

DUI and Criminal Traffic for Beginners

Getting Started in Criminal Defense

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Reasons to Avoid DUIs and Criminal Traffic Cases:



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- 168,504 criminal traffic misdemeanor charges filed in Washington state in 2011
- 38,024 DUI charges
- 130,480 other criminal traffic

Reasons to Learn About DUIs and Criminal Traffic Cases:

Criminal Traffic for Beginners

- Misdemeanor and gross misdemeanor:

- Courts of limited jurisdiction
 - DUI & physical control
 - Minor driving after consuming alcohol
 - Driving a commercial vehicle with alcohol in system
 - Reckless driving
 - Hit and run
 - Negligent driving 1st degree
 - DWLS 1st, 2nd, and 3rd degree

Criminal Traffic and Courts

- Felony criminal traffic:

- Superior court
 - Felony DUI & physical control
 - Vehicular assault/homicide
 - Felony hit and run
 - Eluding

Criminal Traffic and Courts

- Juveniles and criminal traffic cases

- RCW 13.04.030
- If age 16 or older and misdemeanor or gross misdemeanor -- filed in court of limited jurisdiction.

Criminal Traffic and Courts -- Juveniles

- License consequences occur in two categories:

- License suspensions or revocations as a consequence of a conviction to the crime.
- An administrative suspension or revocation based on the arrest for certain crimes.

The Department of Licensing

- License suspensions or revocations as a consequence of a conviction to the crime.

- Court sends a notification to the DOL of the conviction and DOL sends notification to the driver of the pending suspension/revocation.
- RCW 46.20.245
 - 45 days notice of the start date of the suspension/revocation
 - In writing and sent via US mail (certification *not* required)
 - Driver may request an administrative review within 15 days
 - Review: do the records identify the correct person and do the records accurately reflect what happened in court?

The Department of Licensing

- License suspensions or revocations as a consequence of a conviction to the crime.

- DUI
- Physical control
- Reckless driving
- Hit and run attended
- DWLS 1st and 2nd degree

The Department of Licensing

- An administrative suspension or revocation based on the arrest for certain crimes.
- Implied consent law: RCW 46.20.308
 - DUI
 - Physical control
 - Minor driving after consuming alcohol
 - Driving a commercial vehicle after consuming alcohol

The Department of Licensing

- Good information found at DOL's web site:
 - www.dol.wa.gov
 - drivers@dol.wa.gov

The Department of Licensing

The image shows two side-by-side tables from the Department of Licensing. The left table is titled 'Driver License, Restricted License, and Learner's Permit' and the right table is titled 'Driver License, Restricted License, and Learner's Permit'. Both tables list various license categories and their corresponding restrictions, including age, sex, and other factors.

Department of Licensing

- Temporary Restricted Licenses
 - Ignition interlock license
 - Occupational/restricted license
 - Work, school, court ordered community service, treatment, care of dependent.

DOL & Temporary Restricted Licenses

- DOL web site
 - Application forms and instructions
 - Eligibility requirements
 - Fees
 - <http://www.dol.wa.gov/driverslicense/orl.html>

DOL & Temporary Restricted Licenses

- Specific Criminal Traffic Charges

Criminal Traffic for Beginners

- RCW 46.20.342
- 3rd degree:
- 2nd degree:
- 1st degree:

Driving While License Suspended

- DWLS 3rd Degree:
 - Generally due to failure to pay traffic ticket or other financial obligations, failure to reinstate after period of suspension.
 - Client can reinstate at any time by paying off financial obligations (or making payment arrangements with court) and reinstating license.
 - Misdemeanor with no mandatory jail or fines.
 - No additional suspension of license due to conviction.

Driving While License Suspended

- Re-licensing court
 - Goal is to get people re-licensed and insured.
 - Practice tip – client should use resources to get license back and go into court with a valid license.
 - Often reduced to traffic infractions.

Driving While License Suspended

- DWLS 2nd Degree:
 - Driving during a period of license suspension or revocation when driver is **not** eligible to reinstate.
 - Suspension/revocation can be due to conviction or administrative action.
 - Gross misdemeanor.
 - No mandatory jail or fine.
 - Additional 1 year loss of license due to conviction.

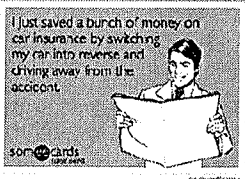
Driving While License Suspended

- DWLS 1st Degree
 - Driver already found to be a habitual traffic offender under 46.65.020.
 - Gross misdemeanor.
 - Mandatory jail time (10 days, 90 days, 180 days).
 - Additional loss of license due to conviction.

Driving While License Suspended

- Issues for DWLS Cases:
 - Confrontation clause and DOL records:
 - *State v. Jasper*, 174 Wn. 2d 96, 271 P.3rd 876 (2012).
 - Older cases/license suspensions:
 - *Redmond v. Moore*, 151 Wn. 2d 664, 91 P.3rd 875 (2004).
 - For DWLS 3rd – make sure reason for suspension is listed in RCW 46.20.342 (i.e. failure to pay child support).

Driving While License Suspended



I just saved a bunch of money on car insurance by switching my car into reverse and driving away from the accident.

Hit and Run

- **Hit and Run.**
 - RCW 46.52.020
- **Felony**
 - Accident involving injury or death.
- **Hit and run attended**
 - Accident involving a vehicle driven or attended by another person.
 - Gross misdemeanor
 - Loss of license for conviction
- **Hit and run unattended/property damage.**
 - Parked car, other property.
 - Misdemeanor
 - No loss of license for conviction

Hit and Run

- **Hit and Run**
 - Does not matter who was at fault in accident.
 - If convicted, court may not order restitution for the damages in the accident. City of Walla Walla v. Ashby, 90 Wn. App. 560, 952 P.2d 201 (1998).
 - Compromise of misdemeanor (RCW 10.22.020)
 - State v. Stalker, 152 Wn. App. 805, 219 P.3d 722 (2009).


Hit and Run

- **RCW 46.61.500.**
- Driving with a willful or wanton disregard for the safety of persons or property.
- Gross misdemeanor.
- Loss of license for conviction.
 - If conviction is for reduction from DUI or physical control may required IID and will get credit for any license suspension on the administrative side.

Reckless Driving

- Other ways to commit reckless driving:
 - Racing (RCW 46.61.530)
 - Willfully comparing or contesting relative speeds (even if under the speed limit).
 - Embracing (RCW 46.61.665)
 - Unlawful to operate a motor vehicle while embracing another person which prevents the free and unhampered operation of the vehicle.
 - Prima facie evidence of reckless driving.

Reckless Driving



Impaired Driving Related

- DUI (RCW 46.61.502)

- Per se prong:

- Driving a motor vehicle and having a blood or breath alcohol content of .08 or greater within two hours of driving.

- Affected by prong:

- Driving while affected by alcohol, drugs, or a combination of drugs and alcohol.

DUI and Physical Control

- Physical Control (RCW 46.61.504)

- Being in "actual physical control of a motor vehicle."

- No clear and consistent definition in case law.
- No pattern jury instruction
- *State v. Smeller*, 36 Wn. App. 439, 674 P.2d 690 (1984); *In re Arambulo*, 37 Wn. App. 805, 683 P.2d 1123 (1984); *State v. Volava*, 149 Wn.2d 178, 66 P.3d 1050 (2003).

- Same per se and affected by prongs as DUI.

- Identical penalties as DUI.

DUI and Physical Control

- Safely Off the Roadway

- Affirmative defense created in RCW 46.61.504(2):

- No person may be convicted under this section if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

Defendant does not need to personally drive vehicle off roadway. *State v. Volava*, 149 Wn. 2d 178, 66 P.3d 1050 (2003).

- Factual issue to be decided by trier of fact. *City of Edmonds v. Ostby*, 48 Wn. App. 867, 740 P.2d 916 (1987).

DUI and Physical Control

- Driver under 21 consuming alcohol (RCW 46.61.503)

- "Minor DUI"

- No affected by prong.

- Elements:

- Driving or being in physical control
- Under 21
- BAC of .02 up to .08 within two hours of driving.

- Misdemeanor

- No mandatory jail/fines
- No loss of license based on conviction (but administrative suspension due to arrest).

Impaired Driving Related

- Breath test statistics:

- Refusals 17.5% of arrests

- 14.8% for women
- 18.4% for men

- Average breath test result was .138

Impaired Driving Related

- Breath Test Foundations

- Foundational requirements are listed out in RCW 46.61.504(4)

- Breath test shall be admissible if person faces evidence that:

Performed on instrument approved by state toxicologist.

Person performing test was authorized by state toxicologist.

