46.61.502 or 46.61.504, or an
25 equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

26 (vi) An out-of-state conviction for a violation that would have
27 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this
28 subsection if committed in this state;

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

32 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
33 prosecution for a violation of RCW 46.61.5249, or an equivalent local
34 ordinance, if the charge under which the deferred prosecution was
35 granted was originally filed as a violation of RCW 46.61.502 or
36 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
37 46.61.522.

38 (b) "Within five years" means that the arrest for a prior offense
39 occurred within five years of the arrest for the current offense.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.61 RCW
2 to read as follows:

3 (1) Immediately before the court orders a sentence, or deferred
4 prosecution under RCW 10.05.120, for any offense listed in subsection
5 (2) of this section, the court and prosecutor shall verify the
6 defendant's criminal history and driving record. The order shall
7 include specific findings as to the criminal history and driving
8 record. For purposes of this section, the criminal history shall
9 include all previous convictions and orders of deferred prosecution, as
10 reported through the judicial information system or otherwise available
11 to the court or prosecutor, current to within the periods specified in
12 subsection (3) of this section before the date of the order. For
13 purposes of this section, the driving record shall include all
14 information reported to the court by the department of licensing.

15 (2) The offenses to which this section applies are violations of
16 (a) RCW 46.61.502 or an equivalent local ordinance; (b) RCW 46.61.504
17 or an equivalent local ordinance; (c) RCW 46.61.520 committed while
18 under the influence of intoxicating liquor or any drug; (d) RCW
19 46.61.522 committed while under the influence of intoxicating liquor or
20 any drug; and (e) RCW 46.61.5249 or 9A.36.050, or an equivalent local
21 ordinance, if the conviction is the result of a charge that was
22 originally filed as a violation of RCW 46.61.502 or 46.61.504, or an
23 equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

24 (3) The periods applicable to previous convictions and orders of
25 deferred prosecution are: (a) One working day, in the case of previous
26 actions of courts that fully participate in the state judicial
27 information system; and (b) seven calendar days, in the case of
28 previous actions of courts that do not fully participate in the
29 judicial information system. For purposes of this subsection, "fully
30 participate" means regularly providing records to and receiving records
31 from the system by electronic means on a daily basis."

32 Correct the title.

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