

## Court – DUI Sentencing Grid

(RCW 46.61.5055 as amended through January 1, 2009)

<b>BAC Result &lt; .15 or No Test Result</b>	<b>No Prior Offense<sup>1</sup></b>	<b>One Prior Offense<sup>1</sup></b>	<b>Two or Three Prior Offenses<sup>1</sup></b>
Mandatory Minimum /Maximum Jail Time <sup>2</sup>	24 Consecutive Hours/365 Days	30/365 Days	90/365 Days
EHM <sup>2</sup>	15 Days in Lieu of Jail	60 Days Mandatory	120 Days Mandatory
Mandatory Minimum /Maximum Fine <sup>3</sup>	\$865.50/\$5,000	\$1,120.50/\$5,000	\$1,970.50/\$5,000
Driver's License	90-Day Suspension	2-Year Revocation	3-Year Revocation
II Driver's License* II Device	Required	Required	Required
Alcohol/Drug Ed. or Treatment	As Ordered	As Ordered	As Ordered

\* See Court and Department of Licensing (DOL) Ignition Interlock Requirements, page 4.

<b>BAC Result ≥ .15 or Test Refusal</b>	<b>No Prior Offense<sup>1</sup></b>	<b>One Prior Offense<sup>1</sup></b>	<b>Two or Three Prior Offenses<sup>1</sup></b>
Mandatory Minimum /Maximum Jail Time <sup>2</sup>	2 Consecutive/365 Days	45/365 Days	120/365 Days
EHM <sup>2</sup>	30 Days in Lieu of Jail	90 Days Mandatory	150 Days Mandatory
Mandatory Minimum /Maximum Fine <sup>3</sup>	\$1,120.50/\$5,000	\$1,545.50/\$5,000	\$2,820.50/\$5,000
Driver's License	1-Year Revocation 2 Years if BAC refused	900-Days Revocation 3 Years if BAC refused	4-Year Revocation
II Driver's License* II Device	Required	Required	Required
Alcohol/Drug Ed. or Treatment	As Ordered	As Ordered	As Ordered

\* See Court and Department of Licensing (DOL) Ignition Interlock Requirements, page 4.

<b>Court Ordered Ignition Interlock Driver's License and Device Requirements, RCW 46.20.720(2), 46.61.5055(5), 46.20.385, effective January 1, 2009*</b>			
Requirement	No Previous Restriction+	Previous 1-Year Restriction+	Previous 5-Year Restriction+
II Driver's License II Device	1 Year	5 Years	10 Years

+ Period of time for ignition interlock restriction is pursuant to RCW 46.61.5055(5)(f).

\* See Court and Department of Licensing (DOL) Ignition Interlock Requirements, page 4.

<b>Department of Licensing Required Ignition Interlock Device Requirements, RCW 46.20.720(3) June 10, 2004*</b>			
Requirement	No Previous Restriction	Previous 1-Year Restriction	Previous 5-Year Restriction
II Device	1 Year	5 Years	10 Years

\* See Court and Department of Licensing (DOL) Ignition Interlock Requirements, page 4.

**<sup>1</sup>Prior Offenses:** Count all prior offenses where the arrest date of the prior offense occurred within seven (7) years before or after the arrest date on the current offense. RCW 46.61.5055(14)(b); *Seattle v. Quezada*, 142 Wn.App. 43, 174 P.3d 129 (Div. 1 2007). “Prior offense” is defined by RCW 46.61.5055(14)(a) to include—

- **Original Convictions for the following:** (1) DUI (RCW 46.61.502) (or an equivalent local ordinance); (2) Phys. Cont. (RCW 46.61.504) (or an equivalent local ordinance); (3) Veh. Homicide (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) if either committed while under the influence; (4) Equiv. out-of-state statute for any of the above offenses.
- **Deferred Prosecution Granted for the following:** 1) DUI (RCW 46.61.502) (or equivalent local ordinance); (2) Phys. Cont. (RCW 46.61.504) (or equiv. local ordinance); (3) Neg. Driving 1st (RCW 46.61.5249, or equiv. local ord.), *if the person was originally charged with DUI or Phys. Cont. (or an equiv. local ord.), or Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522).* See *Bremerton v. Tucker*, 126 Wn.App. 26, 103 P.3d 1285 (Div. 2 2005); *Seattle v. Quezada*, 142 Wn.App. 43, 174 P.3d 129 (Div. 1 2007) (a revoked deferred prosecution only counts as one prior offense).
- **Amended Convictions for the following:** *If the person was originally charged with DUI or Phys. Cont. or an equivalent local ordinance, or Veh. Homicide (RCW 46.61.520) or Veh. Assault (RCW 46.61.522)* (1) Neg. Driving 1st (RCW 46.61.5249), (2) Reckless Driving (RCW 46.61.500), (3) Reckless Endangerment (RCW 9A.36.050), (4) Equiv. out-of-state or local ordinance for the above offenses. See, *Walla Walla v. Greene*, 154 Wn.2d 722, ¶ 14, 116 P.3d 1008 (2005).