Person being tested did not have any foreign substances, not to include dental work, fixed or removable, in his or her mouth at the beginning of the fifteen-minute observation period.

That at the start of the test, the temperature of any liquid simulator solution utilized as an external standard, as measured by a thermometer approved by the state toxicologist, was thirty-four degrees Celsius plus or minus 0.3 degrees Celsius.

The internal ambient test resulted in the message "normal".

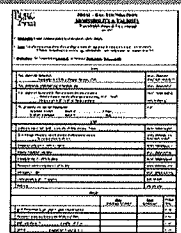
The two breath samples agree to within plus or minus ten percent of their mean to be determined by the method approved by the state toxicologist.

The result of the test of the liquid simulator solution external standard or dry gas external standard result did lie between .071 to .100 inclusive; and

All breath tests gave results of .000

Impaired Driving Related

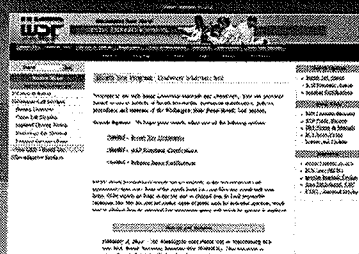
- BAC Foundation Checklist for Trial



Impaired Driving Related


- Challenging the breath test:
 - WSP Breath Test Section Discovery Materials Site
 - http://www.wsp.wa.gov/breathtest/wdms_home.htm

DUI and Physical Control

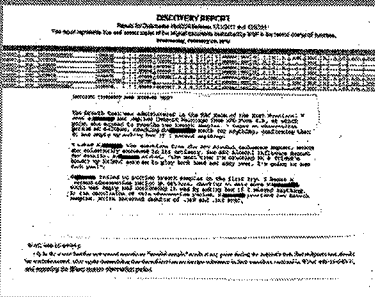


DUI and Physical Control

- BAC records checklist

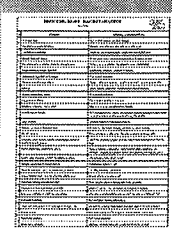


Impaired Driving Related



Impaired Driving Related

- BAC issues checklist



Impaired Driving Related

- Other documents to access on WSP Breath Test Section Web site:

Manuals and Training Materials: In addition to materials specific to your client's breath test and the machine it was performed on – there are general manuals and training materials available on the WSP BAC web site that you need in every DUI case.

- What you need:

- DataMaster Operator Information Manual.

- Policy and Procedures Manual.

- Officer training manuals: NHTSA DWI Detection and Standardized Field Sobriety Testing manuals, SFST Refresher Training Course, DRE manuals, ARID manuals.

- See also *Breath Test Trial Checklist*.

DUI and Physical Control

- BAC trial notebook checklist

Impaired Driving Related

- Public Records Requests

- Audio and Video recordings
- Cad logs/Journal Logs
- Subpoena Duces Tecums
- WSP Breath Test Section Records
 - Discovery Report
 - Manuals and Training Materials
- Public Defender/On Call Attorney Notes

Impaired Driving Related

- Penalties for conviction:

- Gross Misdemeanor
 - Felony under certain circumstances
- Mandatory minimum jail and fines.
- Mandatory ignition interlock device requirement.
- License suspension as consequence of conviction.
 - Driver will get day for day credit for any administrative suspension served for same incident.

DUI and Physical Control

- Sentencing

- RCW 46.61.5055
 - Long and complicated!
- In materials:
 - Washington Courts DUI attachment
 - Plea form
 - Ignition interlock order

DUI and Physical Control

- Average jail sentence in 2011

- DUI: 35 days
- Physical control: 56 days
- Reckless: 15 days
- Negligent driving 1st: 5 days

DUI and Physical Control

- DUI, physical control, and "minor DUI" arrest all trigger administrative actions under implied consent law.
- RCW 46.20.308.

Impaired Driving Related & DOL

- Requesting a hearing:
 - 20 days!
 - In writing or online
 - <http://www.dol.wa.gov/driverslicense/hearingsrequest.htm>
 - WAC 308-103-040 (5)
 - Request for hearing shall include the following information:
 - Full name;
 - Mailing Address;
 - Daytime phone number;
 - Date of birth; and
 - Driver's license number.

Impaired Driving Related & DOL

Impaired Driving Related & DOL

- After reviewing the documents you sent, along with the documents in our imaging system...it appears that the Suspension Unit entered on record, an incorrect arrest date. They listed the arrest date as 01/05/2012, which is incorrect according to the arrest report. The Hearings Unit would have caught this error up front, had Ms. XXXXXX not left the date of arrest "blank" on the hearing request form. In any event, I will contact the Suspension Unit and have them correct the error. Once they correct the arrest date, I will release the action. No hearing necessary and Ms. XXXXXX will be cleared of the administrative action. I will let you know when this has been taken care of. Ms. XXXXXX is still in suspended status, so please inform her not to drive until all these pieces can be adjusted and rectified. Let me know if you have any further questions.

Impaired Driving Related & DOL

- DOL issues checklist in materials

Impaired Driving Related & DOL

- DOL web site and drivers@dol.wa.gov
- Washington Courts web site
 - <http://www.courts.wa.gov/>
 - Pattern Jury Instructions
 - Court forms
- WSP Breath Test Section
 - http://www.wsp.wa.gov/breathtest/wdms_home.htm
- WACDL
- Attend DUI CLE

DUI and Criminal Traffic for Beginners

Driver License Penalties - Administrative Actions

We suspend, revoke, cancel, or disqualify driving privileges for the following offenses. This chart shows the offense, the action length, whether a hearing or an administrative review is offered, the type of restricted license that can be issued (Occupational Restricted License ORL or Ignition Interlock License IIL), and the requirements for reinstatement.

	Suspension/Revocation	Length	Hearing/AR	ORL/IIL	Reinstatement Requirements
94 law effective 7/1/84	Administrative Per Se: 1ST ADM PER SE /0.02 BAC — minor 1st incident - breath/blood test 0.02 BAC or greater	90 days	Hearing Hearing waived if IIL is issued	IIL	\$75 reissue fee
	2ND OR SUBSE >0.02 BAC — minor - 2 or more incidents - 0.02 BAC or greater	1 year or age 21, whichever is greater			Proof of Financial Responsibility (SR-22) Insurance Certificate; Knowledge and driving examinations; \$150 reissue fee
	1ST PER SE/BLOOD-NO ACT — adult - 1st incident - blood test 0.10 BAC or greater	Prob Lic - 5 years from date of issue			None
	1ST ADM PER SE-NO ACT — adult - 1st incident - breath test 0.10 BAC or greater	Prob Lic - 5 years from date of issue			
	2ND ADM PER SE/BL — adult - 2 or more incidents - blood test 0.10 BAC or greater	2 years			Proof of Financial Responsibility (SR-22) Insurance Certificate; Knowledge and driving examinations; \$150 reissue fee
	2ND ADM PER SE INCIDENT — adult 2 or more incidents - breath test 0.10 BAC or greater	2 years			
95 law effective 9/1/95	MINOR 1ST INCID/BL — minor 1st incident - blood test 0.02 BAC or greater	90 days			Proof of Financial Responsibility (SR-22) Insurance Certificate; \$150 reissue fee; Note: If suspension effective on or after 1-1-99, may be eligible to apply for ODL
	MINOR =>.02-1ST OFNS — minor 1st incident - breath test 0.02 BAC or greater	90 days			
	MINOR-2ND/SUB-BLOOD — minor - 2 or more incidents - blood test 0.02 BAC or greater	1 year or age 21, whichever is greater			Proof of Financial Responsibility (SR-22) Insurance Certificate; Knowledge and driving examinations; \$150 reissue fee
	MINOR =>.02-2ND/SUB minor 2 or more incidents - breath test 0.02 BAC or greater	1 year or age 21, whichever is greater			
	1ST ADM PER SE/BLOOD-NO ACT — adult - 1st incident - blood test 0.10 BAC or greater	Prob Lic - 5 years from date of issue			None
	1ST ADM PER SE-NO ACT — adult - 1st incident - breath test 0.10 BAC or greater	Prob Lic - 5 years from date of issue			
98 law effective 1/1/99	2ND ADM PER SE/BL — adult - 2 or more incidents - blood test 0.10 BAC or greater	2 years			Proof of Financial Responsibility (SR-22) Insurance Certificate; Knowledge and driving examinations; \$150 reissue fee
	2ND ADM PER SE INCIDENT — adult - 2 or more incidents - breath test 0.10 BAC or greater	2 years			
	MINOR 1ST INCID/BL — minor 1st incident - blood test 0.02 BAC or greater	90 days			Proof of Financial Responsibility (SR-22) Insurance Certificate; \$150 reissue fee
	MINOR =>.02-1ST OFNS — minor 1st incident - breath test 0.02 BAC or greater	90 days			
	MINOR-2ND/SUB-BLOOD — minor - 2 or more incidents - blood test 0.02 BAC or greater	1 year or age 21, whichever is greater			Proof of Financial Responsibility (SR-22) Insurance Certificate; Knowledge and driving examinations; \$150 reissue fee
	MINOR =>.02-2ND/SUB — minor - 2 or more incidents - breath test 0.02 BAC or greater	1 year or age 21, whichever is greater			
	ADM PER SE/BL-1ST — adult - 1st incident - blood test 0.08 BAC or greater	90 days			Proof of Financial Responsibility (SR-22) Insurance Certificate; \$150 reissue fee
	ADM PER SE/1ST — adult - 1st incident - breath test 0.08 BAC or greater	90 days			
	ADM PER SE/BL-2ND/SUB — adult - 2 or more incidents-blood test 0.08 BAC or greater	2 years			Proof of Financial Responsibility (SR-22) Insurance Certificate; Knowledge and driving examinations; \$150 reissue fee
	ADM PER SE-2ND/SUB — adult - 2 or more incidents- breath test 0.08 BAC or greater	2 years			

