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SENATE BILL 5944

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State of Washington

60th Legislature

2007 Regular Session

By Senator Brandland

Read first time 02/08/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to ignition interlock devices; amending RCW  
2 10.31.100, 46.20.740, 46.55.120, and 46.61.5055; and prescribing  
3 penalties.

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

5 **Sec. 1.** RCW 10.31.100 and 2006 c 138 s 23 are each amended to read  
6 as follows:

7 A police officer having probable cause to believe that a person has  
8 committed or is committing a felony shall have the authority to arrest  
9 the person without a warrant. A police officer may arrest a person  
10 without a warrant for committing a misdemeanor or gross misdemeanor  
11 only when the offense is committed in the presence of the officer,  
12 except as provided in subsections (1) through (10) of this section.

13 (1) Any police officer having probable cause to believe that a  
14 person has committed or is committing a misdemeanor or gross  
15 misdemeanor, involving physical harm or threats of harm to any person  
16 or property or the unlawful taking of property or involving the use or  
17 possession of cannabis, or involving the acquisition, possession, or  
18 consumption of alcohol by a person under the age of twenty-one years

1 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070  
2 or 9A.52.080, shall have the authority to arrest the person.

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

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

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

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

1 the officer shall make every reasonable effort to consider: (i) The  
2 intent to protect victims of domestic violence under RCW 10.99.010;  
3 (ii) the comparative extent of injuries inflicted or serious threats  
4 creating fear of physical injury; and (iii) the history of domestic  
5 violence between the persons involved.

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

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

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

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

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

17 (e) RCW 46.20.342, relating to driving a motor vehicle while  
18 operator's license is suspended or revoked;

19 (f) RCW 46.61.5249, relating to operating a motor vehicle in a  
20 negligent manner;

21 (g) RCW 46.20.740, relating to driving a motor vehicle without a  
22 functioning ignition interlock device.

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

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

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

37 (7) Any police officer having probable cause to believe that a

1 person has committed or is committing any act of indecent exposure, as  
2 defined in RCW 9A.88.010, may arrest the person.

3 (8) A police officer may arrest and take into custody, pending  
4 release on bail, personal recognizance, or court order, a person  
5 without a warrant when the officer has probable cause to believe that  
6 an order has been issued of which the person has knowledge under  
7 chapter 10.14 RCW and the person has violated the terms of that order.

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

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

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

18 (11) Except as specifically provided in subsections (2), (3), (4),  
19 and (6) of this section, nothing in this section extends or otherwise  
20 affects the powers of arrest prescribed in Title 46 RCW.

21 (12) No police officer may be held criminally or civilly liable for  
22 making an arrest pursuant to (~~RCW 10.31.100~~) subsection (2) or (8) of  
23 this section if the police officer acts in good faith and without  
24 malice.

25 **Sec. 2.** RCW 46.20.740 and 2004 c 95 s 12 are each amended to read  
26 as follows:

27 (1) The department shall attach or imprint a notation on the  
28 driving record of any person restricted under RCW 46.20.720 stating  
29 that the person may operate only a motor vehicle equipped with a  
30 functioning ignition interlock device. The department shall determine  
31 the person's eligibility for licensing based upon written verification  
32 by a company doing business in the state that it has installed the  
33 required device on a vehicle owned or operated by the person seeking  
34 reinstatement. If, based upon notification from the interlock provider  
35 or otherwise, the department determines that an ignition interlock  
36 required under this section is no longer installed or functioning as  
37 required, the department shall suspend the person's license or

1 privilege to drive. Whenever the license or driving privilege of any  
2 person is suspended or revoked as a result of noncompliance with an  
3 ignition interlock requirement, the suspension shall remain in effect  
4 until the person provides notice issued by a company doing business in  
5 the state that a vehicle owned or operated by the person is equipped  
6 with a functioning ignition interlock device.

7 (2) It is a misdemeanor for a person with such a notation on his or  
8 her driving record to operate a motor vehicle that is not so equipped.

