
HOUSE BILL 1113

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62nd Legislature

2011 Regular Session

By Representatives Rolfes, Klippert, Warnick, Hurst, Finn, Miloscia, Kelley, Goodman, Liias, Fitzgibbon, and Smith

Read first time 01/12/11. Referred to Committee on Judiciary.

1 AN ACT Relating to prior offenses for the purposes of felony
2 driving or being in physical control of a vehicle while under the
3 influence of intoxicating liquor or any drug; and amending RCW
4 46.61.502, 46.61.504, and 46.61.5055.

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

6 **Sec. 1.** RCW 46.61.502 and 2008 c 282 s 20 are each amended to read
7 as follows:

8 (1) A person is guilty of driving while under the influence of
9 intoxicating liquor or any drug if the person drives a vehicle within
10 this state:

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

14 (b) While the person is under the influence of or affected by
15 intoxicating liquor or any drug; or

16 (c) While the person is under the combined influence of or affected
17 by intoxicating liquor and any drug.

18 (2) The fact that a person charged with a violation of this section

1 is or has been entitled to use a drug under the laws of this state
2 shall not constitute a defense against a charge of violating this
3 section.

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

14 (4) Analyses of blood or breath samples obtained more than two
15 hours after the alleged driving may be used as evidence that within two
16 hours of the alleged driving, a person had an alcohol concentration of
17 0.08 or more in violation of subsection (1)(a) of this section, and in
18 any case in which the analysis shows an alcohol concentration above
19 0.00 may be used as evidence that a person was under the influence of
20 or affected by intoxicating liquor or any drug in violation of
21 subsection (1)(b) or (c) of this section.

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

24 (6) It is a class C felony punishable under chapter 9.94A RCW, or
25 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has
26 four or more prior offenses (~~within ten years~~). Prior offenses
27 includes offenses as defined in RCW 46.61.5055 and convictions from
28 other state and tribal jurisdictions that are comparable to prior
29 offenses as defined in RCW 46.61.5055; or (b) the person has ever
30 previously been convicted of (i) vehicular homicide while under the
31 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), (ii)
32 vehicular assault while under the influence of intoxicating liquor or
33 any drug, RCW 46.61.522(1)(b), or (iii) an out-of-state offense
34 comparable to the offense specified in (b)(i) or (ii) of this
35 subsection.

36 **Sec. 2.** RCW 46.61.504 and 2008 c 282 s 21 are each amended to read
37 as follows:

1 (1) A person is guilty of being in actual physical control of a
2 motor vehicle while under the influence of intoxicating liquor or any
3 drug if the person has actual physical control of a vehicle within this
4 state:

5 (a) And the person has, within two hours after being in actual
6 physical control of the vehicle, an alcohol concentration of 0.08 or
7 higher as shown by analysis of the person's breath or blood made under
8 RCW 46.61.506; or

9 (b) While the person is under the influence of or affected by
10 intoxicating liquor or any drug; or

11 (c) While the person is under the combined influence of or affected
12 by intoxicating liquor and any drug.

13 (2) The fact that a person charged with a violation of this section
14 is or has been entitled to use a drug under the laws of this state does
15 not constitute a defense against any charge of violating this section.
16 No person may be convicted under this section if, prior to being
17 pursued by a law enforcement officer, the person has moved the vehicle
18 safely off the roadway.

19 (3) It is an affirmative defense to a violation of subsection
20 (1)(a) of this section which the defendant must prove by a
21 preponderance of the evidence that the defendant consumed a sufficient
22 quantity of alcohol after the time of being in actual physical control
23 of the vehicle and before the administration of an analysis of the
24 person's breath or blood to cause the defendant's alcohol concentration
25 to be 0.08 or more within two hours after being in such control. The
26 court shall not admit evidence of this defense unless the defendant
27 notifies the prosecution prior to the omnibus or pretrial hearing in
28 the case of the defendant's intent to assert the affirmative defense.

29 (4) Analyses of blood or breath samples obtained more than two
30 hours after the alleged being in actual physical control of a vehicle
31 may be used as evidence that within two hours of the alleged being in
32 such control, a person had an alcohol concentration of 0.08 or more in
33 violation of subsection (1)(a) of this section, and in any case in
34 which the analysis shows an alcohol concentration above 0.00 may be
35 used as evidence that a person was under the influence of or affected
36 by intoxicating liquor or any drug in violation of subsection (1)(b) or
37 (c) of this section.

