
SENATE BILL 6413

AS AMENDED BY THE HOUSE

Passed Legislature - 2014 Regular Session

State of Washington 63rd Legislature 2014 Regular Session

By Senators Fain, Eide, Padden, Pearson, Hobbs, Angel, King, Becker, Tom, Sheldon, Dammeier, Honeyford, Hill, O'Ban, Litzow, Brown, Schoesler, and Rolfes

Read first time 01/24/14. Referred to Committee on Law & Justice.

1 AN ACT Relating to prior offenses for driving under the influence
2 or physical control of a vehicle under the influence; and amending RCW
3 46.61.5055 AND 10.31.100.

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

5 **Sec. 1.** RCW 46.61.5055 and 2013 2nd sp.s. c 35 s 13 are each
6 amended to read as follows:

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

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

16 (i) By imprisonment for not less than one day nor more than three
17 hundred sixty-four days. Twenty-four consecutive hours of the
18 imprisonment may not be suspended unless the court finds that the
19 imposition of this mandatory minimum sentence would impose a

1 substantial risk to the offender's physical or mental well-being.
2 Whenever the mandatory minimum sentence is suspended, the court shall
3 state in writing the reason for granting the suspension and the facts
4 upon which the suspension is based. In lieu of the mandatory minimum
5 term of imprisonment required under this subsection (1)(a)(i), the
6 court may order not less than fifteen days of electronic home
7 monitoring. The offender shall pay the cost of electronic home
8 monitoring. The county or municipality in which the penalty is being
9 imposed shall determine the cost. The court may also require the
10 offender's electronic home monitoring device or other separate alcohol
11 monitoring device to include an alcohol detection breathalyzer, and the
12 court may restrict the amount of alcohol the offender may consume
13 during the time the offender is on electronic home monitoring; and

14 (ii) By a fine of not less than three hundred fifty dollars nor
15 more than five thousand dollars. Three hundred fifty dollars of the
16 fine may not be suspended unless the court finds the offender to be
17 indigent; or

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

23 (i) By imprisonment for not less than two days nor more than three
24 hundred sixty-four days. Forty-eight consecutive hours of the
25 imprisonment may not be suspended unless the court finds that the
26 imposition of this mandatory minimum sentence would impose a
27 substantial risk to the offender's physical or mental well-being.
28 Whenever the mandatory minimum sentence is suspended, the court shall
29 state in writing the reason for granting the suspension and the facts
30 upon which the suspension is based. In lieu of the mandatory minimum
31 term of imprisonment required under this subsection (1)(b)(i), the
32 court may order not less than thirty days of electronic home
33 monitoring. The offender shall pay the cost of electronic home
34 monitoring. The county or municipality in which the penalty is being
35 imposed shall determine the cost. The court may also require the
36 offender's electronic home monitoring device to include an alcohol
37 detection breathalyzer or other separate alcohol monitoring device, and

1 the court may restrict the amount of alcohol the offender may consume
2 during the time the offender is on electronic home monitoring; and

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

6 (2) **One prior offense in seven years.** Except as provided in RCW
7 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation
8 of RCW 46.61.502 or 46.61.504 and who has one prior offense within
9 seven years shall be punished as follows:

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

15 (i) By imprisonment for not less than thirty days nor more than
16 three hundred sixty-four days and sixty days of electronic home
17 monitoring. In lieu of the mandatory minimum term of sixty days
18 electronic home monitoring, the court may order at least an additional
19 four days in jail or, if available in that county or city, a six-month
20 period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300
21 through 36.28A.390, and the court shall order an expanded alcohol
22 assessment and treatment, if deemed appropriate by the assessment. The
23 offender shall pay for the cost of the electronic monitoring. The
24 county or municipality where the penalty is being imposed shall
25 determine the cost. The court may also require the offender's
26 electronic home monitoring device include an alcohol detection
27 breathalyzer or other separate alcohol monitoring device, 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 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, the court shall state in writing the reason for granting
35 the suspension and the facts upon which the suspension is based; and

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

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

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

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

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

35 (a) **Penalty for alcohol concentration less than 0.15.** In the case
36 of a person whose alcohol concentration was less than 0.15, or for whom
37 for reasons other than the person's refusal to take a test offered

1 pursuant to RCW 46.20.308 there is no test result indicating the
2 person's alcohol concentration:

