

SB 6413 - H COMM AMD

By Committee on Public Safety

ADOPTED AND ENGROSSED 3/7/14

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 46.61.5055 and 2013 2nd sp.s. c 35 s 13 are each  
4 amended to read as follows:

5 (1) No prior offenses in seven years. Except as provided in RCW  
6 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation  
7 of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven  
8 years shall be punished as follows:

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

14 (i) By imprisonment for not less than one day nor more than three  
15 hundred sixty-four days. Twenty-four consecutive hours of the  
16 imprisonment may not be suspended unless the court finds that the  
17 imposition of this mandatory minimum sentence would impose a  
18 substantial risk to the offender's physical or mental well-being.  
19 Whenever the mandatory minimum sentence is suspended, the court shall  
20 state in writing the reason for granting the suspension and the facts  
21 upon which the suspension is based. In lieu of the mandatory minimum  
22 term of imprisonment required under this subsection (1)(a)(i), the  
23 court may order not less than fifteen days of electronic home  
24 monitoring. The offender shall pay the cost of electronic home  
25 monitoring. The county or municipality in which the penalty is being  
26 imposed shall determine the cost. The court may also require the  
27 offender's electronic home monitoring device or other separate alcohol  
28 monitoring device to include an alcohol detection breathalyzer, and the  
29 court may restrict the amount of alcohol the offender may consume  
30 during the time the offender is on electronic home monitoring; 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 unless the court finds the offender to be  
4 indigent; or

5 (b) **Penalty for alcohol concentration at least 0.15.** In the case  
6 of a person whose alcohol concentration was at least 0.15, or for whom  
7 by reason of the person's refusal to take a test offered pursuant to  
8 RCW 46.20.308 there is no test result indicating the person's alcohol  
9 concentration:

10 (i) By imprisonment for not less than two days nor more than three  
11 hundred sixty-four days. Forty-eight consecutive hours of the  
12 imprisonment may not be suspended unless the court finds that the  
13 imposition of this mandatory minimum sentence would impose a  
14 substantial risk to the offender's physical or mental well-being.  
15 Whenever the mandatory minimum sentence is suspended, the court shall  
16 state in writing the reason for granting the suspension and the facts  
17 upon which the suspension is based. In lieu of the mandatory minimum  
18 term of imprisonment required under this subsection (1)(b)(i), the  
19 court may order not less than thirty days of electronic home  
20 monitoring. The offender shall pay the cost of electronic home  
21 monitoring. The county or municipality in which the penalty is being  
22 imposed shall determine the cost. The court may also require the  
23 offender's electronic home monitoring device to include an alcohol  
24 detection breathalyzer or other separate alcohol monitoring device, and  
25 the court may restrict the amount of alcohol the offender may consume  
26 during the time the offender is on electronic home monitoring; and

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

30 (2) **One prior offense in seven years.** Except as provided in RCW  
31 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation  
32 of RCW 46.61.502 or 46.61.504 and who has one prior offense within  
33 seven years shall be punished as follows:

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

1 (i) By imprisonment for not less than thirty days nor more than  
2 three hundred sixty-four days and sixty days of electronic home  
3 monitoring. In lieu of the mandatory minimum term of sixty days  
4 electronic home monitoring, the court may order at least an additional  
5 four days in jail or, if available in that county or city, a six-month  
6 period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300  
7 through 36.28A.390, and the court shall order an expanded alcohol  
8 assessment and treatment, if deemed appropriate by the assessment. The  
9 offender shall pay for the cost of the electronic monitoring. The  
10 county or municipality where the penalty is being imposed shall  
11 determine the cost. The court may also require the offender's  
12 electronic home monitoring device include an alcohol detection  
13 breathalyzer or other separate alcohol monitoring device, and may  
14 restrict the amount of alcohol the offender may consume during the time  
15 the offender is on electronic home monitoring. Thirty days of  
16 imprisonment and sixty days of electronic home monitoring may not be  
17 suspended unless the court finds that the imposition of this mandatory  
18 minimum sentence would impose a substantial risk to the offender's  
19 physical or mental well-being. Whenever the mandatory minimum sentence  
20 is suspended, the court shall state in writing the reason for granting  
21 the suspension and the facts upon which the suspension is based; and