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

3 (6) It is a class C felony punishable under chapter 9.94A RCW, or
4 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has
5 four or more prior offenses (~~within ten years~~). Prior offenses
6 includes offenses as defined in RCW 46.61.5055 and convictions from
7 other state and tribal jurisdictions that are comparable to prior
8 offenses as defined in RCW 46.61.5055; or (b) the person has ever
9 previously been convicted of (i) vehicular homicide while under the
10 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), (ii)
11 vehicular assault while under the influence of intoxicating liquor or
12 any drug, RCW 46.61.522(1)(b), or (iii) an out-of-state offense
13 comparable to the offense specified in (b)(i) or (ii) of this
14 subsection.

15 **Sec. 3.** RCW 46.61.5055 and 2010 c 269 s 4 are each amended to read
16 as follows:

17 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
18 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
19 and who has no prior offense within seven years shall be punished as
20 follows:

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

25 (i) By imprisonment for not less than one day nor more than one
26 year. Twenty-four consecutive hours of the imprisonment may not be
27 suspended or deferred unless the court finds that the imposition of
28 this mandatory minimum sentence would impose a substantial risk to the
29 offender's physical or mental well-being. Whenever the mandatory
30 minimum sentence is suspended or deferred, the court shall state in
31 writing the reason for granting the suspension or deferral and the
32 facts upon which the suspension or deferral is based. In lieu of the
33 mandatory minimum term of imprisonment required under this subsection
34 (1)(a)(i), the court may order not less than fifteen days of electronic
35 home monitoring. The offender shall pay the cost of electronic home
36 monitoring. The county or municipality in which the penalty is being
37 imposed shall determine the cost. The court may also require the

1 offender's electronic home monitoring device to include an alcohol
2 detection breathalyzer, and the court may restrict the amount of
3 alcohol the offender may consume during the time the offender is on
4 electronic home monitoring; and

5 (ii) By a fine of not less than three hundred fifty dollars nor
6 more than five thousand dollars. Three hundred fifty dollars of the
7 fine may not be suspended or deferred unless the court finds the
8 offender to be indigent; 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 two days nor more than one
14 year. Two consecutive days of the imprisonment may not be suspended or
15 deferred unless the court finds that the imposition of this mandatory
16 minimum sentence would impose a substantial risk to the offender's
17 physical or mental well-being. Whenever the mandatory minimum sentence
18 is suspended or deferred, the court shall state in writing the reason
19 for granting the suspension or deferral and the facts upon which the
20 suspension or deferral is based. In lieu of the mandatory minimum term
21 of imprisonment required under this subsection (1)(b)(i), the court may
22 order not less than thirty days of electronic home monitoring. The
23 offender shall pay the cost of electronic home monitoring. The county
24 or municipality in which the penalty is being imposed shall determine
25 the cost. The court may also require the offender's electronic home
26 monitoring device to include an alcohol detection breathalyzer, and the
27 court may restrict the amount of alcohol the offender may consume
28 during the time the offender is on electronic home monitoring; and

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

33 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
34 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
35 and who has one prior offense within seven years shall be punished as
36 follows:

37 (a) In the case of a person whose alcohol concentration was less

1 than 0.15, or for whom for reasons other than the person's refusal to
2 take a test offered pursuant to RCW 46.20.308 there is no test result
3 indicating the person's alcohol concentration:

4 (i) By imprisonment for not less than thirty days nor more than one
5 year and sixty days of electronic home monitoring. The offender shall
6 pay for the cost of the electronic monitoring. The county or
7 municipality where the penalty is being imposed shall determine the
8 cost. The court may also require the offender's electronic home
9 monitoring device include an alcohol detection breathalyzer, and may
10 restrict the amount of alcohol the offender may consume during the time
11 the offender is on electronic home monitoring. Thirty days of
12 imprisonment and sixty days of electronic home monitoring may not be
13 suspended or deferred unless the court finds that the imposition of
14 this mandatory minimum sentence would impose a substantial risk to the
15 offender's physical or mental well-being. Whenever the mandatory
16 minimum sentence is suspended or deferred, the court shall state in
17 writing the reason for granting the suspension or deferral and the
18 facts upon which the suspension or deferral is based; and