	Suspension/Revocation	Length	Hearing/AR	ORL/IIL	Reinstatement Requirements
Pre 94 law	Breath/Blood Refusal: REFUSE TEST — 1st refusal to take breath or blood test	1 year	Hearing Hearing waived if IIL is issued	IIL	Proof of Financial Responsibility (SR-22) Insurance Certificate; Knowledge and driving examinations; \$150 reissue fee
	REFUSE TEST — 2 or more refusals to take breath or blood test	2 years			
94 law effective 7/1/94	1ST REFUS BREATH/BLOOD TST — minor - 1st incident	1 year			
	2ND/SUBSE REF BREATH/BLOOD — minor - 2 or more incidents	2 years or until age 21, whichever is greater			
	REFUS BREATH/BLOOD TEST — adult - 1st incident	1 year			
	2ND/SUBSE-REF BAC TEST— adult - 2 or more incidents	1 year			
95 law effective 9/1/95	1ST REFUS BREATH/BLOOD TST — minor - 1st incident	1 year			
	2ND/SUBSE REF BREATH/BLOOD — minor - 2 or more incidents	2 years or until age 21, whichever is greater			
	REFUS BREATH/BLOOD TEST — adult - 1st incident	1 year			
	2ND/SUBSE-REF BAC TEST— adult - 2 or more incidents	2 years			
	Administrative Action: Failure to submit alcohol report	Variable	None	No	Alcohol/drug assessment
	Alcohol/drug certificate received showing: Alco cond/chem dependency		Hearing		Treatment report showing satisfactory compliance with program
	Failure to comply trm pgm - not complying with treatment program		None		Treatment report showing in compliance
	Continuing Offenses & Interest of Safety: 4 traffic violations in 12 month period 5 traffic violations in 24 month period	1 year probation	Hearing	No	None
	Violation of probation on continuing offenses (Conditional Status)	30 to 364 days		ORL	Proof of Financial Responsibility (SR-22) Insurance Certificate; \$75 reissue fee; 1 year probation
	6 violations in 12 month period	60 days			
	Habitual Traffic Offender - 20 moving traffic violations in 5 years, with 4 occurring within 365 days, or any combination of 3 violations in 5 years which require mandatory suspension or revocation (1 conviction must be within the previous 12 months)	Lifetime	Hearing	No	Proof of Financial Responsibility (SR-22) Insurance Certificate; Knowledge and driving examinations; \$75 reissue fee; Alcohol assessment/treatment report if one of the violations was for DUI or Physical Control There is a provision for early reinstatement after 4 years, providing there have been no driving incidents within 2 years. If early reinstatement is denied, a hearing can be requested to contest the Department's decision.
	Fraud: Aiding & abetting unlawful application Altered license Display another license or ID Fictitious driver license or ID Fraudulent application Loaning driver license to another	30 to 364 days	Hearing	No	\$75 reissue fee
	License Manufacturing	364 days			
	Violation Court Probation — violated mandatory terms of court probation following conviction for Driving Under Influence or Physical Control.	30 days - or extend the suspension/revocation for the conviction 30 days	Admin. review	No	\$75 reissue fee
	Violation of Restriction(s) — violated the restriction(s) on the driver's license	120 days	Hearing	No	Knowledge and driving examinations; Proof of Financial Responsibility (SR-22) Insurance Certificate; \$75 reissue fee
	License Not Surrendered — failed to surrender driver's license as required under the DUI laws	1 year	Admin. review	No	Proof of Financial Responsibility (SR-22) Insurance Certificate; Knowledge and driving examinations; \$75 reissue fee

Suspension/Revocation	Length	Hearing/AR	ORL/IIL	Reinstatement Requirements
Financial Responsibility Law: VEHICLE COLLISION/FR — Driver/owner Insurance information not provided - reasonable possibility of a judgment being entered against the driver/owner	Variable	Hearing	ORL	Provide one of the following: - Enter into a payment agreement - Proof of insurance at time of collision - Pay claim and submit release - Deposit security (amount based on damages/injuries) - Proof of Financial Responsibility (SR-22) Insurance Certificate for deposit only - Provide civil court decision showing you are not liable - Affidavit of non-suit (3 years from accident) \$75 reissue fee (only if complying after effective date of susp)
DEFAULT ON AGREE TO PAY — defaulted on agreement to pay for damages/injuries as result of vehicle collision		Admin. review	ORL	Provide one of the following: - Pay claim and submit release - Deposit security (amount based on damages/injuries) - Provide civil court decision showing you are not liable - Enter into a payment agreement \$75 reissue fee (only if complying after effective date of susp)
JUDGMENT — Due to a collision or theft of a motor vehicle. Can be for any amount				Abstract of Judgment from civil court showing judgement is being/has been satisfied (paid in full, payment agreement, etc.) Proof of Financial Responsibility (SR-22) Insurance Certificate; (only if complying after effective date of suspension) \$75 reissue fee (only if complying after effective date of susp)
DEFAULT ON AGREE TO PAY (Judgment) — defaulted on agreement to pay a civil court judgment for a collision or theft of a motor vehicle			No	Provide proof of installation by a company doing business in Washington Proof of Financial Responsibility (SR-22) Insurance Certificate
No Functioning Ignition Interlock Device	Duration of 3 year filing period	None	ORL	Contact court holding citation for resolution \$75 reissue fee \$150 reissue fee if charge is DUI/Physical Control or was amended from these charges
Canceled Insurance — insurance company canceled insurance certificate			No	Contact DSHS to make arrangements to meet child support obligations 1-800-457-6202 \$75 reissue fee
FTA/Unpaid Ticket — failure to comply, respond, pay a traffic infraction/criminal traffic in court.				Submit medical/visual certificate showing condition within licensing standards
Child Support Enforcement — failure to meet child support obligations			Complete required examinations	
Medical/Vision & Driving Examinations: Fail to submit med — failed to submit medical certificate Fail to submit vision cert — failed to submit vision certificate Failed exam — failed to take a reexamination of the driving abilities	Variable			

Cancellation	Length	Hearing/AR	ORL/IIL	Reinstatement Requirements
Medical — medical condition not within licensing standards Vision below standards — vision not within licensing standards	Variable	Hearing	No	Submit medical/visual certificate showing condition within licensing standards
Fraudulent application — applied for license, permit, or identicard giving false information	5 years	Hearing		Not eligible for reinstatement/licensing on the fraudulent record
Driver license issued when applicant suspended/ revoked in another state (applicant may have concealed or knowingly made a false statement in application)	Variable	Admin. review		Satisfy requirements in other licensing state
Social Security — not verified with SSA	Variable	Hearing		SSA verification or signed Declaration
Intermediate driver license — qualifying violation within 6 months prior to issuance	Variable to age 18	Admin. review		Reapply; Knowledge and driving examinations