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

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

30 (i) By imprisonment for not less than forty-five days nor more than  
31 three hundred sixty-four days and ninety days of electronic home  
32 monitoring. In lieu of the mandatory minimum term of ninety days  
33 electronic home monitoring, the court may order at least an additional  
34 six days in jail or, if available in that county or city, a six-month  
35 period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300  
36 through 36.28A.390, and the court shall order an expanded alcohol  
37 assessment and treatment, if deemed appropriate by the assessment. The  
38 offender shall pay for the cost of the electronic monitoring. The

1 county or municipality where the penalty is being imposed shall  
2 determine the cost. The court may also require the offender's  
3 electronic home monitoring device include an alcohol detection  
4 breathalyzer or other separate alcohol monitoring device, and may  
5 restrict the amount of alcohol the offender may consume during the time  
6 the offender is on electronic home monitoring. Forty-five days of  
7 imprisonment and ninety days of electronic home monitoring may not be  
8 suspended unless the court finds that the imposition of this mandatory  
9 minimum sentence would impose a substantial risk to the offender's  
10 physical or mental well-being. Whenever the mandatory minimum sentence  
11 is suspended, the court shall state in writing the reason for granting  
12 the suspension and the facts upon which the suspension 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 unless the court finds the offender to be  
16 indigent.

17 (3) **Two or three prior offenses in seven years.** Except as provided  
18 in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
19 violation of RCW 46.61.502 or 46.61.504 and who has two or three prior  
20 offenses within seven years shall be punished as follows:

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

26 (i) By imprisonment for not less than ninety days nor more than  
27 three hundred sixty-four days, if available in that county or city, a  
28 six-month period of 24/7 sobriety program monitoring pursuant to RCW  
29 36.28A.300 through 36.28A.390, and one hundred twenty days of  
30 electronic home monitoring. In lieu of the mandatory minimum term of  
31 one hundred twenty days of electronic home monitoring, the court may  
32 order at least an additional eight days in jail. The court shall order  
33 an expanded alcohol assessment and treatment, if deemed appropriate by  
34 the assessment. The offender shall pay for the cost of the electronic  
35 monitoring. The county or municipality where the penalty is being  
36 imposed shall determine the cost. The court may also require the  
37 offender's electronic home monitoring device include an alcohol  
38 detection breathalyzer or other separate alcohol monitoring device, and

1 may restrict the amount of alcohol the offender may consume during the  
2 time the offender is on electronic home monitoring. Ninety days of  
3 imprisonment and one hundred twenty days of electronic home monitoring  
4 may not be suspended unless the court finds that the imposition of this  
5 mandatory minimum sentence would impose a substantial risk to the  
6 offender's physical or mental well-being. Whenever the mandatory  
7 minimum sentence is suspended, the court shall state in writing the  
8 reason for granting the suspension and the facts upon which the  
9 suspension is based; and

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

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

18 (i) By imprisonment for not less than one hundred twenty days nor  
19 more than three hundred sixty-four days, if available in that county or  
20 city, a six-month period of 24/7 sobriety program monitoring pursuant  
21 to RCW 36.28A.300 through 36.28A.390, and one hundred fifty days of  
22 electronic home monitoring. In lieu of the mandatory minimum term of  
23 one hundred fifty days of electronic home monitoring, the court may  
24 order at least an additional ten days in jail. The offender shall pay  
25 for the cost of the electronic monitoring. The court shall order an  
26 expanded alcohol assessment and treatment, if deemed appropriate by the  
27 assessment. The county or municipality where the penalty is being  
28 imposed shall determine the cost. The court may also require the  
29 offender's electronic home monitoring device include an alcohol  
30 detection breathalyzer or other separate alcohol monitoring device, and  
31 may restrict the amount of alcohol the offender may consume during the  
32 time the offender is on electronic home monitoring. One hundred twenty  
33 days of imprisonment and one hundred fifty days of electronic home  
34 monitoring may not be suspended unless the court finds that the  
35 imposition of this mandatory minimum sentence would impose a  
36 substantial risk to the offender's physical or mental well-being.  
37 Whenever the mandatory minimum sentence is suspended, the court shall

1 state in writing the reason for granting the suspension and the facts  
2 upon which the suspension is based; and

3 (ii) By a fine of not less than one thousand five hundred dollars  
4 nor more than five thousand dollars. One thousand five hundred dollars  
5 of the fine may not be suspended unless the court finds the offender to  
6 be indigent.

