
ENGROSSED SUBSTITUTE SENATE BILL 6165

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Rossi, Roach, Rasmussen, Goings, T. Sheldon, McCaslin, Strannigan, Zarelli, Long, Deccio, Oke, Kline, Wood, Schow, Swecker, Stevens, Haugen, Johnson, Benton and Winsley)

Read first time 1/15/98.

1 AN ACT Relating to use of ignition interlock devices; amending RCW
2 46.20.720, 46.20.740, and 46.55.113; reenacting and amending RCW
3 46.61.5055; creating new sections; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** This act may be known and cited as the Mary
6 Johnsen Act.

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

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

16 (2) If a person is convicted of a violation of RCW 46.61.502 or
17 46.61.504 or an equivalent local ordinance, the court shall order that
18 after a period of suspension, revocation, or denial of driving

1 privileges, the person may drive only a motor vehicle equipped with a
2 functioning ignition interlock or other biological or technical device.

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

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

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

14 (c) For a person who has previously been restricted under (b) of
15 this subsection, a permanent, lifetime restriction.

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

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

21 (1) The department shall attach or imprint a notation on the
22 driver's license of any person restricted under RCW 46.20.720 or
23 46.61.5055 stating that the person may operate only a motor vehicle
24 equipped with an ignition interlock or other biological or technical
25 device.

26 (2) It is a misdemeanor for a person with such a notation on his or
27 her driver's license to operate a motor vehicle that is not so
28 equipped. For the first such conviction, the minimum sentence is
29 thirty days in jail. For a second offense, the minimum sentence is
30 sixty days in jail. For a third or subsequent offense, the minimum
31 sentence is ninety days in jail.

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

34 (1) A person who is convicted of a violation of RCW 46.61.502 or
35 46.61.504 and who has no prior offense within five years shall be
36 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 one day nor more than one
6 year. Twenty-four consecutive hours of the imprisonment may not be
7 suspended or deferred unless the court finds that the imposition of
8 this mandatory minimum sentence would impose a substantial risk to the
9 offender's physical or mental well-being. Whenever the mandatory
10 minimum sentence is suspended or deferred, the court shall state in
11 writing the reason for granting the suspension or deferral and the
12 facts upon which the suspension or deferral is based; and

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

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

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

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

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

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

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

9 (2) A person who is convicted of a violation of RCW 46.61.502 or
10 46.61.504 and who has one 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 thirty days nor more than one
17 year. Thirty days of the imprisonment may not be suspended or deferred
18 unless the court finds that the imposition of this mandatory minimum
19 sentence would impose a substantial risk to the offender's physical or
20 mental well-being. Whenever the mandatory minimum sentence is
21 suspended or deferred, the court shall state in writing the reason for
22 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 two years. The period of license, permit, or privilege revocation 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 revoke the offender's license, permit, or
34 privilege; and

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

36 (b) In the case of a person whose alcohol concentration was at
37 least 0.15, or for whom by reason of the person's refusal to take a
38 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 forty-five days nor more than
2 one year. Forty-five days of the imprisonment may not be suspended or
3 deferred unless the court finds that the imposition of this mandatory
4 minimum sentence would impose a substantial risk to the offender's
5 physical or mental well-being. Whenever the mandatory minimum sentence
6 is suspended or deferred, the court shall state in writing the reason
7 for 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 seven hundred fifty dollars nor
10 more than five thousand dollars. Seven hundred fifty dollars of the
11 fine may not be suspended or deferred unless the court finds the
12 offender to be 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 nine hundred days. The period of license, permit, or privilege
16 revocation may not be suspended. The court shall notify the department
17 of licensing of the conviction, and upon receiving notification of the
18 conviction the department shall revoke the offender's license, permit,
19 or privilege; and

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

21 (3) A person who is convicted of a violation of RCW 46.61.502 or
22 46.61.504 and who has two or more prior offenses within five years
23 shall be punished as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
20 prosecution for a violation of RCW 46.61.5249, or an equivalent local
21 ordinance, if the charge under which the deferred prosecution was
22 granted was originally filed as a violation of RCW 46.61.502 or
23 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
24 46.61.522.

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

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

29 Whenever the driver of a vehicle is arrested for a violation of RCW
30 46.61.502 or 46.61.504 or any similar municipal ordinance, the
31 arresting officer may take custody of the vehicle and provide for its
32 prompt removal to a place of safety. If the driver is in violation of
33 a restriction under RCW 46.20.720 or 46.61.5055 to operate only a motor
34 vehicle equipped with an ignition interlock or other biological or
35 technical device, the arresting officer shall take custody of the
36 vehicle and provide for its prompt removal to a place of safety. The
37 vehicle will remain impounded for use as evidence at a trial regarding
38 the violation of the restriction.

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

4 (1) Whenever a police officer finds a vehicle standing upon the
5 roadway in violation of any of the provisions of RCW 46.61.560, the
6 officer may provide for the removal of the vehicle or require the
7 driver or other person in charge of the vehicle to move the vehicle to
8 a position off the roadway;

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

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

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

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

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

25 (7) Upon determining that a person is operating a motor vehicle
26 without a valid driver's license in violation of RCW 46.20.005 or with
27 a license that has been expired for ninety days or more, or with a
28 suspended or revoked license in violation of RCW 46.20.342 or
29 46.20.420.

30 Nothing in this section may derogate from the powers of police
31 officers under the common law. For the purposes of this section, a
32 place of safety may include the business location of a registered tow
33 truck operator.

34 NEW SECTION. **Sec. 6.** If this act mandates an increased level of
35 service by local governments, the local government may, under RCW
36 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the

1 legislature. The claims shall be subject to verification by the office
2 of financial management.

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