

SB 6413 - H COMM AMD

By Committee on Public Safety

ADOPTED AS AMENDED 03/07/2014

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, if the offense involved intoxicating liquor, to comply
23 with the rules and requirements of the department regarding the
24 installation and use of a functioning ignition interlock device
25 installed on all motor vehicles operated by the 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, if the offense involved intoxicating liquor,
2 to install and use a functioning ignition interlock or other device in
3 lieu of such period of 24/7 sobriety 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, if the offense involved intoxicating
7 liquor, to install and use a functioning ignition interlock or other
8 device in addition to a period of 24/7 sobriety program monitoring
9 pursuant to subsections (1) through (3) of this 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 if the offense involved intoxicating liquor;

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 (if the offense involved intoxicating
12 liquor), alcohol or drug treatment, supervised probation, or other
13 conditions that may be appropriate. The sentence may be imposed in
14 whole or in part upon violation of a condition of probation during the
15 suspension period.

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

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

30 (12) **Waiver of electronic home monitoring.** A court may waive the
31 electronic home monitoring requirements of this chapter when:

32 (a) The offender does not have a dwelling, telephone service, or
33 any other necessity to operate an electronic home monitoring system.
34 However, if a court determines that an alcohol monitoring device
35 utilizing wireless reporting technology is reasonably available, the
36 court may require the person to obtain such a device during the period
37 of required electronic home monitoring;

38 (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 (if the offense involved intoxicating
10 liquor), the 24/7 sobriety program monitoring, additional jail time,
11 work crew, or work camp.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ~~((viii))~~ (xiii) A deferred prosecution under chapter 10.05 RCW
29 granted in a prosecution for a violation of RCW 46.61.5249, or an
30 equivalent local ordinance, if the charge under which the deferred
31 prosecution was granted was originally filed as a violation of RCW
32 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
33 46.61.520 or 46.61.522;

34 ~~((ix))~~ (xiv) A deferred prosecution granted in another state for
35 a violation of driving or having physical control of a vehicle while
36 under the influence of intoxicating liquor or any drug if the out-of-
37 state deferred prosecution is equivalent to the deferred prosecution

1 under chapter 10.05 RCW, including a requirement that the defendant
2 participate in a chemical dependency treatment program; or

3 ~~((x))~~ (xv) A deferred sentence imposed in a prosecution for a
4 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent
5 local ordinance, if the charge under which the deferred sentence was
6 imposed was originally filed as a violation of RCW 46.61.502 or
7 46.61.504, or an equivalent local ordinance, or a violation of RCW
8 46.61.520 or 46.61.522;

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

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

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

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

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

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

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

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

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

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

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

1 (ii) the comparative extent of injuries inflicted or serious threats
2 creating fear of physical injury; and (iii) the history of domestic
3 violence of each person involved, including whether the conduct was
4 part of an ongoing pattern of abuse((~~or~~

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

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

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

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

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

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

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

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

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

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

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

36 (b) A law enforcement officer investigating at the scene of a motor
37 vessel accident may issue a citation for an infraction to the operator
38 of a motor vessel involved in the accident if the officer has probable

1 cause to believe that the operator has committed, in connection with
2 the accident, a violation of any boating safety law of chapter 79A.60
3 RCW.

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

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

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

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

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

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

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

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

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

37 (14) A police officer shall arrest and keep in custody, until
38 release by a judicial officer on bail, personal recognizance, or court

1 order, a person without a warrant when the officer has probable cause
2 to believe that the person has violated RCW 46.61.502 or 46.61.504 or
3 an equivalent local ordinance and the police officer has knowledge that
4 the person has a prior offense as defined in RCW 46.61.5055 within ten
5 years.

6 **Sec. 3.** RCW 46.61.500 and 2012 c 183 s 11 are each amended to read
7 as follows:

8 (1) Any person who drives any vehicle in willful or wanton
9 disregard for the safety of persons or property is guilty of reckless
10 driving. Violation of the provisions of this section is a gross
11 misdemeanor punishable by imprisonment for up to three hundred sixty-
12 four days and by a fine of not more than five thousand dollars.

13 (2)(a) Subject to (b) of this subsection, the license or permit to
14 drive or any nonresident privilege of any person convicted of reckless
15 driving shall be suspended by the department for not less than thirty
16 days.

17 (b) When a reckless driving conviction is a result of a charge that
18 was originally filed as a violation of RCW 46.61.502 or 46.61.504, or
19 an equivalent local ordinance, the department shall grant credit on a
20 day-for-day basis for any portion of a suspension, revocation, or
21 denial already served under an administrative action arising out of the
22 same incident. During any period of suspension, revocation, or denial
23 due to a conviction for reckless driving as the result of a charge
24 originally filed as a violation of RCW 46.61.502 or 46.61.504, any
25 person who has obtained an ignition interlock driver's license under
26 RCW 46.20.385 may continue to drive a motor vehicle pursuant to the
27 provision of the ignition interlock driver's license without obtaining
28 a separate temporary restricted driver's license under RCW 46.20.391.