7 (4) **Four or more prior offenses in ten years.** A person who is  
8 convicted of a violation of RCW 46.61.502 or 46.61.504 shall be  
9 punished under chapter 9.94A RCW if:

10 (a) The person has four or more prior offenses within ten years; or

11 (b) The person has ever previously been convicted of:

12 (i) A violation of RCW 46.61.520 committed while under the  
13 influence of intoxicating liquor or any drug;

14 (ii) A violation of RCW 46.61.522 committed while under the  
15 influence of intoxicating liquor or any drug;

16 (iii) An out-of-state offense comparable to the offense specified  
17 in (b)(i) or (ii) of this subsection; or

18 (iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

19 (5) **Monitoring.**

20 (a) **Ignition interlock device.** The court shall require any person  
21 convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent  
22 local ordinance to comply with the rules and requirements of the  
23 department regarding the installation and use of a functioning ignition  
24 interlock device installed on all motor vehicles operated by the  
25 person.

26 (b) **Monitoring devices.** If the court orders that a person refrain  
27 from consuming any alcohol, the court may order the person to submit to  
28 alcohol monitoring through an alcohol detection breathalyzer device,  
29 transdermal sensor device, or other technology designed to detect  
30 alcohol in a person's system. The person shall pay for the cost of the  
31 monitoring, unless the court specifies that the cost of monitoring will  
32 be paid with funds that are available from an alternative source  
33 identified by the court. The county or municipality where the penalty  
34 is being imposed shall determine the cost.

35 (c) **Ignition interlock device substituted for 24/7 sobriety program**  
36 **monitoring.** In any county or city where a 24/7 sobriety program is  
37 available and verified by the Washington association of sheriffs and  
38 police chiefs, the court shall:

1       (i) Order the person to install and use a functioning ignition  
2 interlock or other device in lieu of such period of 24/7 sobriety  
3 program monitoring;

4       (ii) Order the person to a period of 24/7 sobriety program  
5 monitoring pursuant to subsections (1) through (3) of this section; or

6       (iii) Order the person to install and use a functioning ignition  
7 interlock or other device in addition to a period of 24/7 sobriety  
8 program monitoring pursuant to subsections (1) through (3) of this  
9 section.

10       (6) **Penalty for having a minor passenger in vehicle.** If a person  
11 who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed  
12 the offense while a passenger under the age of sixteen was in the  
13 vehicle, the court shall:

14       (a) Order the use of an ignition interlock or other device for an  
15 additional six months;

16       (b) In any case in which the person has no prior offenses within  
17 seven years, and except as provided in RCW 46.61.502(6) or  
18 46.61.504(6), order an additional twenty-four hours of imprisonment and  
19 a fine of not less than one thousand dollars and not more than five  
20 thousand dollars. One thousand dollars of the fine may not be  
21 suspended unless the court finds the offender to be indigent;

22       (c) In any case in which the person has one prior offense within  
23 seven years, and except as provided in RCW 46.61.502(6) or  
24 46.61.504(6), order an additional five days of imprisonment and a fine  
25 of not less than two thousand dollars and not more than five thousand  
26 dollars. One thousand dollars of the fine may not be suspended unless  
27 the court finds the offender to be indigent;

28       (d) In any case in which the person has two or three prior offenses  
29 within seven years, and except as provided in RCW 46.61.502(6) or  
30 46.61.504(6), order an additional ten days of imprisonment and a fine  
31 of not less than three thousand dollars and not more than ten thousand  
32 dollars. One thousand dollars of the fine may not be suspended unless  
33 the court finds the offender to be indigent.