CDL Disqualifications	Length	Hearing/AR	ORL/IIL	Reinstatement Requirements
In a commercial vehicle: Breath test 0.04 & above Refuse test	1st incident - one year (unless Hazardous Materials involved - then three years) 2nd/subsequent incident(s) - lifetime	Hearing	No	Pass any commercial knowledge and skills tests including any required training course approved by this Department; \$20 requalification fee
Serious traffic offense: 2 violations in 3 years 3 violations in 3 years	60 days 120 days	Admin. review		\$20 requalification fee
Out-of-Service Orders — convicted of driving in violation of an out-of-service order	90 days - 5 years	Admin. review		Pass any commercial knowledge and skills tests including any required training course approved by this Department; \$20 requalification fee
DOT drug test (RCW 46.25.125): 1st disqualification 2nd disqualification 3rd disqualification	Variable	Hearing		Assessment and proof of education or treatment by a substance abuse professional \$150 requalification fee CDL is disqualified for life for a 3rd positive test/refusal within 5 years
Imminent hazard	Variable	Admin. review		\$20 requalification fee

CDL Disqualification	Length	Hearing/AR	ORL/IIL	Reinstatement Requirements
<div>effective 6/7/06</div> <div>Effective 6/7/06 the following CDL disqualifications take effect when the offense occurs in a personal vehicle: 1ST ADMIN PER SE — Any refusal of breath/ blood, being in physical control or driving under the influence - minor or adult</div>	1 year	for PDL only	on PDL only	Pass any commercial knowledge and skills tests including any required training course approved by this Department; \$20 requalification fee
1ST ADMIN PER SE with prior RCW 46.25.090(1) disqualification	lifetime			N/A
2ND ADMIN PER SE — Any refusal of breath/ blood, being in physical control or driving under the influence - minor or adult				

Driver License Penalties Following Conviction

We suspend, revoke and/or disqualify driving privileges when we receive a notice of conviction from a court. This chart shows the action length, whether an administrative review is offered, the type of restricted license that can be issued (Occupational Restricted License ORL or Ignition Interlock License IIL), and the requirements for reinstatement.

	Offense	Action Length	Admin. Rev.	ORL/IIL	Reinstatement Requirements
Pre 1994 law	DUI and Physical Control Convictions: DUI or Physical Control - 1st conviction - violation prior to 7-1-94	90 days or age 19, whichever is longer	Yes	IIL	Alcohol/drug assessment by an approved agency; Satisfactory completion of alcohol/drug information school or a report showing compliance with program; Proof of financial responsibility (SR-22) Insurance Certificate; \$150 reissue fee; Knowledge and driving examinations required when length of action is 365 days or longer Notes: Effective 7-23-03 courts must order a 60 day ignition interlock requirement for convictions for DUI or Physical Control, with a passenger under 16 years of age. Effective 6-7-12, the 60 day requirement increases to 6 months. This order is in addition to any other mandatory requirement. Effective 6-10-04 RCW 46.20.720 indicates that a person convicted of any alcohol related offense may drive only a motor vehicle equipped with an ignition interlock device. The time period the device is required for is calculated from the date the person is eligible to reinstate. Proof of installation will be required before reinstatement can be considered. If a person is found driving a vehicle in which the interlock device is no longer installed or functioning during the required period, a suspension will result. A probationary license is required under RCW 46.61.5055(7) for all DUI and Physical Control convictions. Effective 7-1-06, driving or being in physical control under the influence is a Class C felony if the person has four or more prior offenses within 10 years or if the person has ever been convicted of vehicular homicide or assault. Effective 1-1-09 RCW 46.20.285 courts must order the IIL for all alcohol-based DUI or physical control convictions. Effective 1-1-11 courts must order the IIL for all drug-based DUI or physical control convictions. Effective 1-1-09 any person granted a deferred prosecution will be required to have an IIL for 2 years from the date the deferred prosecution is granted. Deferred prosecutions granted on or after 1-1-11 will no longer have this requirement. Effective 1-1-11 the ignition interlock device is required for DUI or physical control of drug convictions and for out-of-state DUI or physical control convictions. Effective 1-1-11 a 4-month certification is required from the ignition interlock device installer showing compliance with RCW 46.20.720.
	DUI or Physical Control - 2nd conviction - violation prior to 7-1-94	365 days			
	DUI or Physical Control - 3rd/sub conviction - violation prior to 7-1-94	2 years			
7/94 - 8/95 law	DUI or Physical Control - 1st conviction - <0.15 BAC - violation 7-1-94 thru 8-31-95	0 to 90 days			
	DUI or Physical Control - 1st conviction - >0.15 BAC or Refusal - violation 7-1-94 thru 8-31-95	120 days			
	DUI or Physical Control - with Probationary License - <0.15 BAC - violation 7-1-94 thru 8-31-95	365 days			
	DUI or Physical Control - with Prob Lic - >0.15 BAC or Refusal - violation 7-1-94 thru 8-31-95	450 days			
	DUI or Physical Control - prior conviction violation 7-1-94 thru 8-31-95	2 years			
	DUI or Physical Control - while suspended/revoked - violation 7-1-94 thru 8-31-95				
	DUI or Physical Control/Drugs - no prior offenses - <0.15 BAC - violation 9-1-95 thru 12-31-97	90 days			
95 law effective 9/1/95	DUI or Physical Control/Drugs - no prior offenses - >0.15 BAC or Refusal - violation 9-1-95 thru 12-31-97	120 days			
	DUI or Physical Control/Drugs - 2nd offense - <0.15 BAC - violation 9-1-95 thru 12-31-97	365 days			
	DUI or Physical Control/Drugs - 2nd offense - >0.15 BAC or Refusal - violation 9-1-95 thru 12-31-97	450 days			
	DUI or Physical Control/Drugs - 3rd/subsequent offense - <0.15 BAC - violation 9-1-95 thru 12-31-97	2 years			
	DUI or Physical Control/Drugs - 3rd/ subsequent offense - >0.15 BAC or Refusal - violation 9-1-95 thru 12-31-97	3 years			
	DUI or Physical Control/Drugs - no prior offenses - <0.15 BAC - violation 1-1-98 and after	90 days			
97 law effective 1/1/98	DUI or Physical Control/Drugs - no prior offenses ->0.15 BAC or Refusal - violation 1-1-98 and after	1 year			
	DUI or Physical Control/Drugs - 2nd offense - <0.15 BAC - violation 1-1-98 and after	2 years			
	DUI or Physical Control/Drugs - 2nd offense ->0.15 BAC or Refusal - violation 1-1-98 and after	900 days			
	DUI or Physical Control/Drugs - 3rd/ subsequent offense - <0.15 BAC - violation 1-1-98 and after	3 years			
	DUI or Physical Control/Drugs - 3rd/ subsequent offense ->0.15 BAC or Refusal - violation 1-1-98 and after	4 years			
	Refusal - no prior within 7 years	2 years			
Effective 6/10/04	Refusal - 2nd offense within 7 years	3 years			
	Refusal - 3rd/ subsequent within 7 years	4 years			

Offense	Action Length	Admin. Rev.	ORL/IIL	Reinstatement Requirements
Other Convictions:	1 year	Yes	None	Knowledge and driving examinations; \$75 reissue fee;
DWLS/R 1st Degree - violation 7-28-91 and after			ORL	Note: The court can recommend non-extension of the suspension or revocation. If the driver obtains a valid driver license within 30 days of eligible date, the Department will honor the court's recommendation
DWLS/R 2nd Degree - violation 7-28-91 and after			None	
Driving While Revoked or Revoked/HTO - violation prior to 7-28-91	Variable		ORL	
Driving While Suspended - violation prior to 7-28-91				
Vehicular Assault - violation 7-24-83 through 6-5-96	1 year		If drug or alcohol related the driver can apply for IIL	If drug or alcohol related: Alcohol/drug assessment by an approved agency - if alcohol related; Satisfactory completion of alcohol/drug information school or satisfactory compliance with prescribed treatment program - if alcohol related; Proof of financial responsibility (SR-22) Insurance Certificate;
Vehicular Assault - violation 6-6-96 and after	1 year after release from jail		None	Knowledge and driving examinations; \$75 reissue fee
Vehicular Homicide - violation 7-24-83 through 6-5-96	2 years			
Vehicular Homicide - violation 6-6-96 and after	2 years after release from jail			
Manslaughter or Negligent Homicide - violation prior to 7-24-83	1 year			
Racing or Reckless Driving (1st or 2nd conviction within 2 years)	30 days	No	ORL	Proof of financial responsibility (SR-22) Insurance Certificate; \$75 reissue fee Effective 9-1-11 reckless driving convictions that are reduced from an alcohol or drug related DUI or physical control (with prior offenses as defined in RCW 46.61.5055) and vehicular assault, or vehicular homicide require proof of installation of an ignition interlock device for a minimum of 6 months from the date the individual is eligible to reinstate.
Racing or Reckless Driving (3rd conviction within 2 years)	365 days		Proof of financial responsibility (SR-22) Insurance Certificate; Knowledge and driving examinations; \$75 reissue fee Effective 9-1-11 reckless driving convictions that are reduced from an alcohol or drug related DUI or physical control (with prior offenses as defined in RCW 46.61.5055) and vehicular assault, or vehicular homicide require proof of installation of an ignition interlock device for a minimum of 6 months from the date the individual is eligible to reinstate.	
Negligent Driving 1st Degree (with a prior offense as defined in RCW 46.61.5055, within 7 years)	None	No	None	Effective 9-1-11 an ignition interlock device is required for 6 months from the date of conviction. A certificate from the ignition interlock installer showing 4 months of compliance with RCW 46.20.720 will be required to release the restriction.
Eluding Police	365 days	Yes	ORL	Proof of financial responsibility (SR-22) Insurance Certificate Knowledge and driving examinations \$75 reissue fee
Hit and Run - Attended (Occupied)	365 days			
Felony Involving a Motor Vehicle See examples on following page of Class A, B and C felony convictions for which action is taken when a vehicle is involved.	1 year			
Unattended Child in Running Vehicle (2nd and subsequent offenses)	365 days			
Reckless Endangerment/Const. Zone	60 days			Proof of financial responsibility (SR-22) Insurance Certificate; \$75 reissue fee
Reckless Endangerment/Emergency Zone				