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

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

27 (i) By imprisonment for not less than forty-five days nor more than
28 one year and ninety days of electronic home monitoring. The offender
29 shall pay for the cost of the electronic monitoring. The county or
30 municipality where the penalty is being imposed shall determine the
31 cost. The court may also require the offender's electronic home
32 monitoring device include an alcohol detection breathalyzer, and may
33 restrict the amount of alcohol the offender may consume during the time
34 the offender is on electronic home monitoring. Forty-five days of
35 imprisonment and ninety days of electronic home monitoring may not be
36 suspended or deferred unless the court finds that the imposition of
37 this mandatory minimum sentence would impose a substantial risk to the
38 offender's physical or mental well-being. Whenever the mandatory

1 minimum sentence is suspended or deferred, the court shall state in
2 writing the reason for granting the suspension or deferral and the
3 facts upon which the suspension or deferral is based; and

4 (ii) By a fine of not less than seven hundred fifty dollars nor
5 more than five thousand dollars. Seven hundred fifty dollars of the
6 fine may not be suspended or deferred unless the court finds the
7 offender to be indigent.

8 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
9 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
10 and who has two or three prior offenses within seven 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 ninety days nor more than one
17 year and one hundred twenty days of electronic home monitoring. The
18 offender shall pay for the cost of the electronic monitoring. The
19 county or municipality where the penalty is being imposed shall
20 determine the cost. The court may also require the offender's
21 electronic home monitoring device include an alcohol detection
22 breathalyzer, and may restrict the amount of alcohol the offender may
23 consume during the time the offender is on electronic home monitoring.
24 Ninety days of imprisonment and one hundred twenty days of electronic
25 home monitoring may not be suspended or deferred unless the court finds
26 that the imposition of this mandatory minimum sentence would impose a
27 substantial risk to the offender's physical or mental well-being.
28 Whenever the mandatory minimum sentence is suspended or deferred, the
29 court shall state in writing the reason for granting the suspension or
30 deferral and the facts upon which the suspension or deferral is based;
31 and

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

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 and one hundred fifty days of electronic home
5 monitoring. The offender shall pay for the cost of the electronic
6 monitoring. The county or municipality where the penalty is being
7 imposed shall determine the cost. The court may also require the
8 offender's electronic home monitoring device include an alcohol
9 detection breathalyzer, and may restrict the amount of alcohol the
10 offender may consume during the time the offender is on electronic home
11 monitoring. One hundred twenty days of imprisonment and one hundred
12 fifty days of electronic home monitoring may not be suspended or
13 deferred unless the court finds that the imposition of this mandatory
14 minimum sentence would impose a substantial risk to the offender's
15 physical or mental well-being. Whenever the mandatory minimum sentence
16 is suspended or deferred, the court shall state in writing the reason
17 for granting the suspension or deferral and the facts upon which the
18 suspension or deferral is based; and

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

23 (4) A person who is convicted of a violation of RCW 46.61.502 or
24 46.61.504 shall be punished under chapter 9.94A RCW if: (a) The person
25 has four or more prior offenses (~~within ten years~~). Prior offenses
26 includes convictions from other state and tribal jurisdictions that are
27 comparable to prior offenses as defined in this section; or (b) the
28 person has ever previously been convicted of: (i) A violation of RCW
29 46.61.520 committed while under the influence of intoxicating liquor or
30 any drug; (ii) a violation of RCW 46.61.522 committed while under the
31 influence of intoxicating liquor or any drug; or (iii) an out-of-state
32 offense comparable to the offense specified in (b)(i) or (ii) of this
33 subsection.

34 (5)(a) The court shall require any person convicted of a violation
35 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply
36 for an ignition interlock driver's license from the department and to
37 have a functioning ignition interlock device installed on all motor
38 vehicles operated by the person.

1 (b) The installation of an ignition interlock device is not
2 necessary on vehicles owned, leased, or rented by a person's employer
3 and on those vehicles whose care and/or maintenance is the temporary
4 responsibility of the employer, and driven at the direction of a
5 person's employer as a requirement of employment during working hours.
6 The person must provide the department with a declaration pursuant to
7 RCW 9A.72.085 from his or her employer stating that the person's
8 employment requires the person to operate a vehicle owned by the
9 employer or other persons during working hours.

