

2 **ESSB 6165** - CONF REPT  
3 By Conference Committee

4 ADOPTED 3/12/98

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

7 "NEW SECTION. **Sec. 1.** This act may be known and cited as the Mary  
8 Johnsen Act.

9 **Sec. 2.** RCW 46.20.720 and 1997 c 229 s 8 are each amended to read  
10 as follows:

11 (1) The court may order that after a period of suspension,  
12 revocation, or denial of driving privileges, and for up to as long as  
13 the court has jurisdiction, any person convicted of any offense  
14 involving the use, consumption, or possession of alcohol while  
15 operating a motor vehicle may drive only a motor vehicle equipped with  
16 a functioning ignition interlock or other biological or technical  
17 device.

18 (2) If a person is convicted of a violation of RCW 46.61.502 or  
19 46.61.504 or an equivalent local ordinance, the court shall order that  
20 after a period of suspension, revocation, or denial of driving  
21 privileges, the person may drive only a motor vehicle equipped with a  
22 functioning ignition interlock or other biological or technical device.  
23 The court may waive the requirement for the use of such a device if the  
24 court makes a specific finding in writing that such devices are not  
25 reasonably available in the local area.

26 (3) The court shall establish a specific calibration setting at  
27 which the ignition interlock or other biological or technical device  
28 will prevent the motor vehicle from being started and the period of  
29 time that the person shall be subject to the restriction. In the case  
30 of a person under subsection (2) of this section, the period of time of  
31 the restriction will be as follows:

32 (a) For a person subject to RCW 46.61.5055 (1)(b), (2), or (3) who  
33 has not previously been restricted under this section, a period of not  
34 less than one year;

1       (b) For a person who has previously been restricted under (a) of  
2 this subsection, a period of not less than five years;

3       (c) For a person who has previously been restricted under (b) of  
4 this subsection, a period of not less than ten years.

5       For purposes of this section, "convicted" means being found guilty  
6 of an offense or being placed on a deferred prosecution program under  
7 chapter 10.05 RCW.

8       **Sec. 3.** RCW 46.20.740 and 1997 c 229 s 10 are each amended to read  
9 as follows:

10       (1) The department shall attach or imprint a notation on the  
11 driver's license of any person restricted under RCW 46.20.720 or  
12 46.61.5055 stating that the person may operate only a motor vehicle  
13 equipped with an ignition interlock or other biological or technical  
14 device.

15       (2) It is a misdemeanor for a person with such a notation on his or  
16 her driver's license to operate a motor vehicle that is not so  
17 equipped. For the first such conviction, the minimum sentence is  
18 thirty days in jail. For a second offense, the minimum sentence is  
19 sixty days in jail. For a third or subsequent offense, the minimum  
20 sentence is ninety days in jail.

21       **Sec. 4.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are  
22 each reenacted and amended to read as follows:

23       (1) A person who is convicted of a violation of RCW 46.61.502 or  
24 46.61.504 and who has no prior offense within five years shall be  
25 punished as follows:

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

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

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

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

12 (b) In the case of a person whose alcohol concentration was at  
13 least 0.15, or for whom by reason of the person's refusal to take a  
14 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 two days nor more than one  
17 year. Two consecutive days of the imprisonment may not be suspended or  
18 deferred unless the court finds that the imposition of this mandatory  
19 minimum sentence would impose a substantial risk to the offender's  
20 physical or mental well-being. Whenever the mandatory minimum sentence  
21 is suspended or deferred, the court shall state in writing the reason  
22 for granting the suspension or deferral and the facts upon which the  
23 suspension or deferral is based; and

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

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

35 (iv) By a court-ordered restriction under RCW 46.20.720.