Offense	Action Length	Admin. Rev.	ORL/IIL	Reinstatement Requirements
Other revocations resulting from court or diversion agency intervention (conviction not recorded on drive record):		Yes	None	<p>Knowledge and driving examinations; \$75 reissue fee.</p> <p>The law allows for early release of Minor in Possession (MIP) of alcohol and/or drug revocations but does not allow for early release for MIP of firearms. Revocation for possession of firearms will be considered when determining prior incidents of MIP but not for calculating early release eligibility date.</p> <p>Early release is at the discretion of the conviction court or diversion agency. We must receive a Request for Early Reinstatement form completed by the appropriate agency. On a 1st offense involving alcohol and/or drug, release can be 90 days after: 16th birthday, date of conviction, date the diversion agreement was signed, or date of revocation, whichever is later. On a 2nd or subsequent offense release can be at age 17, one year after date of conviction, date the diversion agreement was signed, or date of revocation, whichever is later.</p> <p>Multiple charges on a single conviction or diversion agreement are treated separately and run consecutively.</p> <p>Effective 7-27-03 consecutive revocations will not extend beyond the 21st birthday. Reinstatement of MIP of alcohol/drug/firearm revocations may be requested on/after the 21st birthday</p>
Minor in Possession Alcohol and/or Drugs - 1st conviction/diversion agreement signed - age 13 through 17 for alcohol, age 13-20 for drugs at time of incident	1 year or age 17, whichever is longer			
Minor in Possession Alcohol and/or Drugs - 2nd /subsequent conviction/diversion agreement signed - age 13 through 17 for alcohol, age 13-20 for drugs at time of incident	2 years or until age 18, whichever is longer			
Minor in Possession Firearm - 1st conviction - age 13 through 17	1 year or age 17, whichever is longer			
Minor in Possession Firearm - 2nd/ subsequent conviction - age 13 through 17	2 years or until age 18, whichever is longer			
Intermediate License - 1st offense	Warning letter	None	None	
Intermediate License - 2nd offense	6 months or until age 18, whichever is first	Yes		\$75 reissue fee
Intermediate License - 3rd offense	Until age 18			
Theft of Motor Vehicle Fuel	Period specified by the court for up to 6 months		ORL	\$75 reissue fee

Disqualifications	Action Length	Admin. Rev.	ORL/IIL	Reinstatement Requirements
Commercial Driver License:		Yes	None	
Driving under influence	1st Incident - 1 year (3 years if Haz Mat involved)			Pass any commercial knowledge and skills tests including any required training course approved by this Department; \$20 requalification fee
Hit and run (occupied/unoccupied)				
Felony involving vehicle				Cannot requalify for CDL
Vehicular assault	2nd/subsequent incident(s) - Lifetime -			
Vehicular homicide				
Manslaughter				
DWLS/R CDL disqualified				
Felony involving drugs	Lifetime			Cannot requalify for CDL
Railroad Crossing - 1st violation	Not less than 60 days			\$20 requalification fee
Railroad Crossing - 2nd violation	Not less than 120 days			
Railroad Crossing - 3rd violation	Not less than 1 year			Pass any commercial knowledge and skills tests including any required training course approved by this Department; \$20 requalification fee

Class A, B and C Felony Convictions: Felony convictions for which driving privileges will be revoked if a motor vehicle is involved include but are not limited to the following:		Any Class A, B or C Felony Involving a Motor Vehicle conviction is reportable and requires revocation action under RCW 46.20.285. Class A, B or C Felony Involving a Motor Vehicle juvenile diversion agreements under Title 9A are not reportable and do not require revocation action. If notice of conviction from the court does not reflect one way or the other that a vehicle was involved, the assumption will be that there was one involved since notice is not otherwise required for these offenses.
Assaulting Police Officer w/vehicle	9A.36.031	
Reckless Endangerment, 1st Degree	9A.36.045	
Malicious Mischief, 1st Degree	9A.48.070	
Burglary, 1st Degree	9A.52.020	
Residential Burglary	9A.52.025	
Burglary, 2nd Degree	9A.52.030	
Vehicle Prowl, 1st Degree	9A.52.095	
Theft, 1st Degree	9A.56.030	
Theft, 2nd Degree	9A.56.040	
Taking Motor Vehicle without the owner's permission (driver only)	9A.56.070	
Poss. Stolen Property, 1st Degree	9A.56.150	
Poss. Stolen Property, 2nd Degree	9A.56.160	
Felony Involving a Vehicle	9A.56.200	
	46.20.285	
Trafficking Stolen Property	9A.82.050	
Assault, 1st Degree	9A.36.011	
Assault, 2nd Degree	9A.36.021	
Kidnapping, 1st Degree	9A.40.020	
Kidnapping, 2nd Degree	9A.40.030	
Escape, 1st Degree	9A.76.110	
Escape, 2nd Degree	9A.76.120	
Signal Preemption Device, Injury	46.37.673	
Signal Preemption Device, Substantial Bodily Harm	46.37.674	
Signal Preemption Device, Fatality	46.37.675	

PRE-TRIAL BAC RECORDS CHECKLIST

www.breathtest.wsp.wa.gov

rev. 03/12

BURG
CRIMINAL &
DUI DEFENSE

Client:	FIELD(MAT_Client)	Checklist Date:	DATE
DOB:	FIELD(MAT_DOB)	Datamaster #:	FIELD(MAT_BAC #)
DOV:	FIELD(MAT_DOV)	BAC Levels:	FIELD(MAT_BAC/Refus.)

Database +/- 60 days of BAC	→ Print	Missing data?	Yes/ No
Highlight client's breath test.		V on BAC ?	Yes/ No
Error codes on client's BAC or many around time of BAC?		Error Code _____	Yes/No
Highlight solution change prior to client's BAC.		w/i 60 days of BAC? (P.31)	Yes/ No
QAP prior to clients breath test, dated _____	→ Print	w/i 1 year of BAC ? (P.24)	Yes/ No
Sim. therm. cert. record → last QAP until present Date: _____ Therm.# _____	→ Print	w/i 1 year of BAC? (P.35)	Yes/ No
Ref. thermometer # _____ ICL record date _____	→ Print	BTP Public Rec. Index → ICL Laboratories → Reference therm. #	w/i 1 year of BAC? (P.37) Yes/ No
Datamaster repair hist. → last QAP until present	→ Print	CPU / Detector brd. work? (P.24)	Yes/ No
Simulator solution → last QAP until present.	→ Print		
Click "Batch" for change prior to BAC	→ Print 1st page only		
Status sheet → last QAP until present.	→ Print		
Case file → last QAP until present.	→ Print 4 pages to 1 page		
CAD report → last QAP until present.	→ Print 4 pages to 1 page		

Code	Error	WSP Operator Manual (10/00)	Code	Error	WSP Operator Manual (10/00)
1	"System won't zero"(Unable to 0 voltage detect. - alcohol in mach.)	P29. Abort test. Check tube. Re-test. Repeat = tag.	11	"blank error" (reads >.003 on blank test)	No instructions.
2	"temperature low" (sample chamber 45 deg. C/less)	P31: Tag out of service.	12	"detector overflow" (detector voltage output >1.999V)	No instructions.
3	"temperature high" (chamber 55 deg. C/more)	P31: Tag out of service.	13	"filter error" (filter solenoid not acting properly)	No instructions.
5	"radio interference" (rfi detected)	P30. Abort test. Determine source. Re-test.	15	"simulator out of range" (not .072-.088)	P26. Tag out of service.
6	"fatal systems error" (RAM, ROM or PIA error)	P31: Tag out of service.	17	"data memory battery low" (RAM battery backup failing)	No instructions.
7	"calibration error" (internal std plate not w/in 10% calib value)	P30. Re-test. Repeat = tag.	19	"ambient fail" (alc in sample chamber after purge)	P29. Check for alc/chem. odors. New test. Repeat = tag.
8	"printer error" (ticket jam, etc.)	P30: Data lost: Tag. Page stuck: Tag. May do new test.	20	"samples outside 10%"	P27. Re-test.
9	"ram error"	P31: Tag out of service.	V	"invalid sample" (mouth alc/out of adjustmt/ improper smple)	P29. New 15 min. Report repeated "V"s to WSP.
10	"pump error" (flow detector does not detect pump operation)	P31: Tag out of service.	X	"interferant" (Interfering substance - not alcohol)	P26. Re-test. May invoke ICW for blood test.