29 (3)(a) Except as provided under (b) of this subsection, a person
30 convicted of reckless driving who has one or more prior offenses as
31 defined in RCW 46.61.5055(14) within seven years shall be required,
32 under RCW 46.20.720, to install an ignition interlock device on all
33 vehicles operated by the person if the conviction is the result of a
34 charge that was originally filed as a violation of RCW 46.61.502,
35 46.61.504, or an equivalent local ordinance, where the offense involved
36 intoxicating liquor.

1 (b) If the offense involved intoxicating liquor, a person convicted
2 of reckless driving shall be required, under RCW 46.20.720, to install
3 an ignition interlock device on all vehicles operated by the person if
4 the conviction is the result of a charge that was originally filed as
5 a violation of RCW 46.61.520 committed while under the influence of
6 intoxicating liquor or any drug or RCW 46.61.522 committed while under
7 the influence of intoxicating liquor or any drug.

8 **Sec. 4.** RCW 46.61.5249 and 2013 2nd sp.s. c 35 s 16 are each
9 amended to read as follows:

10 (1)(a) A person is guilty of negligent driving in the first degree
11 if he or she operates a motor vehicle in a manner that is both
12 negligent and endangers or is likely to endanger any person or
13 property, and exhibits the effects of having consumed liquor or
14 marijuana or any drug or exhibits the effects of having inhaled or
15 ingested any chemical, whether or not a legal substance, for its
16 intoxicating or hallucinatory effects.

17 (b) It is an affirmative defense to negligent driving in the first
18 degree by means of exhibiting the effects of having consumed any drug
19 that must be proved by the defendant by a preponderance of the
20 evidence, that the driver has a valid prescription for the drug
21 consumed, and has been consuming it according to the prescription
22 directions and warnings.

23 (c) Negligent driving in the first degree is a misdemeanor.

24 (2) For the purposes of this section:

25 (a) "Negligent" means the failure to exercise ordinary care, and is
26 the doing of some act that a reasonably careful person would not do
27 under the same or similar circumstances or the failure to do something
28 that a reasonably careful person would do under the same or similar
29 circumstances.

30 (b) "Exhibiting the effects of having consumed liquor, marijuana,
31 or any drug" means that a person has the odor of liquor, marijuana, or
32 any drug on his or her breath, or that by speech, manner, appearance,
33 behavior, lack of coordination, or otherwise exhibits that he or she
34 has consumed liquor, marijuana, or any drug, and either:

35 (i) Is in possession of or in close proximity to a container that
36 has or recently had liquor, marijuana, or any drug in it; or

1 (ii) Is shown by other evidence to have recently consumed liquor,
2 marijuana, or any drug.

3 (c) "Exhibiting the effects of having inhaled or ingested any
4 chemical, whether or not a legal substance, for its intoxicating or
5 hallucinatory effects" means that a person by speech, manner,
6 appearance, behavior, or lack of coordination or otherwise exhibits
7 that he or she has inhaled or ingested a chemical and either:

8 (i) Is in possession of the canister or container from which the
9 chemical came; or

10 (ii) Is shown by other evidence to have recently inhaled or
11 ingested a chemical for its intoxicating or hallucinatory effects.

12 (3) Any act prohibited by this section that also constitutes a
13 crime under any other law of this state may be the basis of prosecution
14 under such other law notwithstanding that it may also be the basis for
15 prosecution under this section.

16 (4) A person convicted of negligent driving in the first degree who
17 has one or more prior offenses as defined in RCW 46.61.5055(14) within
18 seven years shall be required, under RCW 46.20.720, to install an
19 ignition interlock device on all vehicles operated by the person, if
20 the offense involved intoxicating liquor."

21 Correct the title.

EFFECT: The amendment:

(1) Adds a provision to clarify that when a person is arrested and taken into custody for a DUI offense and the officer has knowledge that the person has had prior DUI convictions, that the person can only be released from custody by a judge.

(2) In localities where 24/7 monitoring is available and verified by the Washington Association of Sheriffs and Police Chiefs, requires courts to sentence a person to: (i) The use of an IID as a substitution to participating in 24/7 monitoring; (ii) 24/7 monitoring as mandated in current statute; or (iii) both IID requirements and 24/7 monitoring.

(3) Clarifies that only those offenders convicted of a DUI-related offense, where the offense involved intoxicating liquor, are required to use an IID. As a result, an offender convicted of a DUI-related offense involving drugs would not be subject to IID requirements.

(4) Makes other technical amendments, clarifications, and adds subtitles to the impaired driving statute for clarity and easier reading.

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