10 (c) An ignition interlock device imposed under this section shall
11 be calibrated to prevent a motor vehicle from being started when the
12 breath sample provided has an alcohol concentration of 0.025 or more.

13 (d) The court may waive the requirement that a person apply for an
14 ignition interlock driver's license if the court makes a specific
15 finding in writing that:

16 (i) The person lives out-of-state and the devices are not
17 reasonably available in the person's local area;

18 (ii) The person does not operate a vehicle; or

19 (iii) The person is not eligible to receive an ignition interlock
20 driver's license under RCW 46.20.385 because the person is not a
21 resident of Washington, is a habitual traffic offender, has already
22 applied for or is already in possession of an ignition interlock
23 driver's license, has never had a driver's license, has been certified
24 under chapter 74.20A RCW as noncompliant with a child support order, or
25 is subject to any other condition or circumstance that makes the person
26 ineligible to obtain an ignition interlock driver's license.

27 (e) If a court finds that a person is not eligible to receive an
28 ignition interlock driver's license under this section, the court is
29 not required to make any further subsequent inquiry or determination as
30 to the person's eligibility.

31 (f) If the court orders that a person refrain from consuming any
32 alcohol and requires the person to apply for an ignition interlock
33 driver's license, and the person states that he or she does not operate
34 a motor vehicle or the person is ineligible to obtain an ignition
35 interlock driver's license, the court shall order the person to submit
36 to alcohol monitoring through an alcohol detection breathalyzer device,
37 transdermal sensor device, or other technology designed to detect

1 alcohol in a person's system. The person shall pay for the cost of the
2 monitoring. The county or municipality where the penalty is being
3 imposed shall determine the cost.

4 (g) The period of time for which ignition interlock use or alcohol
5 monitoring is required will be as follows:

6 (i) For a person who has not previously been restricted under this
7 section, a period of one year;

8 (ii) For a person who has previously been restricted under (g)(i)
9 of this subsection, a period of five years;

10 (iii) For a person who has previously been restricted under (g)(ii)
11 of this subsection, a period of ten years.

12 (6) If a person who is convicted of a violation of RCW 46.61.502 or
13 46.61.504 committed the offense while a passenger under the age of
14 sixteen was in the vehicle, the court shall:

15 (a) In any case in which the installation and use of an interlock
16 or other device is not mandatory under RCW 46.20.720 or other law,
17 order the use of such a device for not less than sixty days following
18 the restoration of the person's license, permit, or nonresident driving
19 privileges; and

20 (b) In any case in which the installation and use of such a device
21 is otherwise mandatory, order the use of such a device for an
22 additional sixty days.

23 (7) In exercising its discretion in setting penalties within the
24 limits allowed by this section, the court shall particularly consider
25 the following:

26 (a) Whether the person's driving at the time of the offense was
27 responsible for injury or damage to another or another's property; and

28 (b) Whether at the time of the offense the person was driving or in
29 physical control of a vehicle with one or more passengers.

30 (8) An offender punishable under this section is subject to the
31 alcohol assessment and treatment provisions of RCW 46.61.5056.

32 (9) The license, permit, or nonresident privilege of a person
33 convicted of driving or being in physical control of a motor vehicle
34 while under the influence of intoxicating liquor or drugs must:

35 (a) If the person's alcohol concentration was less than 0.15, or if
36 for reasons other than the person's refusal to take a test offered
37 under RCW 46.20.308 there is no test result indicating the person's
38 alcohol concentration:

1 (i) Where there has been no prior offense within seven years, be
2 suspended or denied by the department for ninety days;

3 (ii) Where there has been one prior offense within seven years, be
4 revoked or denied by the department for two years; or

5 (iii) Where there have been two or more prior offenses within seven
6 years, be revoked or denied by the department for three years;

7 (b) If the person's alcohol concentration was at least 0.15:

8 (i) Where there has been no prior offense within seven years, be
9 revoked or denied by the department for one year;

10 (ii) Where there has been one prior offense within seven years, be
11 revoked or denied by the department for nine hundred days; or

12 (iii) Where there have been two or more prior offenses within seven
13 years, be revoked or denied by the department for four years; or

14 (c) If by reason of the person's refusal to take a test offered
15 under RCW 46.20.308, there is no test result indicating the person's
16 alcohol concentration:

17 (i) Where there have been no prior offenses within seven years, be
18 revoked or denied by the department for two years;

19 (ii) Where there has been one prior offense within seven years, be
20 revoked or denied by the department for three years; or

21 (iii) Where there have been two or more previous offenses within
22 seven years, be revoked or denied by the department for four years.