9 (3) Whenever the driver of a motor vehicle is arrested or issued a  
10 citation for operating a motor vehicle without a functioning ignition  
11 interlock device, the arresting law enforcement officer or the officer  
12 issuing the citation must impound the vehicle. The vehicle must be  
13 impounded even if the driver arrested or issued a citation is not the  
14 registered owner of the vehicle.

15 (4) Impoundment performed under this section shall be in accordance  
16 with chapter 46.55 RCW.

17 **Sec. 3.** RCW 46.55.120 and 2004 c 250 s 1 are each amended to read  
18 as follows:

19 (1) Vehicles or other items of personal property registered or  
20 titled with the department that are impounded by registered tow truck  
21 operators pursuant to RCW 46.55.080, 46.55.085, 46.55.113, 46.20.740,  
22 or 9A.88.140 may be redeemed only under the following circumstances:

23 (a) Only the legal owner, the registered owner, a person authorized  
24 in writing by the registered owner or the vehicle's insurer, a person  
25 who is determined and verified by the operator to have the permission  
26 of the registered owner of the vehicle or other item of personal  
27 property registered or titled with the department, or one who has  
28 purchased a vehicle or item of personal property registered or titled  
29 with the department from the registered owner who produces proof of  
30 ownership or written authorization and signs a receipt therefor, may  
31 redeem an impounded vehicle or items of personal property registered or  
32 titled with the department. In addition, a vehicle impounded because  
33 the operator is in violation of RCW 46.20.342(1)(c) shall not be  
34 released until a person eligible to redeem it under this subsection  
35 (1)(a) satisfies the requirements of (e) of this subsection, including  
36 paying all towing, removal, and storage fees, notwithstanding the fact  
37 that the hold was ordered by a government agency. If the department's

1 records show that the operator has been convicted of a violation of RCW  
2 46.20.342 or a similar local ordinance within the past five years, the  
3 vehicle may be held for up to thirty days at the written direction of  
4 the agency ordering the vehicle impounded. A vehicle impounded because  
5 the operator is arrested for a violation of RCW 46.20.342 may be  
6 released only pursuant to a written order from the agency that ordered  
7 the vehicle impounded or from the court having jurisdiction. An agency  
8 may issue a written order to release pursuant to a provision of an  
9 applicable state agency rule or local ordinance authorizing release on  
10 the basis of the following:

11 (i) Economic or personal hardship to the spouse of the operator,  
12 taking into consideration public safety factors, including the  
13 operator's criminal history and driving record; or

14 (ii) The owner of the vehicle was not the driver, the owner did not  
15 know that the driver's license was suspended or revoked, and the owner  
16 has not received a prior release under this subsection or RCW  
17 46.55.113(3).

18 In order to avoid discriminatory application, other than for the  
19 reasons for release set forth in (a)(i) and (ii) of this subsection, an  
20 agency shall, under a provision of an applicable state agency rule or  
21 local ordinance, deny release in all other circumstances without  
22 discretion.

23 If a vehicle is impounded because the operator is in violation of  
24 RCW 46.20.342(1) (a) or (b), the vehicle may be held for up to thirty  
25 days at the written direction of the agency ordering the vehicle  
26 impounded. However, if the department's records show that the operator  
27 has been convicted of a violation of RCW 46.20.342(1) (a) or (b) or a  
28 similar local ordinance within the past five years, the vehicle may be  
29 held at the written direction of the agency ordering the vehicle  
30 impounded for up to sixty days, and for up to ninety days if the  
31 operator has two or more such prior offenses. If a vehicle is  
32 impounded because the operator is arrested for a violation of RCW  
33 46.20.342, the vehicle may not be released until a person eligible to  
34 redeem it under this subsection (1)(a) satisfies the requirements of  
35 (e) of this subsection, including paying all towing, removal, and  
36 storage fees, notwithstanding the fact that the hold was ordered by a  
37 government agency.

