

STATE:
General Reference:

WASHINGTON
Revised Code of Washington Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Under the influence of or affected by intoxicating liquor ¹²⁴⁷ §§46.61.502(1)(b) and 46.61.504(1)(b)
Illegal Per Se Law (BAC/BrAC):	≥.08 ^{1248and1249} §§46.61.502(1)(a) and 46.61.504(1)(a) <u>Persons Under 21 Years Old-≥.02 but <.08</u> §46.61.503
Presumption (BAC):	None
Types of Drugs/Drugs and Alcohol:	Under the influence of or affected by (1) Any Drug or (2) a Combination of Intoxicating Liquor and Any Drug §§46.61.502(1)(b) and (c) and 46.61.504(1)(b) and (c)

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:	No
Implied Consent Law:	
Arrest Required (Yes/No):	Yes ¹²⁵⁰ §46.20.308
Implied Consent Law Applies to Drugs (Yes/No):	Yes §46.20.308(1)

¹²⁴⁶ In an Assimilative Crimes Act (18 USC §13) case based on the State's drunk driving law for an offense committed on a Federal military reservation, a Federal appellate court has held that the State law did not apply to the operation of mopeds although it did apply to the operation of bicycles. *U.S. v. Dotson*, 34 F.3d 882 (9th Cir. 1994)

¹²⁴⁷ The law defines a drunk driving offense as either driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug. The law further provides that this offense is established (or proven) if a person either (1) has a BAC/BrAC ≥.08 within 2 hours of driving or being in actual physical control of a motor vehicle, (2) was under the influence of or affected by intoxicating liquor or drugs while driving or being in actual has physical control of a motor vehicle or (3) was under the combined influence of or affected by intoxicating liquor or any drug while driving or being in actual physical control of a motor vehicle. §§46.61.502(1), 46.61.504(1), *State v. Robbins*, 980 P.2d 725 (Wash. 1999) and *State v. Crediford*, 927 P.2d 1129 (Wash. 1996).

¹²⁴⁸ Alcohol concentration means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. §46.04.015

¹²⁴⁹ Under §46.20.308(1), a law enforcement officer may request a person under 21 years old to submit to an implied consent test if the officer has made an arrest and has "reasonable grounds to believe" that the young person was operating a motor vehicle with an alcohol concentration ≥.02 but <.08 under §46.61.503. A person under 21 years old commits an offense by occupying a motor vehicle in a public place "while exhibiting the effects of having consumed liquor," unless the person is in the presence of a parent or guardian The sanctions for a first offense are a jail term of not more than 2 months and/or a fine of not more than \$500. The sanction for a second offense is a jail term for not more than 6 months. The sanction for a third or subsequent offense is a jail term for not more than 1 year. If the offender is under 18 years old, for a first offense, the driving privileges are revoked for 1 year (90 days mand) and, for a second or subsequent offense, the driving privileges are revoked for 2 years (1 year mand). §§13.4.020(14), 13.40.265, 46.20.265, 66.44.180, 66.44.270(2)(b) and 66.44.365 There is no licensing sanction for this offense if the offender is over 18 but under 21 years old. In addition, there appears to be no fine sanction for a second or subsequent offense.

Refusal to Submit to Chemical Test
Admitted into Evidence:

Yes (Criminal Cases) §46.61.517, *State v. Long*, 778 P.2d 1027 (Wash. 1989) and *State v. Baldwin*, 37 P.3d 1220 (Wash App 2001)(review denied 60 P.3d 92 (2002)). A person may be administered either a breath or blood test without consent if arrested for (1) vehicle homicide, (2) vehicle assault, or (3) any DWI offense related to an accident where there was a serious bodily injury. §46.20.308(3)¹²⁵¹ and *State v. Schulze*, 804 P.2d 566 (Wash. 1991).

Other Information:

Detention of a person at outdoor music venues for investigation of consumption or possession of illegal drugs and alcohol authorized for a ‘reasonable time’ not to exceed one hour.

Chemical Tests of Other Substances for Alcohol Concentration Which Are Authorized Under the Implied Consent Law:

Blood:
Urine:
Other:

Yes – Limited¹²⁵²
No
None

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):
Anti-Plea-Bargaining Statute (Yes/No):

No¹²⁵³
No But as a condition of granting a deferred prosecution petition on any alcohol-dependency based case, the court shall order the installation of an ignition interlock.

Pre-Sentencing Investigation Law (PSI)
(Yes/No):

Yes. Alcohol evaluation is mandatory. §§46.61.5055(5) and 46.61.5056(2)

¹²⁵¹ Under §46.20.308(3), a person arrested for a drunk driving offense may be compelled to submit to a test for drugs as well as alcohol if the offense involved an accident in which there was a serious bodily injury to another person.