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

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

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

33 (i) By imprisonment for not less than one hundred twenty days nor
34 more than three hundred sixty-four days, if available in that county or
35 city, a six-month period of 24/7 sobriety program monitoring pursuant
36 to RCW 36.28A.300 through 36.28A.390, and one hundred fifty days of
37 electronic home monitoring. In lieu of the mandatory minimum term of
38 one hundred fifty days of electronic home monitoring, the court may

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

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

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

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

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

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

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

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

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

33 (5) **Monitoring.**

34 (a) **Ignition interlock device.** The court shall require any person
35 convicted of a violation of RCW 46.61.502 or 46.61.504 or an equivalent
36 local ordinance to comply with the rules and requirements of the
37 department regarding the installation and use of a functioning ignition

1 interlock device installed on all motor vehicles operated by the
2 person.

3 (b) **Monitoring devices.** If the court orders that a person refrain
4 from consuming any alcohol, the court may order the person to submit to
5 alcohol monitoring through an alcohol detection breathalyzer device,
6 transdermal sensor device, or other technology designed to detect
7 alcohol in a person's system. The person shall pay for the cost of the
8 monitoring, unless the court specifies that the cost of monitoring will
9 be paid with funds that are available from an alternative source
10 identified by the court. The county or municipality where the penalty
11 is being imposed shall determine the cost.

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

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

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

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

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

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

31 (b) In any case in which the person has no prior offenses within
32 seven years, and except as provided in RCW 46.61.502(6) or
33 46.61.504(6), order an additional twenty-four hours of imprisonment and
34 a fine of not less than one thousand dollars and not more than five
35 thousand dollars. One thousand dollars of the fine may not be
36 suspended unless the court finds the offender to be indigent;

37 (c) In any case in which the person has one prior offense within
38 seven years, and except as provided in RCW 46.61.502(6) or

1 46.61.504(6), order an additional five days of imprisonment and a fine
2 of not less than two thousand dollars and not more than five thousand
3 dollars. One thousand dollars of the fine may not be suspended unless
4 the court finds the offender to be indigent;

5 (d) In any case in which the person has two or three prior offenses
6 within seven years, and except as provided in RCW 46.61.502(6) or
7 46.61.504(6), order an additional ten days of imprisonment and a fine
8 of not less than three thousand dollars and not more than ten thousand
9 dollars. One thousand dollars of the fine may not be suspended unless
10 the court finds the offender to be indigent.

11 (7) **Other items courts must consider while setting penalties.** In
12 exercising its discretion in setting penalties within the limits
13 allowed by this section, the court shall particularly consider the
14 following:

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

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

19 (c) Whether the driver was driving in the opposite direction of the
20 normal flow of traffic on a multiple lane highway, as defined by RCW
21 46.04.350, with a posted speed limit of forty-five miles per hour or
22 greater; and

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

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

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

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

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

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

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

5 (b) Penalty for alcohol concentration at least 0.15. If the
6 person's alcohol concentration was at least 0.15:

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

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

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

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

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

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

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

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

26 Upon its own motion or upon motion by a person, a court may find,
27 on the record, that notice to the department under RCW 46.20.270 has
28 been delayed for three years or more as a result of a clerical or court
29 error. If so, the court may order that the person's license, permit,
30 or nonresident privilege shall not be revoked, suspended, or denied for
31 that offense. The court shall send notice of the finding and order to
32 the department and to the person. Upon receipt of the notice from the
33 court, the department shall not revoke, suspend, or deny the license,
34 permit, or nonresident privilege of the person for that offense.

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

1 (10) Probation of driving privilege. After expiration of any
2 period of suspension, revocation, or denial of the offender's license,
3 permit, or privilege to drive required by this section, the department
4 shall place the offender's driving privilege in probationary status
5 pursuant to RCW 46.20.355.