**<sup>2</sup>Mandatory Jail and Electronic Home Monitoring (EHM):** If there are prior offenses within seven (7) years of arrest date, the mandatory jail shall be served by imprisonment for the minimum statutory term and may not be suspended or deferred unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender’s physical or mental well-being. The mandatory statutory term may not be converted to EHM. *Bremerton v. Bradshaw*, 121 Wn.App. 410, 88 P.3d 438 (Div. 2 2004). Where there are no prior offenses within seven (7) years of arrest date, the court may grant EHM instead of mandatory minimum jail. If there are prior offenses, the mandatory EHM may not be suspended or deferred unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender’s physical or mental well-being. RCW 46.61.5055(1)(a)(i), (2)(a)(i), (3)(a)(i).

**Mandatory Conditions of Probation for any Suspended Jail Time:** The individual is not to: (i) drive a motor vehicle without a valid license to drive and proof of financial responsibility (SR 22), (ii) drive while having an alcohol concentration of .08 or more within two (2) hours after driving, (iii) refuse to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement-officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor. Except for ignition interlock driver’s license and device or alcohol monitoring requirements under RCW 46.61.5055(5), violation of **any** mandatory condition, requires a minimum penalty of 30 days’ confinement, which may not be suspended or deferred, and an additional 30-day license suspension. RCW 46.61.5055(11). Courts are required to report violations of mandatory conditions requiring confinement or license suspension to DOL. RCW 46.61.5055.

**<sup>3</sup>Mandatory Monetary Penalty:** PSEA 1, RCW 3.62.090(1); Alcohol Violators Fee, RCW 46.61.5054; Criminal Justice Funding (CJF) Penalty, RCW 46.64.055 (Note: RCW 3.62.090(1) and (2) apply to CJF penalty); Criminal Conviction Fee, RCW 3.62.085.

**Felony DUI and Felony Physical Control:** Laws of 2006, ch. 73, §§ 1-3 (effective July 1, 2007) created new class C felony crimes of Felony DUI and Felony Physical Control. With four (4) priors within ten (10) years, or one (1) prior conviction of Veh. Homicide or Veh. Assault (see above), a current offense is a Class C Felony punished under Chapter 9.94A RCW. “Within ten (10) years” means that the arrest for the prior offense occurred within ten (10) years of the arrest for the current offense. Laws of 2007, ch. 474 (effective July 1, 2007); RCW 46.61.5055(13)(c).

**Jurisdiction:** Court has five (5) years jurisdiction.

## Department of Licensing - DUI Administrative Sanctions and Reinstatement Provisions

(As amended through January 1, 2009)

<b>Administrative Sanctions – RCW 46.20.3101</b>		
<b>REFUSED TEST</b>	<b><i>First Refusal Within 7 Years And No Prior Administrative Action Within Past 7 Years*</i></b>	<b><i>Second or Subsequent Refusal Within Past 7 Years OR First Refusal And At Least One Prior Administrative Action Within Past 7 Years*</i></b>
Adult	1-Year License Revocation	2-Year License Revocation
Minor	1-Year License Revocation	2-Year License Revocation Or Until Age 21 Whichever Is Longer
<b>BAC RESULT</b>	<b><i>First Administrative Action</i></b>	<b><i>Second or Subsequent Administrative Action</i></b>
Adults ≥ 0.08	90-Day License Suspension	2-Year License Revocation
Minors ≥ 0.02	90-Day License Suspension	1-Year License Revocation Or Until Age 21 Whichever Is Longer

\*Day for day credit for revocation period already served under suspension, revocation, or denial imposed under RCW 46.61.5055 and arising out of the same incident.--RCW 46.20.3101(4).

<b>Ignition Interlock Driver's License, RCW 46.20.385 (effective January 1, 2009)</b>
May apply for an Ignition Interlock Driver's License upon receiving RCW 46.20.308 notice or upon suspension or revocation. See "Court and Department of Licensing Ignition Interlock Requirements, page 4."

Note: An individual convicted of DUI or physical control will have his/her driving privilege placed in probationary status for five (5) years from the date he/she is eligible to reinstate his/her driver's license (see RCW 46.61.5055 and 46.20.355). An individual granted a deferred prosecution under RCW 10.05.060 will have his/her driving privilege placed on probationary status for five (5) years from the date of the incident, which was the basis for the deferred prosecution (see RCW 46.20.355 and 10.05.060).