¹²⁵² The implied consent law provides for a blood test only in situations where a person has been arrested for either (1) vehicle homicide, (2) vehicle assault or (3) a DWI offense where the offense involved an accident in which a serious bodily injury occurred to another person. §46.20.308(3)

¹²⁵³ **Deferred Prosecution:** The State has a deferred prosecution program for DWI offenses. A person is eligible for this program only once. The program provides for alcohol treatment for a two-year period. Upon successful completion of the program, the court shall dismiss the charges pending against the defendant. §1.05.010 et seq. The offender's license is placed on probationary status for 5 years. §1.05.060. In addition, as a condition for granting deferred prosecution, the court may require an offender to only operate vehicles that are equipped with ignition interlock devices. §1.05.140. A deferred prosecution is treated as a prior offense for purposes of sanction enhancement for subsequent offenses. §1.05.120.

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:
 Criminal Sanctions (Fine/Jail): N/A
 Administrative Licensing Action (Susp/Rev): N/A
 Other: N/A

Refusal to Take Implied Consent Chemical Test:

Criminal Sanction (Fine/Jail): **None**
 Administrative Licensing Action (Susp/Rev):
 First refusal – **Revocation/Denial 1 year** (mand)^{1254; second} or subsequent refusal¹²⁵⁵ (within 7 years) – **Revocation/Denial 2 years** or until the person reaches 21 years old whichever is longer (mand). §§46.20.308 and 46.20.3101
 In situations involving second or subsequent refusals (or a first refusal where there has been one or more previous admin per se violations within 5 years) where the person has also been convicted of a drunk driving offense related to the same incident, the revocation/denial for the refusal is to run consecutively to any licensing action that may be imposed for the DWI offense. §46.20.3101

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions: A DWI offense is a gross misdemeanor. §§46.61.502(5) and 46.61.504(5)
 Imprisonment:
 Term (Day, Month, Years)
 I. An offense where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **1 day to 1 year.** §46.61.5055(1)(a)
 II. An offense where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **2 days to 1 year.** §46.61.5055(1)(b)
 III. An offense where there has been a prior offense¹²⁵⁶ within 7 years and where

¹²⁵³ Sec. 46.20.391, concerning the issuance of occupational driving privileges, applies only to situations where licensing action is based on traffic offense convictions. Such provision does not apply to licensing actions for refusal to take a breath test. *Burnett v. Dept. of Licensing*, 832 P.2d 1321 (Wash App 1992).

¹²⁵⁴ Or a first refusal where there has been one or more previous admin per se violations within 5 years.

¹²⁵⁵ A prior offense includes any type of prior drunk driving offense. §46.61.5055(9)

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the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **30 days to 1 year.**

§46.61.5055(2)(a)

IV. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **45 days to 1 year.** §46.61.5055(2)(b)

V. An offense where there has been two or more prior offenses within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **90 days to 1 year.** §46.61.5055(3)(a)

VI. An offense where there has been two or more prior offenses within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **120 days to 1 year.**

§46.61.5055(3)(b)

Vehicle Assault – (1) Reckless driving, (2) driving while under the influence of liquor or drugs, or (3) driving with disregard for the safety or others and causing substantial bodily harm to another person.

§46.61.522. (Drunk driving related injury Class B felony) – Not more than **10 years.** §§9A.2.021(1)(b) and 46.61.522

Mandatory Minimum Term:

I. An offense where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **24 con hours** or, as an alternative, not less than **15 days of electronic home monitoring** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(1)(a).

II. An offense where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **2 consecutive days**¹²⁵⁷ or, as an alternative, **not less than 30 days of electronic home monitoring**¹²⁵⁸ which may include a restriction on the amount of alcohol the

¹²⁵⁶ May be suspended only if jail would impose a risk to defendant's physical or mental well-being.

¹²⁵⁷ Under the sentencing guidelines grid, the presumptive sentence is 3 to 84 months. §§9.94A.510 and 9.94A.515.

offender can consume while on home monitoring. §46.61.5055(1)(b).
 III. An offense where there has been a prior offense¹²⁵⁹ within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **30 days and 60 days of electronic home monitoring**¹²⁶⁰ which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(2)(a).
 IV. An offense where there has been a prior offense¹²⁶¹ within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **45 days and 90 days of electronic home monitoring** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(2)(b).

Sanctions Following a Conviction for a DWI Offense:

V. An offense where there have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **90 days and 120 days of electronic home monitoring** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(3)(a).
 VI. An offense where there have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **120 days and 150 days of electronic home monitoring** which may include a restriction on the amount of alcohol the offender can consume while on home monitoring. §46.61.5055(3)(b).

Fine:
 Amount (\$ Range):

I. An offense where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **\$350 to \$5,000** §46.61.5055(1)(a).

¹²⁵⁸ May be suspended only if jail would impose a risk to defendant's physical or mental well-being.