ISSUE CHECKLIST - BAC DATAMASTER

Rev. 11/05



✓	Chapter	Closing Argument Goal
	Acetone filter	Up to .009 acetone in BAC sample
	Alcohol in sample chamber	Minute amount measured, fits on head of pin
	Analytical variability	Machine not working well, would not pass QAP now
	Breath tube not warm	If not warm then collects condensation & traps alcohol
	Blood-breath correlation &/or Partition Ratio	2100:1 not correlation for client (varies 1700-2900)
	Datamaster purchase - low bid	Can't trust cheapest product or results
	Datamaster rejected by Georgia	Can't trust machine
	Detector board temperature	Temp. unknown & temp. could affect BAC - no studies on this
	GERD	Many people have this, could lead to mouth alcohol
	Human physiology varies	Everyone's different
	Imperfect machine	Can't trust machine or results
	Interferent detector not perfect	May not pick up interferent on breath
	Interferent on breath	102 compounds on breath that absorb infrared energy at same level as ethyl alcohol; machine mistook one for alcohol
	Junk science	Science behind Datamaster no good.
	Mirrors in sample chamber dirty	George B. has been flossing his teeth in BAC mirrors
	Mouth alcohol	BAC not really high, slope detector just not working well
	Operator error (mouth check; observation; warm to touch; 2 mouth pieces)	Ain't the machine's fault, it is the cop's fault reading is so *&^%! high
	Radio Frequency Interferent (RFI)	Tested against 1 frequency only, but not other machines on different frequencies (other radios, cell phones, computers, etc.)
	QAP - only accurate w/i 5% of reference value	5% removed from BAC result
	Sample variability (1 blow/1 BAC)	Client blew self to $\geq .08$
	Sample destroyed, can't be analyzed by client.	Not fair, evidence destroyed
	Slope detector bad, not catching mouth alcohol.	Mouth alcohol caused $\geq .08$
	Simulator testing records not kept	How do you know working well if no records?
	Simulator solution prepared properly?	Blame it on tox, sim. solution not properly prepared
	Simulator Solution = 10% margin of error	10% removed from BAC b/c sm. sol. must be w/i 10% of .080
	Software problems	Old software, improperly tested
	Temp. of body; every 1°C 1 will up BAC by 6.5%	Reason for watery, bloodshot eyes and high BAC was a fever
	Thermometer	Not tested or cared for properly, necessary for valid test
	Warrantee expired	Can't trust machine
	Widmark's formula	Machine broken, how else could the BAC be so high

**TRIAL - BAC FOUNDATION
ADMISSIBILITY & VALIDITY**

Post 9/22/07 Policy & Proc. Manual

rev. 03/12

- **Admissible** if state produces prima facie evidence - 46.61.506(4)
- **Valid** "shall have been performed according to methods approved by state toxicologist" 46.61.506(3)
Items in italics go to validity, not admissibility, some judges may not require them
- **Objections:** 6th Amendment/Crawford, not hearsay (Bullcoming, State v. Dash).

TOX

Tox. approved instrument. _____ <i>Datmaster or CDM or Drager Alcotest 9510.</i>	46.61.506(4)(a) <i>WAC 448-16-020(1)</i>
Tox. authorized (certified) cop to perform test.	46.61.506(4)(a)(i)
Tox. approved thermometer that measured simulator solution. _____ • <i>MIG w/scale in tenths of a degree measuring 33.5° - 34.5° c.</i> _____ • <i>Digital w/i Guth 2100 wet bath simulator.</i>	46.61.506(4)(a)(iv) 448-16-020 (2)
<i>Tox prepared sim. sol. for Datmaster.</i> <i>Database records: Batch #: _____ / Date _____</i> <i>In Court testimony: Batch #: _____ / Date _____</i>	P.31

COP

Δ did not vomit, eat, drink, or smoke 15 min. b/f test. Time: _____	46.61.506(4)(a)(ii)
Δ no foreign objects in mouth at start of observation period. _____ <i>by examination or denial</i>	46.61.506(4)(a)(iii) <i>WAC 448-16-040</i>
Simulator solution = 34°c +/- 0.3°c.	46.61.506(4)(a)(iv)
Internal standard "verified."	46.61.506(4)(a)(v)
2 samples w/i +/- 10% of mean.	46.61.506(4)(a)(vi)
Simulator external standard = .072-.088	46.61.506(4)(a)(vii)
All blanks = .000	46.61.506(4)(a)(viii)
<i>End-expiratory air - 2 samples</i>	448-16-050
<i>Printout</i>	448-16-050

TECH

	<i>Date</i> (Database records)	<i>Date</i> (testimony)	<i>Policy/ Proc.</i>
<i>QAP Performed 1x per year or after critical repair</i>			P.24
<i>Simulator solution changed w/i 60 days of BAC</i>			P.31
<i>MIG sim. therm. # _____ certified w/i 1 yr.</i>			P.35
<i>DRT # _____ certified w/i 1 year by ICL</i>			P.37

Case Name: _____ **Cause No.:** _____

"DUI" Attachment: Driving under the influence of alcohol and/or actual physical control of a vehicle while under the influence of alcohol and/or drugs. (If required, attach to Statement of Defendant on Plea of Guilty.)

Court – DUI Sentencing Grid (RCW 46.61.5055 as amended through August 1, 2012)

BAC Result < .15 or No Test Result	No Prior Offense¹	One Prior Offense¹	Two or Three Prior Offenses¹
Mandatory Minimum/Maximum Jail Time ²	24 Consecutive Hours/364 Days	30/364 Days	90/364Days
EHM/Jail Alternative ²	15 Days in Lieu of Jail	60 Days Mandatory/4 Days Jail Min.	120 Days Mandatory/8 Days Jail Min.
Mandatory Minimum/Maximum Fine ³	\$940.50/\$5,000	\$1,195.50/\$5,000	\$2,045.50/\$5,000
If Passenger Under 16 Minimum/Maximum ⁴	\$1,000/\$1,000-\$5,000 + assessments	\$1,000/\$2,000-\$5,000 + assessments	\$1,000/\$3,000-\$10,000 + assessments
Driver's License	90-Day Suspension	2-Year Revocation	3-Year Revocation
II Driver's License* II Device	DOL imposed	DOL imposed	DOL imposed.
If Passenger Under 16 II Device	6 Months	6 Months	6 Months
Alcohol/Drug Ed./Victim Impact or Treatment	As Ordered	As Ordered	As Ordered

BAC Result ≥ .15 or Test Refusal	No Prior Offense¹	One Prior Offense¹	Two or Three Prior Offenses¹
Mandatory Minimum/Maximum Jail Time ²	2 Consecutive/364 Days	45/364 Days	120/364 Days
EHM/Jail Alternative ²	30 Days in Lieu of Jail	90 Days Mandatory/6 Days Jail Min.	150 Days Mandatory/10 Days Jail Min.
Mandatory Minimum/Maximum Fine ³	\$1,195.50/\$5,000	\$1,620.50/\$5,000	\$2,895.50/\$5,000
If Passenger Under 16 Minimum/Maximum ⁴	\$1,000/\$1,000-\$5,000 + assessments	\$1,000/\$2,000-\$5,000 + assessments	\$1,000/\$3,000-\$10,000 + assessments
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	DOL imposed	DOL imposed	DOL imposed
If Passenger Under 16 II Device	6 Months	6 Months	6 Months
Alcohol/Drug Ed./Victim Impact or Treatment	As Ordered	As Ordered	As Ordered

Department of Licensing Required Ignition Interlock Device Requirements, RCW 46.20.720(3)(4) January 1, 2011*			
Requirement	No Previous Restriction no less than:	Previous 1-Year Restriction no less than:	Previous 5-Year Restriction no less than:
II Device	1 Year	5 Years	10 Years
Restriction effective, until IID vendor certifies to DOL that none of the following occurred within four months prior to date of release: an attempt to start the vehicle with a BAC of .04 or more; failure to take or pass any required retest; failure of the person to appear at the IID vendor when required.			