1 (b) If the vehicle is directed to be held for a suspended license  
2 impound, a person who desires to redeem the vehicle at the end of the  
3 period of impound shall within five days of the impound at the request  
4 of the tow truck operator pay a security deposit to the tow truck  
5 operator of not more than one-half of the applicable impound storage  
6 rate for each day of the proposed suspended license impound. The tow  
7 truck operator shall credit this amount against the final bill for  
8 removal, towing, and storage upon redemption. The tow truck operator  
9 may accept other sufficient security in lieu of the security deposit.  
10 If the person desiring to redeem the vehicle does not pay the security  
11 deposit or provide other security acceptable to the tow truck operator,  
12 the tow truck operator may process and sell at auction the vehicle as  
13 an abandoned vehicle within the normal time limits set out in RCW  
14 46.55.130(1). The security deposit required by this section may be  
15 paid and must be accepted at any time up to twenty-four hours before  
16 the beginning of the auction to sell the vehicle as abandoned. The  
17 registered owner is not eligible to purchase the vehicle at the  
18 auction, and the tow truck operator shall sell the vehicle to the  
19 highest bidder who is not the registered owner.

20 (c) Notwithstanding (b) of this subsection, a rental car business  
21 may immediately redeem a rental vehicle it owns by payment of the costs  
22 of removal, towing, and storage, whereupon the vehicle will not be held  
23 for a suspended license impound.

24 (d) Notwithstanding (b) of this subsection, a motor vehicle dealer  
25 or lender with a perfected security interest in the vehicle may redeem  
26 or lawfully repossess a vehicle immediately by payment of the costs of  
27 removal, towing, and storage, whereupon the vehicle will not be held  
28 for a suspended license impound. A motor vehicle dealer or lender with  
29 a perfected security interest in the vehicle may not knowingly and  
30 intentionally engage in collusion with a registered owner to repossess  
31 and then return or resell a vehicle to the registered owner in an  
32 attempt to avoid a suspended license impound. However, this provision  
33 does not preclude a vehicle dealer or a lender with a perfected  
34 security interest in the vehicle from repossessing the vehicle and then  
35 selling, leasing, or otherwise disposing of it in accordance with  
36 chapter 62A.9A RCW, including providing redemption rights to the debtor  
37 under RCW 62A.9A-623. If the debtor is the registered owner of the  
38 vehicle, the debtor's right to redeem the vehicle under chapter 62A.9A

1 RCW is conditioned upon the debtor obtaining and providing proof from  
2 the impounding authority or court having jurisdiction that any fines,  
3 penalties, and forfeitures owed by the registered owner, as a result of  
4 the suspended license impound, have been paid, and proof of the payment  
5 must be tendered to the vehicle dealer or lender at the time the debtor  
6 tenders all other obligations required to redeem the vehicle. Vehicle  
7 dealers or lenders are not liable for damages if they rely in good  
8 faith on an order from the impounding agency or a court in releasing a  
9 vehicle held under a suspended license impound.

10 (e) The vehicle or other item of personal property registered or  
11 titled with the department shall be released upon the presentation to  
12 any person having custody of the vehicle of commercially reasonable  
13 tender sufficient to cover the costs of towing, storage, or other  
14 services rendered during the course of towing, removing, impounding, or  
15 storing any such vehicle, with credit being given for the amount of any  
16 security deposit paid under (b) of this subsection. In addition, if a  
17 vehicle is impounded because the operator was arrested for a violation  
18 of RCW 46.20.342 or 46.20.345 and was being operated by the registered  
19 owner when it was impounded under local ordinance or agency rule, it  
20 must not be released to any person until the registered owner  
21 establishes with the agency that ordered the vehicle impounded or the  
22 court having jurisdiction that any penalties, fines, or forfeitures  
23 owed by him or her have been satisfied. Registered tow truck operators  
24 are not liable for damages if they rely in good faith on an order from  
25 the impounding agency or a court in releasing a vehicle held under a  
26 suspended license impound. Commercially reasonable tender shall  
27 include, without limitation, cash, major bank credit cards issued by  
28 financial institutions, or personal checks drawn on Washington state  
29 branches of financial institutions if accompanied by two pieces of  
30 valid identification, one of which may be required by the operator to  
31 have a photograph. If the towing firm cannot determine through the  
32 customer's bank or a check verification service that the presented  
33 check would be paid by the bank or guaranteed by the service, the  
34 towing firm may refuse to accept the check. Any person who stops  
35 payment on a personal check or credit card, or does not make  
36 restitution within ten days from the date a check becomes insufficient  
37 due to lack of funds, to a towing firm that has provided a service  
38 pursuant to this section or in any other manner defrauds the towing