¹²⁵⁹ **Electronic Home Monitoring:** I. The court may waive this sanction if the offender is not a State resident, does not have either a dwelling, a telephone or other items needed to operate an electronic monitoring system. §46.61.5055(9). II. The total time served in jail and on electronic home monitoring cannot exceed 365 days. The jail sentence has to be served first. §46.61.5055

¹²⁶⁰ A prior offense includes any type of prior drunk driving offense. §46.61.5055.

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II. An offense where the offender's BAC/BrAC is $\geq .15$ or there was a refusal to submit to the implied consent test – **\$500 to \$5,000** §46.61.5055(1)(b).

III. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is $< .15$ or there was no test result (but not via a refusal to submit to a test) – **\$500 to \$5,000** §46.61.5055(2)(a).

IV. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is $\geq .15$ or there was a refusal to submit to the implied consent test – **\$750 to \$5,000.** §46.61.5055(2)(b).

V. An offense where there have been two or more prior offenses¹²⁶² within 7 years and where the offender's BAC/BrAC is $< .15$ or there was no test result (but not via a refusal to submit to a test) – **\$1,000 to \$5,000** §46.61.5055(3)(a).

VI. An offense where there have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is $\geq .15$ or there was a refusal to submit to the implied consent test – **\$1,500 to \$5,000** §46.61.5055(3)(b).

Vehicle Assault (Drunk Driving related injury Class B felony) – Not more than **\$20,000.** §9A.2.021(1)(b).

Mandatory Min. Fine (\$):

I. An offense where the offender's BAC/BrAC is $< .15$ or there was no test result (but not via a refusal to submit to a test) – **\$350.**¹²⁶³ §46.61.5055(1)(a).

II. An offense where the offender's BAC/BrAC is $\geq .15$ or there was a refusal to submit to the implied consent test – **\$500.** §46.61.5055(1)(b).

III. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is $< .15$ or there was no test result (but not via a refusal to submit to a test) – **\$500.** §46.61.5055(2)(a).

IV. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is $\geq .15$ or there was

¹²⁶¹ A prior offense includes any type of prior drunk driving offense. §46.61.5055(9)

¹²⁶² Unless the defendant is indigent.

a refusal to submit to the implied consent test – **\$750.** §46.61.5055(2)(b).

V. An offense where there has been two or more prior offenses within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **\$1,000.** §46.61.5055(3)(a).

VI. An offense where there has been two or more prior offenses within 7 years and where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test – **\$1,500.** §46.61.5055(3)(b).

Other Penalties:
Community Service:

Possible for any misdemeanor.
§9.94A.680.

Restitution
(e.g., Victim's Fund)

Yes.¹²⁶⁴ Payment via a State compensation fund. §7.68.020 et seq.

Ignition Interlock: I. For a first offense (BAC <.15 with no previously alcohol-related deferred prosecution and no refusal to submit to a chemical test) and no children in the vehicle less than age 16, the court may, after the license suspension or revocation period, require an offender to only operate motor vehicles that are equipped with an ignition interlock device. This requirement may last for as long as the court has jurisdiction. §46.20.720(1)

II. For (1) a first offense (BAC ≥.15 or a refusal to submit to a chemical test) or (2) any subsequent drunk driving offense (within 7 years), or (3) an offense following a previous deferred

¹²⁶³ Also, the court may order the defendant to pay direct compensation to a victim. For felony offenses (e.g., Vehicle Assault), the court must order a defendant to pay restitution directly to a victim except in unusual circumstances. §§9.94A.505(7), 9.94A.750 and 9.94A.753.

Negligent Driving: A person commits first degree Negligent Driving, a misdemeanor, if (1) by operating a motor vehicle in a negligent manner likely to endanger persons or property and (2) exhibiting the effects of having consumed alcohol or an illegal drug. It is a defense to this offense if the person had a valid prescription for the drug consumed. The sanctions for this offense are a jail term of not more than 90 days and/or a fine of not more than \$1,000. In addition, there is a mandatory penalty assessment of **\$250.** §§7.68.035(1)(a) and (2) 9A.2.010(2), 9A.2.021(3), 46.61.050 and 46.61.5249

Persons <21 years old commit a misdemeanor if they operate a motor vehicle with a BAC/BrAC ≥.02 but <.08. §46.61.503. The sanctions for this offense are an imprisonment term of not more than 90 days and/or a fine of not more than \$1,000. §§9A.04.040(2), 9A.2.021(3) and 46.64.050

alcohol offense prosecution, or (4) a child under age 16 was in the vehicle, the court, after the license suspension or revocation period, **MUST** require an offender to operate only motor vehicles that are equipped with an ignition interlock device. If there has been no previous ignition interlock use, the usage period is not less than 1 year; if there has been one previous restriction, the usage period is not less than 5 years; and, if there have been two previous restrictions, the usage period is not less than 10 years. {Note: if child less than 16 in vehicle, ignition interlock ordered for an additional 60 days.}

§46.20.720(2) and (3) and
§46.61.5055(1)(b)(iii).

