

2 **ESSB 6408** - CONF REPT  
3 By Conference Committee

4 ADOPTED 3/12/98

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

7 "Sec. 1. RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are  
8 each reenacted and amended to read as follows:

9 (1) A person who is convicted of a violation of RCW 46.61.502 or  
10 46.61.504 and who has no prior offense within five years shall be  
11 punished as follows:

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

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

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

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

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

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

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

22 (2) A person who is convicted of a violation of RCW 46.61.502 or  
23 46.61.504 and who has one prior offense within five years shall be  
24 punished as follows:

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

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

37 (ii) By a fine of not less than five hundred dollars nor more than  
38 five thousand dollars. Five hundred dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be  
2 indigent; and

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

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

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

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

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

33 (3) A person who is convicted of a violation of RCW 46.61.502 or  
34 46.61.504 and who has two or more prior offenses within five years  
35 shall be punished as follows:

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

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

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

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

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

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

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

36 (iii) By revocation of the offender's license or permit to drive,  
37 or suspension of any nonresident privilege to drive, for a period of  
38 four years. The period of license, permit, or privilege revocation may  
39 not be suspended. The court shall notify the department of licensing

1 of the conviction, and upon receiving notification of the conviction  
2 the department shall revoke the offender's license, permit, or  
3 privilege.

4 (4) In exercising its discretion in setting penalties within the  
5 limits allowed by this section, the court shall particularly consider  
6 the following:

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

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

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

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

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

37 (b) For each violation of mandatory conditions of probation under  
38 (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall

1 order the convicted person to be confined for thirty days, which shall  
2 not be suspended or deferred.

3 (c) For each incident involving a violation of a mandatory  
4 condition of probation imposed under this subsection, the license,  
5 permit, or privilege to drive of the person shall be suspended by the  
6 court for thirty days or, if such license, permit, or privilege to  
7 drive already is suspended, revoked, or denied at the time the finding  
8 of probation violation is made, the suspension, revocation, or denial  
9 then in effect shall be extended by thirty days. The court shall  
10 notify the department of any suspension, revocation, or denial or any  
11 extension of a suspension, revocation, or denial imposed under this  
12 subsection.

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

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

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

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

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

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

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

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

32 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
33 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
34 ordinance, if the charge under which the deferred prosecution was  
35 granted was originally filed as a violation of RCW 46.61.502 or  
36 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
37 46.61.522.

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

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4 On page 1, line 1 of the title, after "violators;" strike the  
5 remainder of the title and insert "reenacting and amending RCW  
6 46.61.5055; and prescribing penalties."

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