1 firm in connection with services rendered pursuant to this section  
2 shall be liable for damages in the amount of twice the towing and  
3 storage fees, plus costs and reasonable attorney's fees.

4 (2)(a) The registered tow truck operator shall give to each person  
5 who seeks to redeem an impounded vehicle, or item of personal property  
6 registered or titled with the department, written notice of the right  
7 of redemption and opportunity for a hearing, which notice shall be  
8 accompanied by a form to be used for requesting a hearing, the name of  
9 the person or agency authorizing the impound, and a copy of the towing  
10 and storage invoice. The registered tow truck operator shall maintain  
11 a record evidenced by the redeeming person's signature that such  
12 notification was provided.

13 (b) Any person seeking to redeem an impounded vehicle under this  
14 section has a right to a hearing in the district or municipal court for  
15 the jurisdiction in which the vehicle was impounded to contest the  
16 validity of the impoundment or the amount of towing and storage  
17 charges. The district court has jurisdiction to determine the issues  
18 involving all impoundments including those authorized by the state or  
19 its agents. The municipal court has jurisdiction to determine the  
20 issues involving impoundments authorized by agents of the municipality.  
21 Any request for a hearing shall be made in writing on the form provided  
22 for that purpose and must be received by the appropriate court within  
23 ten days of the date the opportunity was provided for in subsection  
24 (2)(a) of this section and more than five days before the date of the  
25 auction. At the time of the filing of the hearing request, the  
26 petitioner shall pay to the court clerk a filing fee in the same amount  
27 required for the filing of a suit in district court. If the hearing  
28 request is not received by the court within the ten-day period, the  
29 right to a hearing is waived and the registered owner is liable for any  
30 towing, storage, or other impoundment charges permitted under this  
31 chapter. Upon receipt of a timely hearing request, the court shall  
32 proceed to hear and determine the validity of the impoundment.

33 (3)(a) The court, within five days after the request for a hearing,  
34 shall notify the registered tow truck operator, the person requesting  
35 the hearing if not the owner, the registered and legal owners of the  
36 vehicle or other item of personal property registered or titled with  
37 the department, and the person or agency authorizing the impound in  
38 writing of the hearing date and time.

1 (b) At the hearing, the person or persons requesting the hearing  
2 may produce any relevant evidence to show that the impoundment, towing,  
3 or storage fees charged were not proper. The court may consider a  
4 written report made under oath by the officer who authorized the  
5 impoundment in lieu of the officer's personal appearance at the  
6 hearing.

7 (c) At the conclusion of the hearing, the court shall determine  
8 whether the impoundment was proper, whether the towing or storage fees  
9 charged were in compliance with the posted rates, and who is  
10 responsible for payment of the fees. The court may not adjust fees or  
11 charges that are in compliance with the posted or contracted rates.

12 (d) If the impoundment is found proper, the impoundment, towing,  
13 and storage fees as permitted under this chapter together with court  
14 costs shall be assessed against the person or persons requesting the  
15 hearing, unless the operator did not have a signed and valid  
16 impoundment authorization from a private property owner or an  
17 authorized agent.