Deferred prosecution: As a condition of granting a deferred prosecution petition on any alcohol-dependency-based case, the court shall order the installation of an ignition **interlock**.
RCW 46.20.380

Any person convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, may submit to the department an application for a temporary restricted driver's license if his or her vehicle is equipped with an interlock, and that person:

(i) Is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle;

(ii) Is undergoing continuing health care or providing continuing care to another who is dependent upon the applicant;

(iii) Is enrolled in an educational institution and pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion;

(iv) Is undergoing substance abuse treatment or is participating in meetings of a twelve-step group such as Alcoholics Anonymous that requires the petitioner to drive to or from the treatment or meetings;

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- (v) Is fulfilling court-ordered community service responsibilities;
- (vi) Is in a program that assists persons who are enrolled in a Work First program to become gainfully employed and the program requires a driver's license;
- (vii) Is in an apprenticeship, on-the-job training, on welfare-to-work program; or
- (viii) Presents evidence that he or she has applied for a position in an apprenticeship or on-the-job training program for which a driver's license is required to begin the program, provided that a license granted under this provision shall be in effect for no longer than fourteen days; and

(c) The applicant files satisfactory proof of financial responsibility {under chapter 46.29 RCW}. RCW 46.20.391

Penalty Assessment: A defendant who is convicted of drunk driving offense under §46.61.502 or 46.61.504 is required to pay an assessment used to support the victim's compensation fund. There is an assessment of **\$250** for a first or subsequent misdemeanor and **\$500** for a first or subsequent gross misdemeanor or felony. For juvenile offenders, there is an assessment of **\$75** for a first or subsequent misdemeanor and **\$100** for a first or subsequent gross misdemeanor or felony. §7.68.035(1)(a) and (b) and (2).

Laboratory Assessment Fee: An offender is assessed a **\$125** fee which is used to fund the State's toxicology laboratory. The court may suspend this fee if the defendant does not have the ability to pay it. §46.61.5054.

Safety and Education Assessment: A defendant must pay an assessment equal to 60 percent of the fine imposed for the purpose of funding safety and education programs. §3.62.090(1).

\$100 fee for an occupational or temporary restricted driver's license.

Summary Impoundment: If arrested for DUI, Vehicle Homicide and Assault {RCW 46.61.502} or while 'found to be an Habitual Offender ordered not to drive {RCWA 46.65}, the vehicle is subject to summary impoundment pursuant to the

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terms and conditions of an applicable local ordinance or State agency rule. RCWA 46.55.113 (1)

Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law:

Yes ≥.08 BAC/BrAC first violation– suspension – **90 days** (30 days mandatory – an occupational driver’s license may be issued after mandatory period.). Second or Subsequent Violation (within 7 years) – **Revocation/Denial- 2 years**¹²⁶⁵ (mandatory). §§46.20.308, 46.20.355(2), 46.20.391(1) and 46.20.3101.

But this licensing action may be stayed 45 to 90 days if the offender is deferred prosecution treatment program. §46.20.308(10).

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Administrative Licensing Actions:
Pre-DWI Conviction Licensing Action:
Administrative Per Se Law

Persons Under 21 Years Old-≥.02 but <.08 BAC/BrAC first violation– suspension **90 days** (30 days mandatory. An occupational driver’s license may be issued after this mandatory period.). Second or Subsequent Violation (within 7 years) – **Revocation/Denial 1 year** or until the person reaches 21 whichever is longer. This revocation appears to be mandatory. §§46.20.308, 46.20.391(1) and 46.20.3101.

Post DWI Conviction Licensing Action:

Type of Licensing Action

(Susp/Rev):

- I. An offense where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **Suspension** §46.61.5055(6)(a)(i).
- II. An offense where the offender's BAC/BrAC is ≥.15 or there was a refusal to submit to the implied consent test- **Revocation** §46.61.5055(6)(b)(i).
- III. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is <.15 or there was no test result (but not via a refusal to submit to a test) – **Revocation**¹²⁶⁶ §46.61.5055(6)(a)(ii).

¹²⁶⁴ A prior offense includes any type of prior drunk driving offense. §46.61.5055

¹²⁶⁵ The revocation is "tolled" during any period of incarceration. §46.20.285

A DWI offender's driving privileges cannot be reinstated until that person is enrolled in and is participating in an approved alcoholism treatment program. §46.20.311.

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IV. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is $\geq .15$ or there was a refusal to submit to the implied consent test- **Revocation** §46.61.5055(6)(b)(ii).

V. An offense where there have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is $< .15$ or there was no test result (but not via a refusal to submit to a test) – **Revocation** §46.61.5055(6)(a)(iii).

VI. An offense where there have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is $\geq .15$ or there was a refusal to submit to the implied consent test – **Revocation** §46.61.5055(6)(b)(iii).

Veh Assault- Revocation §§46.04.480 and 46.20.285.