34       (7) **Other items courts must consider while setting penalties.** In  
35 exercising its discretion in setting penalties within the limits  
36 allowed by this section, the court shall particularly consider the  
37 following:

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

3 (b) Whether at the time of the offense the person was driving or in  
4 physical control of a vehicle with one or more passengers;

5 (c) Whether the driver was driving in the opposite direction of the  
6 normal flow of traffic on a multiple lane highway, as defined by RCW  
7 46.04.350, with a posted speed limit of forty-five miles per hour or  
8 greater; and

9 (d) Whether a child passenger under the age of sixteen was an  
10 occupant in the driver's vehicle.

11 (8) **Treatment and information school.** An offender punishable under  
12 this section is subject to the alcohol assessment and treatment  
13 provisions of RCW 46.61.5056.

14 (9) **Driver's license privileges of the defendant.** The license,  
15 permit, or nonresident privilege of a person convicted of driving or  
16 being in physical control of a motor vehicle while under the influence  
17 of intoxicating liquor or drugs must:

18 (a) **Penalty for alcohol concentration less than 0.15.** If the  
19 person's alcohol concentration was less than 0.15, or if for reasons  
20 other than the person's refusal to take a test offered under RCW  
21 46.20.308 there is no test result indicating the person's alcohol  
22 concentration:

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

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

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

29 (b) **Penalty for alcohol concentration at least 0.15.** If the  
30 person's alcohol concentration was at least 0.15:

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

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

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

37 (c) **Penalty for refusing to take test.** If by reason of the



1 person's refusal to take a test offered under RCW 46.20.308, there is  
2 no test result indicating the person's alcohol concentration:

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

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

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

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

13 Upon its own motion or upon motion by a person, a court may find,  
14 on the record, that notice to the department under RCW 46.20.270 has  
15 been delayed for three years or more as a result of a clerical or court  
16 error. If so, the court may order that the person's license, permit,  
17 or nonresident privilege shall not be revoked, suspended, or denied for  
18 that offense. The court shall send notice of the finding and order to  
19 the department and to the person. Upon receipt of the notice from the  
20 court, the department shall not revoke, suspend, or deny the license,  
21 permit, or nonresident privilege of the person for that offense.

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

25 (10) **Probation of driving privilege.** After expiration of any  
26 period of suspension, revocation, or denial of the offender's license,  
27 permit, or privilege to drive required by this section, the department  
28 shall place the offender's driving privilege in probationary status  
29 pursuant to RCW 46.20.355.

30 (11) **Conditions of probation.** (a) In addition to any  
31 nonsuspendable and nondeferrable jail sentence required by this  
32 section, whenever the court imposes up to three hundred sixty-four days  
33 in jail, the court shall also suspend but shall not defer a period of  
34 confinement for a period not exceeding five years. The court shall  
35 impose conditions of probation that include: (i) Not driving a motor  
36 vehicle within this state without a valid license to drive and proof of  
37 liability insurance or other financial responsibility for the future  
38 pursuant to RCW 46.30.020; (ii) not driving or being in physical

1 control of a motor vehicle within this state while having an alcohol  
2 concentration of 0.08 or more or a THC concentration of 5.00 nanograms  
3 per milliliter of whole blood or higher, within two hours after  
4 driving; and (iii) not refusing to submit to a test of his or her  
5 breath or blood to determine alcohol or drug concentration upon request  
6 of a law enforcement officer who has reasonable grounds to believe the  
7 person was driving or was in actual physical control of a motor vehicle  
8 within this state while under the influence of intoxicating liquor or  
9 drug. The court may impose conditions of probation that include  
10 nonrepetition, installation of an ignition interlock device on the  
11 probationer's motor vehicle, alcohol or drug treatment, supervised  
12 probation, or other conditions that may be appropriate. The sentence  
13 may be imposed in whole or in part upon violation of a condition of  
14 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) **Waiver of electronic home monitoring.** A court may waive the  
30 electronic home monitoring requirements 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 However, if a court determines that an alcohol monitoring device  
34 utilizing wireless reporting technology is reasonably available, the  
35 court may require the person to obtain such a device during the period  
36 of required electronic home monitoring;

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

1 (c) The court determines that there is reason to believe that the  
2 offender would violate the conditions of the electronic home monitoring  
3 penalty.