36 (2) A person who is convicted of a violation of RCW 46.61.502 or  
37 46.61.504 and who has one prior offense within five years shall be  
38 punished as follows:

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

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

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

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

24 (iv) By a court-ordered restriction under RCW 46.20.720; or

25 (b) In the case of a person whose alcohol concentration was at  
26 least 0.15, or for whom by reason of the person's refusal to take a  
27 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 forty-five days nor more than  
30 one year. Forty-five days of the imprisonment may not be suspended or  
31 deferred unless the court finds that the imposition of this mandatory  
32 minimum sentence would impose a substantial risk to the offender's  
33 physical or mental well-being. Whenever the mandatory minimum sentence  
34 is suspended or deferred, the court shall state in writing the reason  
35 for 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 seven hundred fifty dollars nor  
38 more than five thousand dollars. Seven hundred fifty dollars of the

1 fine may not be suspended or deferred unless the court finds the  
2 offender to be 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 nine hundred days. The period of license, permit, or privilege  
6 revocation may not be suspended. The court shall notify the department  
7 of licensing of the conviction, and upon receiving notification of the  
8 conviction the department shall revoke the offender's license, permit,  
9 or privilege; and

10 (iv) By a court-ordered restriction under RCW 46.20.720.

11 (3) A person who is convicted of a violation of RCW 46.61.502 or  
12 46.61.504 and who has two or more prior offenses within five years  
13 shall be punished as follows:

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

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

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

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

37 (iv) By a court-ordered restriction under RCW 46.20.720; or

38 (b) In the case of a person whose alcohol concentration was at  
39 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 one hundred twenty days nor  
4 more than one year. One hundred twenty days of the imprisonment may  
5 not be suspended or deferred unless the court finds that the imposition  
6 of this mandatory minimum sentence would impose a substantial risk to  
7 the offender's physical or mental well-being. Whenever the mandatory  
8 minimum sentence is suspended or deferred, the court shall state in  
9 writing the reason for granting the suspension or deferral and the  
10 facts upon which the suspension or deferral is based; and

11 (ii) By a fine of not less than one thousand five hundred dollars  
12 nor more than five thousand dollars. One thousand five hundred dollars  
13 of the fine may not be suspended or deferred unless the court finds the  
14 offender to be 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 four years. The period of license, permit, or privilege revocation 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 revoke the offender's license, permit, or  
21 privilege; and

22 (iv) By a court-ordered restriction under RCW 46.20.720.

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

27 (5) An offender punishable under this section is subject to the  
28 alcohol assessment and treatment provisions of RCW 46.61.5056.

29 (6) After expiration of any period of suspension or revocation of  
30 the offender's license, permit, or privilege to drive required by this  
31 section, the department shall place the offender's driving privilege in  
32 probationary status pursuant to RCW 46.20.355.

33 (7)(a) In addition to any nonsuspendable and nondeferrable jail  
34 sentence required by this section, whenever the court imposes less than  
35 one year in jail, the court shall also suspend but shall not defer a  
36 period of confinement for a period not exceeding two years. The court  
37 shall impose conditions of probation that include: (i) Not driving a  
38 motor vehicle within this state without a valid license to drive and  
39 proof of financial responsibility for the future; (ii) not driving a

1 motor vehicle within this state while having an alcohol concentration  
2 of 0.08 or more within two hours after driving; and (iii) not refusing  
3 to submit to a test of his or her breath or blood to determine alcohol  
4 concentration upon request of a law enforcement officer who has  
5 reasonable grounds to believe the person was driving or was in actual  
6 physical control of a motor vehicle within this state while under the  
7 influence of intoxicating liquor. The court may impose conditions of  
8 probation that include nonrepetition, installation of an ignition  
9 interlock or other biological or technical device on the probationer's  
10 motor vehicle, alcohol or drug treatment, supervised probation, or  
11 other conditions that may be appropriate. The sentence may be imposed  
12 in whole or in part upon violation of a condition of probation during  
13 the suspension period.

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

18 (c) For each incident involving a violation of a mandatory  
19 condition of probation imposed under this subsection, the license,  
20 permit, or privilege to drive of the person shall be suspended by the  
21 court for thirty days or, if such license, permit, or privilege to  
22 drive already is suspended, revoked, or denied at the time the finding  
23 of probation violation is made, the suspension, revocation, or denial  
24 then in effect shall be extended by thirty days. The court shall  
25 notify the department of any suspension, revocation, or denial or any  
26 extension of a suspension, revocation, or denial imposed under this  
27 subsection.

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

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

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

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

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

37 (v) A conviction for a violation of RCW 46.61.5249 or an equivalent  
38 local ordinance, if the conviction is the result of a charge that was

1 originally filed as a violation of RCW 46.61.502 or 46.61.504, or an  
2 equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

9 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
10 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
11 ordinance, if the charge under which the deferred prosecution was  
12 granted was originally filed as a violation of RCW 46.61.502 or  
13 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
14 46.61.522.