Term of License Withdrawal
(Days, Months, Years, etc.):

I. An offense where the offender's BAC/BrAC is $< .15$ or there was no test result (but not via a refusal to submit to a test) – **90 days.** §46.61.5055(6)(a)(i).

II. An offense where the offender's BAC/BrAC is $\geq .15$ or there was a refusal to submit to the implied consent test- **1 year.** §46.61.5055(6)(b)(i).

III. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is $< .15$ or there was no test result (but not via a refusal to submit to a test) – **2 years.** §46.61.5055(6)(a)(ii).

IV. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is $\geq .15$ or there was a refusal to submit to the implied consent test- **900 days.** §46.61.5055(6)(b)(ii).

V. An offense where there have been two or more prior offenses¹²⁶⁷ within 7 years and where the offender's BAC/BrAC is $< .15$ or there was no test result (but not via a refusal to submit to a test) – **3 years.** §46.61.5055(6)(a)(iii)

VI. An offense where there have been two or more prior offenses¹²⁶⁸ within 7 years

¹²⁶⁶ A prior offense includes any type of prior drunk driving offense. §46.61.5055

¹²⁶⁷ The revocation is "tolled" during any period of incarceration. §46.20.285

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and where the offender's BAC/BrAC is $\geq .15$ or there was a refusal to submit to the implied consent test- **4 years.**
§46.61.5055(6)(b)(iii)
Vehicle Assault- 1 year. §§46.04.480 and 46.20.285

Mandatory Minimum Term of
Withdrawal:

- I. An offense where the offender's BAC/BrAC is $< .15$ or there was no test result (but not via a refusal to submit to a test) – **30 days.**¹²⁶⁹ §§46.20.391 and 46.61.5055(6)(a)(i)
- II. An offense where the offender's BAC/BrAC is $\geq .15$ or there was a refusal to submit to the implied consent test – **30 days.** §§46.20.391 and 46.61.5055(6)(b)(i)
- III. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is $< .15$ or there was no test result (but not via a refusal to submit to a test) – **2 years.**¹²⁷⁰
§46.61.5055(6)(a)(ii)
- IV. An offense where there has been a prior offense within 7 years and where the offender's BAC/BrAC is $\geq .15$ or there was a refusal to submit to the implied consent test- **900 days.** §46.61.5055(6)(b)(ii)
- V. An offense where there have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is $< .15$ or there was no test result (but not via a refusal to submit to a test) – **3 years.**
§46.61.5055(6)(a)(iii)
- VI. An offense where there have been two or more prior offenses within 7 years and where the offender's BAC/BrAC is $\geq .15$ or there was a refusal to submit to the implied consent test- **4 years.**
§46.61.5055(6)(b)(iii)
Vehicle Assault- 1 year. §§46.04.480 and 46.20.285

Other:
Rehabilitation:
Alcohol Education:
Alcohol Treatment:

Yes – for all offenses §46.61.5056(1)
Yes – for all offenses §46.61.5056(1)
A court-ordered assessment will determine whether an offender will be required to

¹²⁶⁸ Under §46.20.391(1), a first offender is eligible for occupational driving privileges after 30 days
¹²⁶⁹ An offender is not eligible for an occupational license. §46.20.391(3)(b)

attend either an alcohol education course or treatment. §46.61.5056

Vehicle Impoundment/Confiscation:
Authorized by Specific
Statutory Authority:

Forfeiture: the vehicle used in the offense, in which a second or subsequent DWI offender (within 7 years) has a financial interest, is subject to forfeiture. This action is not mandatory. §46.61.5058
A law enforcement officer may take custody and remove to a safe place a vehicle involved in a DWI offense. §46.55.113.

Terms Upon Which Vehicle Will Be Released:

Mandatory Probation: For any drunk driving offense, if the court imposes <1 year in jail, it shall suspend but not defer a period of confinement ≤5 years and place offenders on probation with the following minimum conditions: (1) They cannot operate a vehicle unless they have valid licenses and maintain proof of financial responsibility; (2) They cannot operate a motor vehicle with BAC/BrAC ≥.08; and, (3) they must submit to implied consent tests. If an offender violates (1) in combination with either (2) or (3), that person is subject to a mandatory 30-day jail term and a license suspension for 30 days.

Vehicle Assault -Community Placement: A person who has been convicted of Vehicle Assault must be sentenced to "community placement" for at least 2 years. §9.94A.120(9)(b).

DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver's Licenses (CDL): Persons are "disqualified" from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, they (1) have a BAC/BrAC ≥.04, (2) are under the influence of alcohol or any drug or (3) refuse to submit to a chemical test for alcohol. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the "disqualification" is for life (10 years mand). The implied consent provisions for CMV operators allow testing for either alcohol or drugs; however, the "disqualification" sanctions only apply to a refusal to submit to a test for an alcohol concentration. In addition, CMV operators must be placed "out-of-service" for 24 hours if they have any amount of alcohol in their systems. A person commits a gross misdemeanor by operating a CMV with any amount of alcohol in the system: Jail – not more than 1 year; fine – not more than \$5,000. §§9.92.020, 46.25.010(2), (6), (8) and (15), 46.25.090, 46.25.110, 46.25.120 and 46.25.170 . Note: A motor carrier or employer who employs drivers who operate commercial motor vehicles and who is required to have a testing program conducted under the procedures established by 49 C.F.R. 40, must report a refusal by a commercial motor vehicle driver to take a drug or alcohol test; or a motor vehicle driver's verified positive drug test or a positive alcohol when: (i) The driver's employment has been terminated or the driver has

resigned; (ii) any grievance process, up to but not including arbitration, has been concluded; and (iii) at the time of termination or resignation the driver has not been cleared to return to safety-sensitive functions. §46.25.123

The CDL administrative disqualification law does not violate the constitutional principles of equal protection of the laws. *Merseal v. State Dept. of Licensing*, 994 P.2d 262 (Wash. App. Div. 3 2000) (review denied 10 P.3d 1073(2000)).

In addition, the court may order an offender to only operate motor vehicles that are equipped with an "ignition interlock" device. §46.61.5055(8).

Probationary License: After either the suspension or revocation period, DWI offenders' driving privileges or must be placed on probationary status for 5 years. §§46.20.355(2) and 46.61.5055.

Home Detention: Incarceration may include "home detention". See §§9.94A.030(23) and 9.94A.190(1).

Special Education Program: A person convicted of a DWI offense may be required to attend an educational program that focuses on the emotional, physical and financial suffering of DWI victims. §46.61.5152.

EMS Cost. A defendant is liable for up to **\$1,000** of the cost of an emergency response related to the DWI offense. §38.52.430.

Other Criminal Actions Related to DWI:

Homicide by Vehicle:

State Has Such a Law:

Yes – Class A felony, where death is caused by the operation of a vehicle (1) while under the influence of intoxicating liquor or any drug¹²⁷¹, (2) in a reckless manner, or (3) with disregard for the safety of others. §46.61.520

Sanctions:

Criminal Sanction:

Life Imprisonment.¹²⁷² §9A.2.021(1)(a) **None.** The sentencing guidelines grid would appear to require a period of incarceration.

Imprisonment (Term):

Mandatory Minimum Term:

Not more than **\$50,000.** §9A.2.021(1)(a) **A Penalty Assessment of \$500.**¹²⁷³ §7.68.035(1)(a)and (2)

Fine (\$ Range):

¹²⁷⁰ The State does not have to prove that a defendant's intoxication caused the victim's death. However, the State must still prove that the defendant's driving was related to the accident that caused the fatality. *State v. Rivas*, 896 P.2d 57 (Wash. 1995)

¹²⁷¹ Under the sentencing guidelines grid, the presumptive sentences are as follows: Vehicle homicide related to a drunk driving offense – 31 to 144 months with 2 years added for each prior drunk driving offense; vehicle homicide related to reckless driving-21 to 116 months; and, vehicle homicide related to vehicle operation with disregard for the safety of others-15 to 102 mos. §§9.94A.510(1) and (7), 9.94A.515 and 46.61.520(2)

Mandatory Minimum Fine:	None. But the Penalty Assessment is mandatory.
Administrative Licensing Action: Licensing Authorized and Type of Action:	Revocation §46.20.285
Length of Term of Licensing Withdrawal:	2 years ¹²⁷⁴ §46.20.285
Mandatory Action--Minimum Length of License Withdrawal:	2 years No occupational license is available. §46.20.391 I. Restitution: (1) For felony offenses (e.g., Vehicle Homicide), the court may order a defendant to pay restitution directly to a victim. §§9.94A.505(7), 9.94A.750 and 9.94A.753. (2) A victim is eligible for compensation directly from a State fund. §7.68.010 et seq. (3) A person who has been convicted of Vehicle Homicide must be sentenced to "community placement" for at least 2 years. §9.94A.505(9)(b) II. EMS Cost: A defendant is liable for up to \$1,000 of the cost of an emergency response related to a DWI vehicle homicide offense. §38.52.430
<u>Driving While License Suspended or Revoked</u>	
<u>Where the Basis Was a DWI Offense:</u>	§46.20.342.
Sanction: Criminal: Imprisonment (Term):	Gross Misdemeanor ¹²⁷⁵ – Not more than 1 year §§9.92.020, 9A.2.021 and 46.20.342(1) ¹²⁷⁶
Mandatory Minimum Term of Imprisonment:	None

¹²⁷² Public Safety and Education Assessment: In addition to any other fine, an offender is subject to two public safety and education assessments. The first assessment is equal to 60 percent of any fine imposed. The second is equal to 50 percent of the first. §3.62.090(1) and (2)