4 Whenever the mandatory minimum term of electronic home monitoring  
5 is waived, the court shall state in writing the reason for granting the  
6 waiver and the facts upon which the waiver is based, and shall impose  
7 an alternative sentence with similar punitive consequences. The  
8 alternative sentence may include, but is not limited to, use of an  
9 ignition interlock device, the 24/7 sobriety program monitoring,  
10 additional jail time, work crew, or work camp.

11 Whenever the combination of jail time and electronic home  
12 monitoring or alternative sentence would exceed three hundred sixty-  
13 four days, the offender shall serve the jail portion of the sentence  
14 first, and the electronic home monitoring or alternative portion of the  
15 sentence shall be reduced so that the combination does not exceed three  
16 hundred sixty-four days.

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

22 (14) **Definitions.** For purposes of this section and RCW 46.61.502  
23 and 46.61.504:

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

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

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

29 (iii) A conviction for a violation of RCW 46.25.110 or an  
30 equivalent local ordinance;

31 (iv) A conviction for a violation of RCW 79A.60.040 or an  
32 equivalent local ordinance;

33 (v) A conviction for a violation of RCW 47.68.220 or an equivalent  
34 local ordinance;

35 (vi) A conviction for a violation of RCW 46.09.470(2) or an  
36 equivalent local ordinance;

37 (vii) A conviction for a violation of RCW 46.10.490(2) or an  
38 equivalent local ordinance;

1        (viii) A conviction for a violation of RCW 46.61.520 committed  
2 while under the influence of intoxicating liquor or any drug, or a  
3 conviction for a violation of RCW 46.61.520 committed in a reckless  
4 manner or with the disregard for the safety of others if the conviction  
5 is the result of a charge that was originally filed as a violation of  
6 RCW 46.61.520 committed while under the influence of intoxicating  
7 liquor or any drug;

8        ~~((+iv))~~ (ix) A conviction for a violation of RCW 46.61.522  
9 committed while under the influence of intoxicating liquor or any drug,  
10 or a conviction for a violation of RCW 46.61.522 committed in a  
11 reckless manner or with the disregard for the safety of others if the  
12 conviction is the result of a charge that was originally filed as a  
13 violation of RCW 46.61.522 committed while under the influence of  
14 intoxicating liquor or any drug;

15        ~~((+v))~~ (x) A conviction for a violation of RCW 46.61.5249,  
16 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the  
17 conviction is the result of a charge that was originally filed as a  
18 violation of RCW 46.61.502 or 46.61.504, or an equivalent local  
19 ordinance, or of RCW 46.61.520 or 46.61.522;

20        ~~((+vi))~~ (xi) An out-of-state conviction for a violation that would  
21 have been a violation of (a)(i), (ii), ~~((+iii))~~ (viii), ~~((+iv))~~ (ix),  
22 or ~~((+v))~~ (x) of this subsection if committed in this state;

23        ~~((+vii))~~ (xii) A deferred prosecution under chapter 10.05 RCW  
24 granted in a prosecution for a violation of RCW 46.61.502, 46.61.504,  
25 or an equivalent local ordinance;

26        ~~((+viii))~~ (xiii) A deferred prosecution under chapter 10.05 RCW  
27 granted in a prosecution for a violation of RCW 46.61.5249, or an  
28 equivalent local ordinance, if the charge under which the deferred  
29 prosecution was granted was originally filed as a violation of RCW  
30 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
31 46.61.520 or 46.61.522;

32        ~~((+ix))~~ (xiv) A deferred prosecution granted in another state for  
33 a violation of driving or having physical control of a vehicle while  
34 under the influence of intoxicating liquor or any drug if the out-of-  
35 state deferred prosecution is equivalent to the deferred prosecution  
36 under chapter 10.05 RCW, including a requirement that the defendant  
37 participate in a chemical dependency treatment program; or

1       (~~(x)~~) (xv) A deferred sentence imposed in a prosecution for a  
2 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent  
3 local ordinance, if the charge under which the deferred sentence was  
4 imposed was originally filed as a violation of RCW 46.61.502 or  
5 46.61.504, or an equivalent local ordinance, or a violation of RCW  
6 46.61.520 or 46.61.522;

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

11       (b) "Treatment" means alcohol or drug treatment approved by the  
12 department of social and health services;

13       (c) "Within seven years" means that the arrest for a prior offense  
14 occurred within seven years before or after the arrest for the current  
15 offense; and

16       (d) "Within ten years" means that the arrest for a prior offense  
17 occurred within ten years before or after the arrest for the current  
18 offense.