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

¹Prior Offenses: Count all prior offenses where the arrest date of the prior offense occurred within seven years before or after the arrest date on the current offense. RCW 46.61.5055(14)(b). "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).* An equivalent out-of-state deferred prosecution for DUI or Phys. Contr., including a chemical dependency treatment program. If a deferred prosecution is revoked based on a subsequent conviction for an offense listed in RCW 46.61.5055(14)(a), the subsequent conviction shall not be treated as a prior offense of the revoked deferred prosecution for the purposes of sentencing.
- **Amended Convictions for the following:** *If originally charged with DUI or Phys. Cont. or an equivalent local ordinance, or Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522); but convicted of (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. If originally charged with Veh. Hom. (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) committed while under the influence of intoxicating liquor or any drug; but convicted of Veh. Hom. or Veh. Assault committed in a reckless manner or with the disregard for the safety of others.*

²Mandatory Jail and Electronic Home Monitoring (EHM): If there are prior offenses within seven years before or after the arrest date of the current offense, 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. Two 2004). Where there are no prior offenses within seven years, 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. Instead of mandatory EHM, the court may order additional jail time. RCW 46.61.5055(1), (2), (3).

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 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.

³Mandatory 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.

⁴If Passenger Under 16: The interpretation of RCW 46.61.5055(6) is unsettled. Some interpret it as setting a new mandatory minimum and maximum fine, replacing a fine in RCW 46.61.5055(1) – (3). Some interpret it as a fine that is in addition to one of those fines. Apply applicable assessments.

Felony DUI and Felony Physical Control: A current offense is a Class C felony punished under Ch.9.94A RCW if the defendant has (a) four prior convictions within ten years, or (b) one prior conviction of Veh. Homicide or Veh. Assault, or (c) a prior Class C felony resulting from (a) or (b). "Within ten years" means that the arrest for the prior offense occurred within ten years before or after the arrest for the current offense. RCW 46.61.5055(14)(c).

Jurisdiction: Court has five years jurisdiction.

**Department of Licensing - DUI Administrative Sanctions and Reinstatement Provisions
(As amended through August 1, 2012)**

Administrative Sanctions – RCW 46.20.3101		
REFUSED TEST	<i>First Refusal Within 7 Years <u>And</u> No Prior Administrative Action Within Past 7 Years*</i>	<i>Second or Subsequent Refusal Within Past 7 Years OR First Refusal <u>And</u> At Least One Prior Administrative Action Within Past 7 Years*</i>
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
BAC RESULT	<i>First Administrative Action</i>	<i>Second or Subsequent Administrative Action</i>
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).

Ignition Interlock Driver's License, RCW 46.20.385 (amended through August 1, 2012)

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 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 years from the date of the incident, which was the basis for the deferred prosecution (see RCW 46.20.355 and 10.05.060).

Requirements for Reinstatement of Driving Privilege	
<i>Suspended License* (RCW 46.20.311)</i>	<i>Revoked License* (RCW 46.20.311)</i>
<ul style="list-style-type: none"> • File and maintain proof of financial responsibility for the future with the Department of Licensing as provided in chapter 46.29 RCW (SR 22) • 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 • Pay \$150 driver's license reissue fee • Driver's ability test NOT required 	<ul style="list-style-type: none"> • File and maintain proof of financial responsibility for the future with the Department of Licensing as provided in chapter 46.29 RCW (SR22) • 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 • Pay \$150 driver's license reissue fee • Satisfactorily complete a driver's ability test

*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**

Ignition Interlock Driver's License, RCW 46.20.380, 46.20.385	
Eligible to Apply	<ul style="list-style-type: none">• Conviction of violation of RCW 46.61.502, 46.61.504, or an equivalent local or out-of-state statute or ordinance, 46.61.520(1)(a), or 46.61.522(1)(b) involving alcohol.• License suspended, revoked, or denied under RCW 46.20.3101.• Proof of installed functioning ignition interlock device.
Requirements	<ul style="list-style-type: none">• Proof of financial responsibility (SR 22).
Financial Obligations	<ul style="list-style-type: none">• \$100 mandatory fee to DOL.• Costs to install, remove, and lease the ignition interlock device, and \$20 fee per month, unless waived.
Duration	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.
Operation with Other Requirements	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.

Court Order to Comply with Rules and Requirements of DOL: The court orders the person to comply with the rules and requirements of DOL regarding the installation and use of a functioning II device on all motor vehicles operated by the person. If the court orders the person to refrain from consuming any alcohol, the court may order the person to submit to alcohol monitoring and to pay for the monitoring unless the court specifies the cost will be paid with funds available from an alternative source identified by the court. RCW 46.61.5055(5).

Court Ordered Discretionary Ignition Interlock (II) Device: The court may order discretionary II device requirements that last up to the five 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 and after any DOL mandated II device restriction. The court sets the calibration level. RCW 46.20.720(1).

Passenger Under Age 16: The Court shall order the installation and use of an II device for an additional six months.

Deferred Prosecution: For application in DUI Deferred Prosecution, see RCW 46.20.720 and RCW 10.05.140, which require II 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 vehicles owned, leased, or rented by a person's employer or on those vehicles whose care and/or maintenance is the temporary responsibility of the employer and driven at the direction of a person's employer as a requirement of employment during business hours upon proof to DOL of employment affidavit. However, when the employer's vehicle is assigned exclusively to the restricted driver and used solely for commuting to and from employment, the employer exemption does not apply. The person must pay a \$20 fee per month in addition to costs to install, remove, and lease the ignition interlock device. DOL may waive requirement if the device is not reasonably available in the local area. DOL will give day-for-day credit as allowed by law.

Court – Reckless Driving/Negligent Driving – 1st Degree Sentencing Grid

(RCW 46.61.500, RCW 46.61.5249, RCW 46.20.720 as amended through
August 1, 2012)

Reckless Driving	
Conviction	Qualifications
Reckless Driving (RCW 46.61.500(3)(a))	<ul style="list-style-type: none"> Original charge: Violation of DUI (RCW 46.61.502) or Phys. Control (RCW 46.61.504) or equivalent local ordinance. One or More Prior Offenses within 7 years as defined above.
Reckless Driving (RCW 46.61.500(3)(b))	<ul style="list-style-type: none"> Original charge; Violation of Veh. Homicide (RCW 46.61.520) or Veh. Assault (RCW 46.61.522) committed while under the influence of intoxicating liquor or any drug.
Consequences	
II Device	<ul style="list-style-type: none"> 6 Months. Restriction remains in effect, until IID vendor certifies to DOL that none of the following incidents occurred within four months before date of release: an attempt to start the vehicle with a BAC of .04 or more; failure to take or pass any required retest; failure of the person to appear at the IID vendor when required. DOL will give day-for-day credit as allowed by law. Costs to install, remove, and lease the ignition interlock device, and \$20 fee per month.
Maximum Jail Time	<ul style="list-style-type: none"> 364 Days if convicted of reckless driving.
Maximum Fine	<ul style="list-style-type: none"> \$5,000 if convicted of reckless driving.
EHM	<ul style="list-style-type: none"> As ordered.
II Driver's License	<ul style="list-style-type: none"> As imposed by DOL. May apply for II driver's license if original charge was violation of DUI (RCW 46.61.502) or Phys. Control (RCW 46.61.504) or equivalent local ordinance. If the Defendant is eligible to apply; but does not have a Washington driver's license, the defendant may apply for an II license. DOL may require the defendant to take a licensing examination and apply and qualify for a temporary restricted driver's license. During any period of suspension, revocation or denial, a person who has obtained an II driver's license under RCW 46.20.385 may continue to drive without getting a separate temporary restricted driver's license.
Alcohol/Drug Ed./Victim Impact or Treatment	<ul style="list-style-type: none"> As ordered.