¹²⁷³ The revocation is "tolled" during any period of incarceration. §46.20.285

¹²⁷⁴ It is a gross misdemeanor to operate a CMV during either a CDL disqualification or a CDL out-of-service order. The sanctions for this offense are an imprisonment term of not more than 1 year and/or a fine of not more than \$5,000. §§9.92.020, 46.20.342(1) and 46.25.050(2). If a person operating a CMV while under an out-of-service order is subject to the following disqualification periods: first violation – 90 days (mand) to 1 year; second violation (within 10 years) – 1 year (mand) to 5 years; and, third or subsequent violation (within 10 years) – 3 years (mand) to 5 years. If the CMV operator was driving a CDL either containing hazardous materials or designed to carry 16 or more persons, the CDL disqualification periods are as follows: first violation-180 days (mand) to 2 years; and, subsequent violation (within 10 years) – 3 years (mand) to 5 years. §46.25.090(6)(d).

¹²⁷⁵ The vehicle used in this offense may be impounded as follows: first offense – Not more than **30 days**; second offense (within 5 years) – Not more than **60 days**; and, third and subsequent offense – Not more than **90 days**. If the registered owner of the vehicle was the violator, the vehicle cannot be released until all penalties, fines or forfeitures have been satisfied. §46.55.120(a) (2) and (b).

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Fine (\$ Range):	Not more than \$5,000. §§9.92.020 and 9A.2.021
Mandatory Minimum Fine:	None
Type of Licensing Action (Susp/Rev):	Suspension or Revocation §46.20.342(2)
Length of Term of License Withdrawal Action:	An additional suspension/revocation period of 1 year. §46.20.342(2)(b)
Mandatory Term of License Withdrawal Action:	The suspension/revocation shall not be extended if the court recommends against such extension and the driver has already obtained a valid license. §46.20.342(2)(c)
<u>Habitual Traffic Offender Law:</u> State Has Such a Law (Yes/No):	Yes §46.65.020
Grounds for Being Declared an Habitual Offender:	Three serious offenses within 5 years or a combination of 20 minor and/or serious offenses within 5 years provided that 3 minor offenses must have been committed within the period of 360 days for this alternative to apply.
Term of License Revocation while Under Habitual Offender Status:	7 years ¹²⁷⁷ maximum. But there is a special stay of revocation if based on DWI offenses and person is attending an alcohol treatment program. In addition, after 4 years a license may be issued upon "good and sufficient showing".§§46.65.060,46.65.070and 46.65.080
Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status	Gross Misdemeanor §46.20.342(1)(a)
Sanctions Following a Conviction of Driving While on Habitual Offender Status:	
Imprisonment (Term):	First <u>offense</u> – 10 days to 1 year ; second <u>offense</u> – 90 days to 1 year ; third <u>and subsequent offense</u> – Not less than 1 year. §§9.92.020, 9A.2.021 and 46.20.342(1)(a)
Mandatory Minimum Term of Imprisonment:	First <u>offense</u> – 10 days (if the offender has also committed a DWI offense – 90 days); second <u>offense</u> – 90 days ; third <u>and subsequent offense</u> – 180 days. §46.20.342(1)(a)

¹²⁷⁶ After this 7-year period, the revocation remains in effect until the offender petitions and receives a new license from the State licensing agency. §46.65.100.

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Fine (\$ Range):	Not more than \$5,000 . §§9.92.020 and 9A.2.021
Mandatory Minimum Fine (\$):	None
Licensing Actions (Specify):	The original revocation for being an habitual violator is extended for an additional period of 1 year. The court may recommend against such an extension. §46.20.342(2)(a) and (c)
<u>Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:</u>	
State Has Such a Law (Yes/No):	Yes § 46.52.065
BAC Chemical Test Is Given to the the Following Persons:	
Driver:	Yes
Vehicle Passengers:	No
Pedestrian:	Yes
<u>Laws Establishing the Minimum Ages Concerning Alcoholic Beverages:</u>	
Minimum Age (Years) Sale/Purchase:	21 §§66.44.270(1) and 66.44.290
Minimum Age (Years) Possession:	21 §66.44.270(2) Exemptions for minors who have been served alcoholic beverages by their parents or guardians in the home, for medical reasons and for religious services.
Minimum Age (Years) Consumption:	21 §66.44.270(2) Exemptions for minors who have been served alcoholic beverages by their parents or guardians in the home, for medical reasons and for religious services.
<u>Dram Shop Laws and Related Legal Actions:</u>	
State Has a Dram Shop Law (Yes/No):	No
"Dram Shop Law" Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest	
Court of Record in the State (Case Citation):	Yes <i>Purchase v. Meyer</i> , 737 P.2d 661 (Wash. 1987) ¹²⁷⁸
Dram Shop Actions-Social Hosts:	No. <i>Reynolds v. Hicks</i> , 951 P.2d 761 (Wash. 1998) ¹²⁷⁹ Comment: This case