19       **Sec. 2.** RCW 10.31.100 and 2013 2nd sp.s. c 35 s 22 are each  
20 amended to read as follows:

21       A police officer having probable cause to believe that a person has  
22 committed or is committing a felony shall have the authority to arrest  
23 the person without a warrant. A police officer may arrest a person  
24 without a warrant for committing a misdemeanor or gross misdemeanor  
25 only when the offense is committed in the presence of the officer,  
26 except as provided in subsections (1) through (11) of this section.

27       (1) Any police officer having probable cause to believe that a  
28 person has committed or is committing a misdemeanor or gross  
29 misdemeanor, involving physical harm or threats of harm to any person  
30 or property or the unlawful taking of property or involving the use or  
31 possession of cannabis, or involving the acquisition, possession, or  
32 consumption of alcohol by a person under the age of twenty-one years  
33 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070  
34 or 9A.52.080, shall have the authority to arrest the person.

35       (2) A police officer shall arrest and take into custody, pending  
36 release on bail, personal recognizance, or court order, a person  
37 without a warrant when the officer has probable cause to believe that:

1 (a) An order has been issued of which the person has knowledge  
2 under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09, 26.10,  
3 26.26, 26.50, or 74.34 RCW restraining the person and the person has  
4 violated the terms of the order restraining the person from acts or  
5 threats of violence, or restraining the person from going onto the  
6 grounds of or entering a residence, workplace, school, or day care, or  
7 prohibiting the person from knowingly coming within, or knowingly  
8 remaining within, a specified distance of a location or, in the case of  
9 an order issued under RCW 26.44.063, imposing any other restrictions or  
10 conditions upon the person; or

11 (b) A foreign protection order, as defined in RCW 26.52.010, has  
12 been issued of which the person under restraint has knowledge and the  
13 person under restraint has violated a provision of the foreign  
14 protection order prohibiting the person under restraint from contacting  
15 or communicating with another person, or excluding the person under  
16 restraint from a residence, workplace, school, or day care, or  
17 prohibiting the person from knowingly coming within, or knowingly  
18 remaining within, a specified distance of a location, or a violation of  
19 any provision for which the foreign protection order specifically  
20 indicates that a violation will be a crime; or

21 (c) The person is sixteen years or older and within the preceding  
22 four hours has assaulted a family or household member as defined in RCW  
23 10.99.020 and the officer believes: (i) A felonious assault has  
24 occurred; (ii) an assault has occurred which has resulted in bodily  
25 injury to the victim, whether the injury is observable by the  
26 responding officer or not; or (iii) that any physical action has  
27 occurred which was intended to cause another person reasonably to fear  
28 imminent serious bodily injury or death. Bodily injury means physical  
29 pain, illness, or an impairment of physical condition. When the  
30 officer has probable cause to believe that family or household members  
31 have assaulted each other, the officer is not required to arrest both  
32 persons. The officer shall arrest the person whom the officer believes  
33 to be the primary physical aggressor. In making this determination,  
34 the officer shall make every reasonable effort to consider: (i) The  
35 intent to protect victims of domestic violence under RCW 10.99.010;  
36 (ii) the comparative extent of injuries inflicted or serious threats  
37 creating fear of physical injury; and (iii) the history of domestic

1 violence of each person involved, including whether the conduct was  
2 part of an ongoing pattern of abuse(~~(+or~~

3 ~~(d) The person has violated RCW 46.61.502 or 46.61.504 or an~~  
4 ~~equivalent local ordinance and the police officer has knowledge that~~  
5 ~~the person has a prior offense as defined in RCW 46.61.5055 within ten~~  
6 ~~years)).~~