Negligent Driving – 1st Degree	
Conviction	Qualifications
Negligent Driving - 1st Degree (RCW 46.61.5249)	<ul style="list-style-type: none"> One or More Prior Offenses within 7 years as defined above.
Consequences	
IID Device	<ul style="list-style-type: none"> 6 Months. Restriction remains in effect, until IID vendor certifies to DOL that none of the following incidents occurred within four months before date of release: an attempt to start the vehicle with a BAC of .04 or more; failure to take or pass any required retest; failure of the person to appear at the IID vendor when required.
Maximum Jail Time	<ul style="list-style-type: none"> 90 days if convicted of negligent driving in the 1st degree.
Maximum Fine	<ul style="list-style-type: none"> \$1,000 if convicted of negligent driving in the 1st degree.
EHM	<ul style="list-style-type: none"> As ordered.
Driver's License	<ul style="list-style-type: none"> As imposed by DOL.
Alcohol/Drug Ed./Victim Impact or Treatment	<ul style="list-style-type: none"> As ordered.



Driver's Hearing Request

Case/Citation number

XXXXXXXXXXXX

Pursuant to RCW 46.20.308, this serves as your notice of the Department of Licensing's intent to suspend, revoke or deny your license, permit, or privilege to drive. The hearing will be conducted according to Chapter 308-103 WAC.

You have the right to request a formal hearing to contest the suspension, revocation or denial. Your request must be made within 20 days after receipt of this notice, and may be made either online or in writing. A fee of \$200 must be paid as part of the hearing request unless you are determined to be indigent as defined in RCW 10.101.010. If your request is not made within 20 days from receipt of this notice, or the \$200 fee or Hearing Fee Waiver Application is not included, you will be deemed to have waived your right to a hearing. You also waive your right to a hearing if you receive an Ignition Interlock Driver License.

Online request—If you have a Washington driver license and a valid MasterCard, Visa, or American Express credit card, you may be able to apply for a hearing online. For more information about hearings, including the online hearing application, please visit the DOL website at dol.wa.gov

Written request—You may choose to request a hearing in writing. The request must be postmarked within 20 days after receipt of this notice. When completed, mail request form and \$200 fee to:

Hearings and Interviews, Department of Licensing, PO Box 9048, Olympia, WA 98507-9048

Indigency—If applying for waiver of fee due to indigence, mail request form and fee waiver application (next page) to: Hearings and Interviews, Department of Licensing, PO Box 9031, Olympia, WA 98507-9031

Issues at a hearing are:

1. Whether you were under lawful arrest.
2. Whether an officer had reasonable grounds to believe you had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug, or whether an officer had reasonable grounds to believe you had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in your system of 0.02 or more and were under the age of twenty-one.
3. Whether you were advised of your rights and warnings as required by RCW 46.20.308(2).
4. Whether you refused to submit to the test, or if the test was administered, whether the test indicated an alcohol concentration of 0.08 or more if you were age twenty-one or over, or 0.02 or more if you were under twenty-one.

Attorney's name (If any)—Do not list public defender Patricia Fulton			PRINT OR TYPE Your name (Last, First, Middle Initial)		
Attorney's address 720 Third Avenue, Suite 2015			Your mailing address		
City Seattle	State WA	ZIP code + 4 98104	Your city	State	ZIP code + 4
Attorney's telephone number (Include area code) (206) 467-3190			Your daytime telephone number (Include area code)		
Attorney's FAX number (Include area code) (206) 467-3152			Your FAX number (Include area code)		
Attorney's email address patricia@glblaw.com			Date of birth	Date & time of arrest XXXXXXXXXXXX	County of arrest XXXXXXXXXXXX
Arresting agency XXXXXXXXXXXXXXXXXXXXXXXXXXXX			Driver license number		State
Your signature X					

You are hereby advised that if parties or witnesses are hearing or speech impaired and/or non-English speaking, a qualified interpreter will be appointed at no cost to you. Complete the following information if you need an interpreter.

Request for interpreter <input type="checkbox"/> I need an interpreter <input type="checkbox"/> I am Hearing Impaired	Primary language	Dialect
--	------------------	---------

BURG DOL ISSUE CHECKLIST - REV. 4/28/2011

REVIEWED BY: _____

DATE: _____

CLIENT: _____

HRG. OFF: _____

HRG. DATE: _____

2ND HRG. DATE: _____**PAGE 1: DUI ARREST REPORT**

☐ Suspect's name
☐ Date of birth (if minor)
 Date of arrest ☐ yes ☒ no Arrest date _____
 Time of arrest ☐ yes ☒ no Arrest time _____
 Two BAC samples or refusal ☐ yes ☒ no BAC _____

Defective certification

Dated after arrest ☐ yes ☒ no 9A.72.085; Broom, Veranth
 Place signed ☐ yes ☒ no Date signed _____
 Signature ☐ yes ☒ no

60 days of arrest? .308(7&8) ☐ yes ☒ no 308-103-030/1.12.040 Date _____
 10 days notice? 46.20.329 ☐ yes ☒ no Rec. date _____

PAGE 2: CONSTITUTIONAL RIGHTS

Jurisdiction box marked ☐ yes ☒ no
 Attorney requested ☐ yes ☒ no If yes, make sure we have PD notes.

PAGE 3: IMPLIED CONSENT WARNINGS

Correct box re DUI/minor/commercial 46.20.308; 46.61.506(4); 448.16.040
 Signed by driver, or narrative explains why not ☐ yes ☒ no
 Dated on arrest date? ☐ yes ☒ no Date signed _____
 Time before 1st BAC? ☐ yes ☒ no ICW time _____
 Submit to BAC? ☐ yes ☒ no
 Confusion? ☒ yes ☐ no Strand; Waid
 Certified PBT/BAC? ☐ yes ☒ no
 Anything in mouth? ☒ yes ☐ no If yes, explain _____
 Mouth Checked? ☐ yes ☒ no 1st check _____
 2nd Mouth Check? ☒ yes ☐ no 2nd check _____
 Foreign substance found? ☐ yes ☒ no Explain _____
 Observed entire time box ✓ed? ☐ yes ☒ no
 Nothing in mouth, etc. ✓ed? ☐ yes ☒ no
 Performed PBT, etc. ✓ed? ☐ yes ☒ no
 PBT reading _____ PBT time _____
 Revised 1/09 form ☐ yes ☒ no Earlier ones do not have IIL.

PAGE 4: DUI INTERVIEW/PRE-ARREST OBSERVATIONS

Pre-Arrest observations indicate belief of DUI ☐ yes ☒ no
 Interpreter requested/Prok issue ☒ yes ☐ no

PAGE 5: FSTS: HGN certification box marked ☐ yes ☒ no

PAGE 6: CERTIFICATION PAGE:

Dated after arrest ☐ yes ☒ no Date signed _____
 Place signed ☐ yes ☒ no
 Signature ☐ yes ☒ no

NARRATIVE

P/C Stop? ☐ yes ☒ no Gillenwater; Avery: Reason: _____
 P/C Detain? ☐ yes ☒ no
 P/C Arrest DUI ☐ yes ☒ no
 Confusion re. ICW ☒ yes ☐ no ☐ No mention
 Mouth check? ☐ yes ☒ no ☐ No mention 1st check _____
 Foreign substances? ☒ yes ☐ no ☐ No mention
 Observation issues? ☒ yes ☐ no ☐ No mention Obs. time _____

TICKET Machine #

On date of arrest: ☐ yes ☒ no BAC date _____
 Suspect's name ☐ yes ☒ no
 After ICW: ☐ yes ☒ no BAC time _____
 All required elements legible ☐ yes ☒ no
 15 minute observation ☐ yes ☒ no Obs. time _____
☐ Simulator temp 34 +/- .3 ☐ internal standard verified
☐ 2 tests ≥ .08 (.02 if minor) ☐ four tests at .000
☐ Within 10% ☐ external standard: .072-.088

OTHER Invalid (v) sample issues? ☒ yes ☐ no WAC 448-16-040; blue book
 Sim. sol. changed w/i 60 ? ☐ yes ☒ no Date _____
 QAP w/i 1 year? ☐ yes ☒ no Date _____
 Uncertainty Range _____
 Exhibit 2 issues? _____

PARALEGAL TO DO:

- ☐ Continue hearing on _____
☐ Conflict - atty. unavailable
☐ Subpoena officer
☐ Investigation
☐ Other _____
☐ Subpoena officer _____
☐ Personal service ☐ ABC
☐ Print BAC & return to attorney
☐ Discovery to client _____
☐ Email ☐ US Mail
☐ New date to client _____
☐ Email ☐ US Mail
☐ File NOA
☐ File notice of intent to seek DP
☐ Add HO to case in TM

ATTORNEY ISSUES FOR HEARING:

- ☐ Advised client of IIL email? Date _____

HEARING:

DATE: _____
 RULING EXP. BY: _____
 TEMP. LIC. THRU: _____
 CLIENT PRESENT ☐ YES ☐ NO
 RULING RSVD. ☐ YES ☐ NO
 REQ. TAPE ☐ YES ☐ NO