<b>Requirements for Reinstatement of Driving Privilege</b>	
<b><i>Suspended License* (RCW 46.20.311)</i></b>	<b><i>Revoked License* (RCW 46.20.311)</i></b>
<ul style="list-style-type: none"> <li>• File and maintain proof of financial responsibility for the future with the Department of Licensing as provided in chapter 46.29 RCW (SR 22)</li> <li>• Present written verification by a company that it has installed the required ignition interlock device on a vehicle owned and/or operated by the person seeking reinstatement</li> <li>• Pay \$150 driver's license reissue fee</li> <li>• Driver's ability test NOT required</li> </ul>	<ul style="list-style-type: none"> <li>• File and maintain proof of financial responsibility for the future with the Department of Licensing as provided in chapter 46.29 RCW (SR22)</li> <li>• Present written verification by a company that it has installed the required ignition interlock device on a vehicle owned and/or operated by the person seeking reinstatement</li> <li>• Pay \$150 driver's license reissue fee</li> <li>• Satisfactorily complete a driver's ability test</li> </ul>

\*If suspension or revocation is the result of a criminal conviction, the driver must also show proof of either (1) enrollment and satisfactory participation in an approved alcohol treatment program or (2) completion of an alcohol information school, as determined by the court and/or treatment agency.

## Court and Department of Licensing (DOL) Ignition Interlock Requirements, RCW 46.20.380, 46.20.385

<b>Ignition Interlock Driver's License, RCW 46.20.380, 46.20.385</b>	
<b>Eligible to Apply</b>	<ul style="list-style-type: none"> <li>• Conviction of violation of RCW 46.61.502 or 46.61.504, involving alcohol</li> <li>• License suspended, revoked, or denied under RCW 46.20.3101</li> <li>• Proof of installed functioning ignition interlock device</li> </ul>
<b>Requirements</b>	<ul style="list-style-type: none"> <li>• During previous seven (7) years, no conviction for vehicular homicide or vehicular assault</li> <li>• Proof of financial responsibility (SR 22)</li> </ul>
<b>Financial Obligations</b>	<ul style="list-style-type: none"> <li>• \$100 mandatory fee to DOL.</li> <li>• Costs to install, remove, and lease the ignition interlock device, and \$20 fee per month, unless waived</li> </ul>
<b>Duration</b>	Extends through the remaining portion of any concurrent or consecutive suspension or revocation imposed as the result of administrative action and criminal conviction arising from the same incident
<b>Operation with Other Requirements</b>	The time period during which the person is licensed under RCW 46.20.385, shall apply on a day-for-day basis toward satisfying the period of time the ignition interlock device restriction is required under RCW 46.20.720 and 46.61.5055

**Court Ordered Ignition Interlock (II) Driver's License and Device:** The court may waive II Driver's License and Device requirements upon written findings of fact when: (i) the devices are not reasonably available in the local area, (ii) the person does not operate a motor vehicle, (iii) the person is not eligible to receive the driver's license under RCW 46.20.385. (RCW 46.61.5055(5) as amended by Laws of 2008, ch. 282, § 14). If the court waives the requirements, the court shall order the person to submit to alcohol monitoring for one (1), five (5), or ten (10) years, and to pay for the monitoring. RCW 46.61.5055(5) (Laws of 2008, ch. 282, §, 14). II device is not required on employer's vehicle driven during business hours upon proof to DOL of employment affidavit. The court sets the calibration level.

**Court Ordered Discretionary Ignition Interlock (II) Device:** The court may order discretionary II device requirements that last up to the five (5) years jurisdictional limit of the court. The court sets the duration and calibration level. Discretionary II device restrictions begin after any applicable period of suspension, revocation, or denial of driving privileges. RCW 46.20.720(1) (as amended Chapter 95, Laws 2004).

**Passenger Under Age 16:** The Court shall order the installation and use of an II device for not less than 60 days if an IID is not mandatory under RCW 46.20.720 or 46.61.5055(5) and for an additional 60 days if an IID is otherwise mandatory.

**Deferred Prosecution:** For application in DUI Deferred Prosecution, see RCW 46.20.385, RCW 46.20.720(2), RCW 10.05.020 and RCW 10.05.140, which require II driver's license and device in a deferred prosecution of any alcohol-dependency based case.

**DOL Imposed Ignition Interlock (II) Device - RCW 46.20.720:** For all offenses occurring June 10, 2004 or later, DOL shall require that, after any applicable period of suspension, revocation, or denial of driving privileges, a person may drive only a motor vehicle equipped with a functioning II device if the person is convicted of "an alcohol-related" violation of DUI or Physical Control. The DOL required II device is not required on employer's vehicle during business hours upon proof to DOL of employment affidavit. DOL may waive requirement if the device is not reasonably available in the local area.