6 (11) Conditions of probation. (a) In addition to any
7 nonsuspendable and nondeferrable jail sentence required by this
8 section, whenever the court imposes up to three hundred sixty-four days
9 in jail, the court shall also suspend but shall not defer a period of
10 confinement for a period not exceeding five years. The court shall
11 impose conditions of probation that include: (i) Not driving a motor
12 vehicle within this state without a valid license to drive and proof of
13 liability insurance or other financial responsibility for the future
14 pursuant to RCW 46.30.020; (ii) not driving or being in physical
15 control of a motor vehicle within this state while having an alcohol
16 concentration of 0.08 or more or a THC concentration of 5.00 nanograms
17 per milliliter of whole blood or higher, within two hours after
18 driving; and (iii) not refusing to submit to a test of his or her
19 breath or blood to determine alcohol or drug concentration upon request
20 of a law enforcement officer who has reasonable grounds to believe the
21 person was driving or was in actual physical control of a motor vehicle
22 within this state while under the influence of intoxicating liquor or
23 drug. The court may impose conditions of probation that include
24 nonrepetition, installation of an ignition interlock device on the
25 probationer's motor vehicle, alcohol or drug treatment, supervised
26 probation, or other conditions that may be appropriate. The sentence
27 may be imposed in whole or in part upon violation of a condition of
28 probation during the suspension period.

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

33 (c) For each incident involving a violation of a mandatory
34 condition of probation imposed under this subsection, the license,
35 permit, or privilege to drive of the person shall be suspended by the
36 court for thirty days or, if such license, permit, or privilege to
37 drive already is suspended, revoked, or denied at the time the finding
38 of probation violation is made, the suspension, revocation, or denial

1 then in effect shall be extended by thirty days. The court shall
2 notify the department of any suspension, revocation, or denial or any
3 extension of a suspension, revocation, or denial imposed under this
4 subsection.

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

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

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

14 (c) The court determines that there is reason to believe that the
15 offender would violate the conditions of the electronic home monitoring
16 penalty.

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

24 Whenever the combination of jail time and electronic home
25 monitoring or alternative sentence would exceed three hundred sixty-
26 four days, the offender shall serve the jail portion of the sentence
27 first, and the electronic home monitoring or alternative portion of the
28 sentence shall be reduced so that the combination does not exceed three
29 hundred sixty-four days.

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

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

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

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

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

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

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

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

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

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

15 (viii) A conviction for a violation of RCW 46.61.520 committed
16 while under the influence of intoxicating liquor or any drug, or a
17 conviction for a violation of RCW 46.61.520 committed in a reckless
18 manner or with the disregard for the safety of others if the conviction
19 is the result of a charge that was originally filed as a violation of
20 RCW 46.61.520 committed while under the influence of intoxicating
21 liquor or any drug;

22 ~~((+iv+))~~ (ix) A conviction for a violation of RCW 46.61.522
23 committed while under the influence of intoxicating liquor or any drug,
24 or a conviction for a violation of RCW 46.61.522 committed in a
25 reckless manner or with the disregard for the safety of others if the
26 conviction is the result of a charge that was originally filed as a
27 violation of RCW 46.61.522 committed while under the influence of
28 intoxicating liquor or any drug;

29 ~~((+v+))~~ (x) A conviction for a violation of RCW 46.61.5249,
30 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the
31 conviction is the result of a charge that was originally filed as a
32 violation of RCW 46.61.502 or 46.61.504, or an equivalent local
33 ordinance, or of RCW 46.61.520 or 46.61.522;

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

37 ~~((+vii+))~~ (xii) A deferred prosecution under chapter 10.05 RCW

1 granted in a prosecution for a violation of RCW 46.61.502, 46.61.504,
2 or an equivalent local ordinance;

3 ~~((viii))~~ (xiii) A deferred prosecution under chapter 10.05 RCW
4 granted in a prosecution for a violation of RCW 46.61.5249, or an
5 equivalent local ordinance, if the charge under which the deferred
6 prosecution was granted was originally filed as a violation of RCW
7 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
8 46.61.520 or 46.61.522;

9 ~~((ix))~~ (xiv) A deferred prosecution granted in another state for
10 a violation of driving or having physical control of a vehicle while
11 under the influence of intoxicating liquor or any drug if the out-of-
12 state deferred prosecution is equivalent to the deferred prosecution
13 under chapter 10.05 RCW, including a requirement that the defendant
14 participate in a chemical dependency treatment program; or

15 ~~((x))~~ (xv) A deferred sentence imposed in a prosecution for a
16 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent
17 local ordinance, if the charge under which the deferred sentence was
18 imposed was originally filed as a violation of RCW 46.61.502 or
19 46.61.504, or an equivalent local ordinance, or a violation of RCW
20 46.61.520 or 46.61.522;

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

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

27 (c) "Within seven years" means that the arrest for a prior offense
28 occurred within seven years before or after the arrest for the current
29 offense; and

30 (d) "Within ten years" means that the arrest for a prior offense
31 occurred within ten years before or after the arrest for the current
32 offense.

