

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6165

55th Legislature
1998 Regular Session

Passed by the Senate March 12, 1998
YEAS 49 NAYS 0

President of the Senate

Passed by the House March 11, 1998
YEAS 97 NAYS 0

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6165** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6165

AS RECOMMENDED BY CONFERENCE COMMITTEE

Passed Legislature - 1998 Regular Session

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; adding a new section to chapter 46.61 RCW; creating new
4 sections; prescribing penalties; and providing an effective date.

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

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

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

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

17 (2) If a person is convicted of a violation of RCW 46.61.502 or
18 46.61.504 or an equivalent local ordinance, the court shall order that

1 after a period of suspension, revocation, or denial of driving
2 privileges, the person may drive only a motor vehicle equipped with a
3 functioning ignition interlock or other biological or technical device.
4 The court may waive the requirement for the use of such a device if the
5 court makes a specific finding in writing that such devices are not
6 reasonably available in the local area.

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

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

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

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

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

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

25 (1) The department shall attach or imprint a notation on the
26 driver's license of any person restricted under RCW 46.20.720 or
27 46.61.5055 stating that the person may operate only a motor vehicle
28 equipped with an ignition interlock or other biological or technical
29 device.

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

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

1 (1) A person who is convicted of a violation of RCW 46.61.502 or
2 46.61.504 and who has no prior offense within five years shall be
3 punished as follows:

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

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

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

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

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

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

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

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

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

13 (2) A person who is convicted of a violation of RCW 46.61.502 or
14 46.61.504 and who has one prior offense within five years shall be
15 punished as follows:

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

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

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

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

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

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

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

25 (3) A person who is convicted of a violation of RCW 46.61.502 or
26 46.61.504 and who has two or more prior offenses within five years
27 shall be punished as follows:

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

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

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

5 (iii) By revocation of the offender's license or permit to drive,
6 or suspension of any nonresident privilege to drive, for a period of
7 three years. The period of license, permit, or privilege revocation
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 revoke the offender's license, permit,
11 or privilege; and

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

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

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

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

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

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

37 (4) In exercising its discretion in setting penalties within the
38 limits allowed by this section, the court shall particularly consider

1 whether the person's driving at the time of the offense was responsible
2 for injury or damage to another or another's property.

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

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

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

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

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

1 notify the department of any suspension, revocation, or denial or any
2 extension of a suspension, revocation, or denial imposed under this
3 subsection.

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

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

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

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

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

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

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

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

23 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
24 prosecution for a violation of RCW 46.61.5249, or an equivalent local
25 ordinance, if the charge under which the deferred prosecution was
26 granted was originally filed as a violation of RCW 46.61.502 or
27 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
28 46.61.522.

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

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

33 Whenever the driver of a vehicle is arrested for a violation of RCW
34 46.61.502 or 46.61.504 or any similar municipal ordinance, the
35 arresting officer may take custody of the vehicle and provide for its
36 prompt removal to a place of safety. If the driver is in violation of
37 a restriction under RCW 46.20.720 or 46.61.5055 to operate only a motor
38 vehicle equipped with an ignition interlock or other biological or

1 technical device, the arresting officer shall take custody of the
2 vehicle and provide for its prompt removal to a place of safety. The
3 vehicle will remain impounded for use as evidence at a trial regarding
4 the violation of the restriction.

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

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

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

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

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

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

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

29 (7) Upon determining that a person is operating a motor vehicle
30 without a valid driver's license in violation of RCW 46.20.005 or with
31 a license that has been expired for ninety days or more, or with a
32 suspended or revoked license in violation of RCW 46.20.342 or
33 46.20.420.

34 Nothing in this section may derogate from the powers of police
35 officers under the common law. For the purposes of this section, a
36 place of safety may include the business location of a registered tow
37 truck operator.

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

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

7 NEW SECTION. **Sec. 7.** The legislature finds that driving is a
8 privilege and that the state may restrict that privilege in the
9 interests of public safety. One such reasonable restriction is
10 requiring certain individuals, if they choose to drive, to drive only
11 vehicles equipped with ignition interlock devices. The legislature
12 further finds that the costs of these devices are minimal and are
13 affordable. It is the intent of the legislature that these devices be
14 paid for by the drivers using them and that neither the state nor
15 entities of local government provide any public funding for this
16 purpose.

17 NEW SECTION. **Sec. 8.** If this act mandates an increased level of
18 service by local governments, the local government may, under RCW
19 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the
20 legislature. The claims shall be subject to verification by the office
21 of financial management.

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

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