23 The department shall grant credit on a day-for-day basis for any
24 portion of a suspension, revocation, or denial already served under
25 this subsection for a suspension, revocation, or denial imposed under
26 RCW 46.20.3101 arising out of the same incident.

27 For purposes of this subsection (9), the department shall refer to
28 the driver's record maintained under RCW 46.52.120 when determining the
29 existence of prior offenses.

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

34 (11)(a) In addition to any nonsuspendable and nondeferrable jail
35 sentence required by this section, whenever the court imposes less than
36 one year in jail, the court shall also suspend but shall not defer a
37 period of confinement for a period not exceeding five years. The court
38 shall impose conditions of probation that include: (i) Not driving a

1 motor vehicle within this state without a valid license to drive and
2 proof of financial responsibility for the future; (ii) not driving a
3 motor vehicle within this state while having an alcohol concentration
4 of 0.08 or more within two hours after driving; and (iii) not refusing
5 to submit to a test of his or her breath or blood to determine alcohol
6 concentration upon request of a law enforcement officer who has
7 reasonable grounds to believe the person was driving or was in actual
8 physical control of a motor vehicle within this state while under the
9 influence of intoxicating liquor. The court may impose conditions of
10 probation that include nonrepetition, installation of an ignition
11 interlock device on the probationer's motor vehicle, alcohol or drug
12 treatment, supervised probation, or other conditions that may be
13 appropriate. The sentence may be imposed in whole or in part upon
14 violation of a condition of probation during the suspension period.

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

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

29 (12) A court may waive the electronic home monitoring requirements
30 of this chapter when:

31 (a) The offender does not have a dwelling, telephone service, or
32 any other necessity to operate an electronic home monitoring system;

33 (b) The offender does not reside in the state of Washington; or

34 (c) The court determines that there is reason to believe that the
35 offender would violate the conditions of the electronic home monitoring
36 penalty.

37 Whenever the mandatory minimum term of electronic home monitoring
38 is waived, the court shall state in writing the reason for granting the

1 waiver and the facts upon which the waiver is based, and shall impose
2 an alternative sentence with similar punitive consequences. The
3 alternative sentence may include, but is not limited to, additional
4 jail time, work crew, or work camp.

5 Whenever the combination of jail time and electronic home
6 monitoring or alternative sentence would exceed three hundred sixty-
7 five days, the offender shall serve the jail portion of the sentence
8 first, and the electronic home monitoring or alternative portion of the
9 sentence shall be reduced so that the combination does not exceed three
10 hundred sixty-five days.

11 (13) An offender serving a sentence under this section, whether or
12 not a mandatory minimum term has expired, may be granted an
13 extraordinary medical placement by the jail administrator subject to
14 the standards and limitations set forth in RCW 9.94A.728(3).

15 (14) For purposes of this section and RCW 46.61.502 and 46.61.504:

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

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

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

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

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

25 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
26 9A.36.050 or an equivalent local ordinance, if the conviction is the
27 result of a charge that was originally filed as a violation of RCW
28 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
29 46.61.520 or 46.61.522;

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

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

36 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
37 prosecution for a violation of RCW 46.61.5249, or an equivalent local
38 ordinance, if the charge under which the deferred prosecution was

1 granted was originally filed as a violation of RCW 46.61.502 or
2 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
3 46.61.522;

4 If a deferred prosecution is revoked based on a subsequent
5 conviction for an offense listed in this subsection (14)(a), the
6 subsequent conviction shall not be treated as a prior offense of the
7 revoked deferred prosecution for the purposes of sentencing; and

8 (b) "Within seven years" means that the arrest for a prior offense
9 occurred within seven years before or after the arrest for the current
10 offense(~~;~~ ~~and~~

11 ~~(c) "Within ten years" means that the arrest for a prior offense~~
12 ~~occurred within ten years before or after the arrest for the current~~
13 ~~offense)).~~

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