18 (e) If the impoundment is determined to be in violation of this  
19 chapter, then the registered and legal owners of the vehicle or other  
20 item of personal property registered or titled with the department  
21 shall bear no impoundment, towing, or storage fees, and any security  
22 shall be returned or discharged as appropriate, and the person or  
23 agency who authorized the impoundment shall be liable for any towing,  
24 storage, or other impoundment fees permitted under this chapter. The  
25 court shall enter judgment in favor of the registered tow truck  
26 operator against the person or agency authorizing the impound for the  
27 impoundment, towing, and storage fees paid. In addition, the court  
28 shall enter judgment in favor of the registered and legal owners of the  
29 vehicle, or other item of personal property registered or titled with  
30 the department, for the amount of the filing fee required by law for  
31 the impound hearing petition as well as reasonable damages for loss of  
32 the use of the vehicle during the time the same was impounded against  
33 the person or agency authorizing the impound. However, if an  
34 impoundment arising from an alleged violation of RCW 46.20.342 or  
35 46.20.345 is determined to be in violation of this chapter, then the  
36 law enforcement officer directing the impoundment and the government  
37 employing the officer are not liable for damages if the officer relied  
38 in good faith and without gross negligence on the records of the

1 department in ascertaining that the operator of the vehicle had a  
2 suspended or revoked driver's license. If any judgment entered is not  
3 paid within fifteen days of notice in writing of its entry, the court  
4 shall award reasonable attorneys' fees and costs against the defendant  
5 in any action to enforce the judgment. Notice of entry of judgment may  
6 be made by registered or certified mail, and proof of mailing may be  
7 made by affidavit of the party mailing the notice. Notice of the entry  
8 of the judgment shall read essentially as follows:

9 TO: . . . . .  
10 YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the  
11 . . . . . Court located at . . . . . in the sum of  
12 \$. . . . ., in an action entitled . . . . ., Case No.  
13 . . . . YOU ARE FURTHER NOTIFIED that attorneys fees and costs  
14 will be awarded against you under RCW . . . if the judgment is  
15 not paid within 15 days of the date of this notice.  
16 DATED this . . . . day of . . . . ., (year) . . .  
17 Signature . . . . .  
18 Typed name and address  
19 of party mailing notice

20 (4) Any impounded abandoned vehicle or item of personal property  
21 registered or titled with the department that is not redeemed within  
22 fifteen days of mailing of the notice of custody and sale as required  
23 by RCW 46.55.110(3) shall be sold at public auction in accordance with  
24 all the provisions and subject to all the conditions of RCW 46.55.130.  
25 A vehicle or item of personal property registered or titled with the  
26 department may be redeemed at any time before the start of the auction  
27 upon payment of the applicable towing and storage fees.

28 **Sec. 4.** RCW 46.61.5055 and 2006 c 73 s 3 are each amended to read  
29 as follows:

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

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

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

18 (ii) By a fine of not less than three hundred fifty dollars nor  
19 more than five thousand dollars. Three hundred fifty dollars of the  
20 fine may not be suspended or deferred unless the court finds the  
21 offender to be indigent. The court shall suspend the fine imposed if  
22 it receives written verification by a company doing business in the  
23 state that it has installed an ignition interlock device on a vehicle  
24 owned or operated by the offender; or

25 (b) In the case of a person whose alcohol concentration was at  
26 least 0.15, or for whom by reason of the person's refusal to take a  
27 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 two days nor more than one  
30 year. Two consecutive days of the imprisonment may not be suspended or  
31 deferred unless the court finds that the imposition of this mandatory  
32 minimum sentence would impose a substantial risk to the offender's  
33 physical or mental well-being. Whenever the mandatory minimum sentence  
34 is suspended or deferred, the court shall state in writing the reason  
35 for granting the suspension or deferral and the facts upon which the  
36 suspension or deferral is based. In lieu of the mandatory minimum term  
37 of imprisonment required under this subsection (1)(b)(i), the court may  
38 order not less than thirty days of electronic home monitoring. The

1 offender shall pay the cost of electronic home monitoring. The county  
2 or municipality in which the penalty is being imposed shall determine  
3 the cost. The court may also require the offender's electronic home  
4 monitoring device to include an alcohol detection breathalyzer, and the  
5 court may restrict the amount of alcohol the offender may consume  
6 during the time the offender is on electronic home monitoring; and

7 (ii) By a fine of not less than five hundred dollars nor more than  
8 five thousand dollars. Five hundred dollars of the fine may not be  
9 suspended or deferred unless the court finds the offender to be  
10 indigent. The court shall suspend the fine imposed if it receives  
11 written verification by a company doing business in the state that it  
12 has installed an ignition interlock device on a vehicle owned or  
13 operated by the offender.