7 (3) Any police officer having probable cause to believe that a  
8 person has committed or is committing a violation of any of the  
9 following traffic laws shall have the authority to arrest the person:

10 (a) RCW 46.52.010, relating to duty on striking an unattended car  
11 or other property;

12 (b) RCW 46.52.020, relating to duty in case of injury to or death  
13 of a person or damage to an attended vehicle;

14 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or  
15 racing of vehicles;

16 (d) RCW 46.61.502 or 46.61.504, relating to persons under the  
17 influence of intoxicating liquor or drugs;

18 (e) RCW 46.61.503 or 46.25.110, relating to persons having alcohol  
19 or THC in their system;

20 (f) RCW 46.20.342, relating to driving a motor vehicle while  
21 operator's license is suspended or revoked;

22 (g) RCW 46.61.5249, relating to operating a motor vehicle in a  
23 negligent manner.

24 (4) A law enforcement officer investigating at the scene of a motor  
25 vehicle accident may arrest the driver of a motor vehicle involved in  
26 the accident if the officer has probable cause to believe that the  
27 driver has committed in connection with the accident a violation of any  
28 traffic law or regulation.

29 (5)(a) A law enforcement officer investigating at the scene of a  
30 motor vessel accident may arrest the operator of a motor vessel  
31 involved in the accident if the officer has probable cause to believe  
32 that the operator has committed, in connection with the accident, a  
33 criminal violation of chapter 79A.60 RCW.

34 (b) A law enforcement officer investigating at the scene of a motor  
35 vessel accident may issue a citation for an infraction to the operator  
36 of a motor vessel involved in the accident if the officer has probable  
37 cause to believe that the operator has committed, in connection with

1 the accident, a violation of any boating safety law of chapter 79A.60  
2 RCW.

3 (6) Any police officer having probable cause to believe that a  
4 person has committed or is committing a violation of RCW 79A.60.040  
5 shall have the authority to arrest the person.

6 (7) An officer may act upon the request of a law enforcement  
7 officer in whose presence a traffic infraction was committed, to stop,  
8 detain, arrest, or issue a notice of traffic infraction to the driver  
9 who is believed to have committed the infraction. The request by the  
10 witnessing officer shall give an officer the authority to take  
11 appropriate action under the laws of the state of Washington.

12 (8) Any police officer having probable cause to believe that a  
13 person has committed or is committing any act of indecent exposure, as  
14 defined in RCW 9A.88.010, may arrest the person.

15 (9) A police officer may arrest and take into custody, pending  
16 release on bail, personal recognizance, or court order, a person  
17 without a warrant when the officer has probable cause to believe that  
18 an order has been issued of which the person has knowledge under  
19 chapter 10.14 RCW and the person has violated the terms of that order.

20 (10) Any police officer having probable cause to believe that a  
21 person has, within twenty-four hours of the alleged violation,  
22 committed a violation of RCW 9A.50.020 may arrest such person.

23 (11) A police officer having probable cause to believe that a  
24 person illegally possesses or illegally has possessed a firearm or  
25 other dangerous weapon on private or public elementary or secondary  
26 school premises shall have the authority to arrest the person.

27 For purposes of this subsection, the term "firearm" has the meaning  
28 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning  
29 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

30 (12) Except as specifically provided in subsections (2), (3), (4),  
31 and (7) of this section, nothing in this section extends or otherwise  
32 affects the powers of arrest prescribed in Title 46 RCW.

33 (13) No police officer may be held criminally or civilly liable for  
34 making an arrest pursuant to subsection (2) or (9) of this section if  
35 the police officer acts in good faith and without malice.

36 (14) A police officer shall arrest and keep in custody, until  
37 release by a judicial officer on bail, personal recognizance, or court  
38 order, a person without a warrant when the officer has probable cause



1 to believe that the person has violated RCW 46.61.502 or 46.61.504 or  
2 an equivalent local ordinance and the police officer has knowledge that  
3 the person has a prior offense as defined in RCW 46.61.5055 within ten  
4 years."

5 Correct the title.

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