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

17 **Sec. 5.** RCW 46.55.113 and 1997 c 66 s 7 are each amended to read  
18 as follows:

19 Whenever the driver of a vehicle is arrested for a violation of RCW  
20 46.61.502 or 46.61.504 or any similar municipal ordinance, the  
21 arresting officer may take custody of the vehicle and provide for its  
22 prompt removal to a place of safety. If the driver is in violation of  
23 a restriction under RCW 46.20.720 or 46.61.5055 to operate only a motor  
24 vehicle equipped with an ignition interlock or other biological or  
25 technical device, the arresting officer shall take custody of the  
26 vehicle and provide for its prompt removal to a place of safety. The  
27 vehicle will remain impounded for use as evidence at a trial regarding  
28 the violation of the restriction.

29 In addition, a police officer may take custody of a vehicle and  
30 provide for its prompt removal to a place of safety under any of the  
31 following circumstances:

32 (1) Whenever a police officer finds a vehicle standing upon the  
33 roadway in violation of any of the provisions of RCW 46.61.560, the  
34 officer may provide for the removal of the vehicle or require the  
35 driver or other person in charge of the vehicle to move the vehicle to  
36 a position off the roadway;



1 (2) Whenever a police officer finds a vehicle unattended upon a  
2 highway where the vehicle constitutes an obstruction to traffic or  
3 jeopardizes public safety;

4 (3) Whenever a police officer finds an unattended vehicle at the  
5 scene of an accident or when the driver of a vehicle involved in an  
6 accident is physically or mentally incapable of deciding upon steps to  
7 be taken to protect his or her property;

8 (4) Whenever the driver of a vehicle is arrested and taken into  
9 custody by a police officer;

10 (5) Whenever a police officer discovers a vehicle that the officer  
11 determines to be a stolen vehicle;

12 (6) Whenever a vehicle without a special license plate, card, or  
13 decal indicating that the vehicle is being used to transport a disabled  
14 person under RCW 46.16.381 is parked in a stall or space clearly and  
15 conspicuously marked under RCW 46.61.581 which space is provided on  
16 private property without charge or on public property;

17 (7) Upon determining that a person is operating a motor vehicle  
18 without a valid driver's license in violation of RCW 46.20.005 or with  
19 a license that has been expired for ninety days or more, or with a  
20 suspended or revoked license in violation of RCW 46.20.342 or  
21 46.20.420.

22 Nothing in this section may derogate from the powers of police  
23 officers under the common law. For the purposes of this section, a  
24 place of safety may include the business location of a registered tow  
25 truck operator.

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 46.61 RCW  
27 to read as follows:

28 Charges of a violation of RCW 46.61.502, 46.61.503, or 46.61.504,  
29 whether made by citation, complaint, or information, shall be filed,  
30 and arraignment on those charges shall be held, within twenty-one days  
31 following arrest.

32 NEW SECTION. **Sec. 7.** The legislature finds that driving is a  
33 privilege and that the state may restrict that privilege in the  
34 interests of public safety. One such reasonable restriction is  
35 requiring certain individuals, if they choose to drive, to drive only  
36 vehicles equipped with ignition interlock devices. The legislature  
37 further finds that the costs of these devices are minimal and are

1 affordable. It is the intent of the legislature that these devices be  
2 paid for by the drivers using them and that neither the state nor  
3 entities of local government provide any public funding for this  
4 purpose.

5 NEW SECTION. **Sec. 8.** If this act mandates an increased level of  
6 service by local governments, the local government may, under RCW  
7 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the  
8 legislature. The claims shall be subject to verification by the office  
9 of financial management.

10 NEW SECTION. **Sec. 9.** This act takes effect January 1, 1999."

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12 By Conference Committee

13 ADOPTED 3/12/98

14 On page 1, line 1 of the title, after "devices;" strike the  
15 remainder of the title and insert "amending RCW 46.20.720, 46.20.740,  
16 and 46.55.113; reenacting and amending RCW 46.61.5055; adding a new  
17 section to chapter 46.61 RCW; creating new sections; prescribing  
18 penalties; and providing an effective date."

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