¹²⁷⁷ I. Applies to the actions of either (1) an obviously intoxicated patron or (2) a minor patron. See Footnote No. 10 of the *Purchase* case for other decisions (737 P.2d at 664), *Christen v. Lee*, 780 P.2d 1307 (Wash. 1989), and *Cox v. The Keg Restaurants U.S., Inc.*, 935 P.2d 1377 (Wash. App. 1997). II. A licensee who sells alcohol beverages illegally to a minor is liable for the injuries sustained by another intoxicated minor (not a purchaser) after they consumed such beverages. *Crowe v. Gaston*, 951 P.2d 1118 (Wash. 1998) and *Schooly v. Pinch's Deli Market, Inc.*, 951 P.2d 749 (Wash. 1998). In addition, a third party who is injured by an intoxicated minor was able to bring a cause of action against a licensee who provided alcoholic beverages to an underage person who in turn provided such beverages to the injury causing minor. *Rinks v. Bearss*, 921 P.2d 558 (Wash. App. Div. 1 1996).

¹²⁷⁸ Notwithstanding the *Reynolds* decision, an adult social host was held liable for the death of an

concerned social host liability resulting from injuries caused by a minor guest to a third party. There is no social host liability resulting from injuries suffered by or caused by an adult guest to a third party. *Burkhard v. Harrod*, 755 P.2d 759 (Wash. 1988).

Other:

A licensee is not liable for the injuries sustained by an intoxicated (adult) patron. *Estate of Kelly by and Through Kelly v. Falin*, 896 P.2d 1245 (Wash. 1995).

Note: Sec. 4.56.250(2) that limited the amount of non-economic damages a person could receive in civil (tort) action, was declared in violation of the State's constitution. *Sofie v. Fibreboard Corp.*, 771 P.2d 711 (Wash. 1989).

Criminal Action Against Owner or Employees of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

Type of Criminal Action:

Misdemeanor/Gross Misdemeanor

§§9A.2.010(2), 66.44.180 and 66.44.200

Term of Imprisonment:

First offense (misdemeanor) – Not more than **2 months**; second offense (gross misdemeanor) – Not more than **6 months**; third and subsequent offenses (gross misdemeanor) – Not more than **1 year**.

Fine (\$ Range):

For individuals: first offense – Not more than **\$500**¹²⁸⁰; second and subsequent offense – **None** For corporations: first offense – Not more than **\$5,000**; second and subsequent offenses – Not more than **\$10,000** (and/or forfeiture of its corporate license.).

Administrative Actions Against Owners of Establishments that Serve Alcoholic Beverages to Intoxicated Patrons:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes. Suspension/Cancel (Revocation)

§§66.24.010 and 66.44.200

Length of Term of License Withdrawal:

Not specified in the statute

intoxicated minor guest on a violation of a statutory duty theory. *Hansen v. Friend*, 824 P.2d 483 (Wash. 1992). Given the language in the *Hansen* case, it appears that a commercial server of alcoholic beverage can be held liable for the injuries (or death) of an intoxicated minor patron, citing *Young v. Caravan Corp.*, 663 P.2d 834 (Wash 1983). And, in another case, the court held that an employer may be liable for the injuries caused by an intoxicated employee to a third party. The employee became intoxicated at a company-sponsored banquet. *Fairbanks v. J.B. McLoughlin Co. Inc.*, 929 P.2d 433 (Wash. 1997).

¹²⁷⁹ There is an assessment of **\$250** for a first or subsequent misdemeanor and **\$500** for a first or subsequent gross misdemeanor. For juvenile offenders, there is an assessment of **\$75** for a first or subsequent misdemeanor and **\$100** for a first or subsequent gross misdemeanor. §7.68.035(1)(a) and (b).

Criminal Actions Against Owners or Employees of Establishments that Serve Alcoholic Beverages or the Wrong Type of Alcoholic Beverage to Those Persons Under the Minimum Legal Drinking Age:

Type of Criminal Action:

Gross Misdemeanor §66.44.270(1)

Term of Imprisonment:

Not more than **1 year**. §9A.2.021(2)

Fine (\$ Range):

Not more than **\$5,000**. §9A.2.021(2)

Administrative Actions Against Owners of Establishments That Serve Alcoholic Beverages to Those Persons Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

Yes. Suspension/Cancel /Revocation

Length of Term License Withdrawal:

Not specified in the statute. §§66.24.010 and 66.44.180.

Anti-Happy Hour Laws/Regulations:

No

Laws Prohibiting (1) the Possession of Open Containers of Alcoholic Beverages and (2) the Consumption of Alcoholic Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

Yes Driver and Passengers
§46.61.519(2)^{1281and1282}

Anti-Consumption Law (Yes/No):

Yes Driver and Passengers §46.61.519(1)
Under §66.44.100, "no person shall open the package containing liquor or consume liquor in a public place", although the law allows exceptions for licensed establishments.

¹²⁸⁰ A violation is a traffic infraction.

¹²⁸¹ Does not apply to passengers in commercially chartered vehicles or in the living quarters of a motor home or camper.