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

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

22 (i) By imprisonment for not less than thirty days nor more than one  
23 year and sixty days of electronic home monitoring. The offender shall  
24 pay for the cost of the electronic monitoring. The county or  
25 municipality where the penalty is being imposed shall determine the  
26 cost. The court may also require the offender's electronic home  
27 monitoring device include an alcohol detection breathalyzer, and may  
28 restrict the amount of alcohol the offender may consume during the time  
29 the offender is on electronic home monitoring. Thirty days of  
30 imprisonment and sixty days of electronic home monitoring may not be  
31 suspended or deferred unless the court finds that the imposition of  
32 this mandatory minimum sentence would impose a substantial risk to the  
33 offender's physical or mental well-being. Whenever the mandatory  
34 minimum sentence is suspended or deferred, the court shall state in  
35 writing the reason for granting the suspension or deferral and the  
36 facts upon which the suspension or deferral is based; and

37 (ii) By a fine of not less than five hundred dollars nor more than

1 five thousand dollars. Five hundred dollars of the fine may not be  
2 suspended or deferred unless the court finds the offender to be  
3 indigent; or

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

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

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

27 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
28 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
29 and who has two or three prior offenses within seven years shall be  
30 punished as follows:

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

35 (i) By imprisonment for not less than ninety days nor more than one  
36 year and one hundred twenty days of electronic home monitoring. The  
37 offender shall pay for the cost of the electronic monitoring. The  
38 county or municipality where the penalty is being imposed shall

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

13 (ii) By a fine of not less than one thousand dollars nor more than  
14 five thousand dollars. One thousand dollars of the fine may not be  
15 suspended or deferred unless the court finds the offender to be  
16 indigent; or

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

21 (i) By imprisonment for not less than one hundred twenty days nor  
22 more than one year and one hundred fifty days of electronic home  
23 monitoring. The offender shall pay for the cost of the electronic  
24 monitoring. The county or municipality where the penalty is being  
25 imposed shall determine the cost. The court may also require the  
26 offender's electronic home monitoring device include an alcohol  
27 detection breathalyzer, and may restrict the amount of alcohol the  
28 offender may consume during the time the offender is on electronic home  
29 monitoring. One hundred twenty days of imprisonment and one hundred  
30 fifty days of electronic home monitoring may not be suspended or  
31 deferred unless the court finds that the imposition of this mandatory  
32 minimum sentence would impose a substantial risk to the offender's  
33 physical or mental well-being. Whenever the mandatory minimum sentence  
34 is suspended or deferred, the court shall state in writing the reason  
35 for 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 one thousand five hundred dollars

1 nor more than five thousand dollars. One thousand five hundred dollars  
2 of the fine may not be suspended or deferred unless the court finds the  
3 offender to be indigent.

4 (4) A person who is convicted of a violation of RCW 46.61.502 or  
5 46.61.504 and who has four or more prior offenses within ten years, or  
6 who has ever previously been convicted of a violation of RCW 46.61.520  
7 committed while under the influence of intoxicating liquor or any drug  
8 or RCW 46.61.522 committed while under the influence of intoxicating  
9 liquor or any drug, shall be punished in accordance with chapter 9.94A  
10 RCW.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

27 For purposes of this subsection (8), the department shall refer to  
28 the driver's record maintained under RCW 46.52.120 when determining the  
29 existence of prior offenses.

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

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

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

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

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

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

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

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

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

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

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

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

11 (12) An offender serving a sentence under this section, whether or  
12 not a mandatory minimum term has expired, may be granted an  
13 extraordinary medical placement by the jail administrator subject to  
14 the standards and limitations set forth in RCW 9.94A.728(4).

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

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

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

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

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

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

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

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

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

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

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

4 (b) "Within seven years" means that the arrest for a prior offense  
5 occurred within seven years of the arrest for the current offense.

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