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

35 A police officer having probable cause to believe that a person has
36 committed or is committing a felony shall have the authority to arrest
37 the person without a warrant. A police officer may arrest a person

1 without a warrant for committing a misdemeanor or gross misdemeanor
2 only when the offense is committed in the presence of the officer,
3 except as provided in subsections (1) through (11) of this section.

4 (1) Any police officer having probable cause to believe that a
5 person has committed or is committing a misdemeanor or gross
6 misdemeanor, involving physical harm or threats of harm to any person
7 or property or the unlawful taking of property or involving the use or
8 possession of cannabis, or involving the acquisition, possession, or
9 consumption of alcohol by a person under the age of twenty-one years
10 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070
11 or 9A.52.080, shall have the authority to arrest the person.

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

15 (a) An order has been issued of which the person has knowledge
16 under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09, 26.10,
17 26.26, 26.50, or 74.34 RCW restraining the person and the person has
18 violated the terms of the order restraining the person from acts or
19 threats of violence, or restraining the person from going onto the
20 grounds of or entering a residence, workplace, school, or day care, or
21 prohibiting the person from knowingly coming within, or knowingly
22 remaining within, a specified distance of a location or, in the case of
23 an order issued under RCW 26.44.063, imposing any other restrictions or
24 conditions upon the person; or

25 (b) A foreign protection order, as defined in RCW 26.52.010, has
26 been issued of which the person under restraint has knowledge and the
27 person under restraint has violated a provision of the foreign
28 protection order prohibiting the person under restraint from contacting
29 or communicating with another person, or excluding the person under
30 restraint from a residence, workplace, school, or day care, or
31 prohibiting the person from knowingly coming within, or knowingly
32 remaining within, a specified distance of a location, or a violation of
33 any provision for which the foreign protection order specifically
34 indicates that a violation will be a crime; or

35 (c) The person is sixteen years or older and within the preceding
36 four hours has assaulted a family or household member as defined in RCW
37 10.99.020 and the officer believes: (i) A felonious assault has
38 occurred; (ii) an assault has occurred which has resulted in bodily

1 injury to the victim, whether the injury is observable by the
2 responding officer or not; or (iii) that any physical action has
3 occurred which was intended to cause another person reasonably to fear
4 imminent serious bodily injury or death. Bodily injury means physical
5 pain, illness, or an impairment of physical condition. When the
6 officer has probable cause to believe that family or household members
7 have assaulted each other, the officer is not required to arrest both
8 persons. The officer shall arrest the person whom the officer believes
9 to be the primary physical aggressor. In making this determination,
10 the officer shall make every reasonable effort to consider: (i) The
11 intent to protect victims of domestic violence under RCW 10.99.010;
12 (ii) the comparative extent of injuries inflicted or serious threats
13 creating fear of physical injury; and (iii) the history of domestic
14 violence of each person involved, including whether the conduct was
15 part of an ongoing pattern of abuse((~~or~~

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

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

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

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

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

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

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

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

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

37 (4) A law enforcement officer investigating at the scene of a motor
38 vehicle accident may arrest the driver of a motor vehicle involved in

1 the accident if the officer has probable cause to believe that the
2 driver has committed in connection with the accident a violation of any
3 traffic law or regulation.

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

9 (b) A law enforcement officer investigating at the scene of a motor
10 vessel accident may issue a citation for an infraction to the operator
11 of a motor vessel involved in the accident if the officer has probable
12 cause to believe that the operator has committed, in connection with
13 the accident, a violation of any boating safety law of chapter 79A.60
14 RCW.

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

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

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

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

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

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

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

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

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

10 (14) A police officer shall arrest and keep in custody, until
11 release by a judicial officer on bail, personal recognizance, or court
12 order, a person without a warrant when the officer has probable cause
13 to believe that the person has violated RCW 46.61.502 or 46.61.504 or
14 an equivalent local ordinance and the police officer has knowledge that
15 the person has a prior offense as defined in RCW 46.61.5055 within ten
16 years.

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