

# DUI INFORMATION SHEET

## Notice to All Defendants Charged with DUI or Physical Control

You have been charged with driving (or being in actual physical control of) a vehicle while under the influence of intoxicating liquor and/or drugs. These charges are hereafter referred to as "DUI".

You will find the penalties for "DUI" on the following page of this Information Sheet. Please finish reading this page first, though, since you may be eligible for having your DUI prosecution "deferred" and the case ultimately dismissed.

## Deferred Prosecution Information

Even though you have been charged with DUI, you may be eligible to petition (ask) the Court to be placed on a Deferred Prosecution. The Deferred Prosecution program is an alternative to conviction and punishment for those defendants who have an alcohol (or drug or mental health) problem and who will benefit from a treatment program. If you are accepted into and complete a Deferred Prosecution program, you will not be convicted of the offense(s) with which you are currently charged. You will also not be required to serve any jail time or pay a fine. Further, unless you refused to submit to a breath test, you will not lose your license to drive a vehicle as a result of this DUI charge (provided you petition for Deferred Prosecution within 60 days from the date of this incident).

Your DUI charge will be dismissed three years after successful completion of the two year treatment program so long as you do not violate the Court order granting your Deferred Prosecution. You will be required to successfully complete an intensive two year treatment program for your alcohol, drug or mental health problem, and you must arrange to pay the cost of such treatment.

You will in addition be ordered by the Court as part of the Deferred Prosecution to not operate any vehicle for one year, five years, or ten years (depending on the number of prior ignition interlock orders that have been entered against you) unless the vehicle is equipped with a functioning ignition interlock breath alcohol device. Violation of an ignition interlock order is a separate crime.

The Court will not accept a petition for Deferred Prosecution from anyone who sincerely believes that he or she is innocent of the charges herein, or who believes that he or she does not suffer from an alcohol, drug, or mental health problem.

A defendant charged with DUI is not eligible for more than one DUI Deferred Prosecution program in his or her lifetime.

Furthermore, before you are accepted into the Deferred Prosecution program, you will be required to stipulate (admit) to the facts contained in the police reports, including the results of any breath or blood alcohol tests. Those reports will be used to convict you of the offense(s) charged if the Court finds cause to remove you from the Deferred Prosecution program.

You must and will be removed from the Deferred Prosecution program (and be found guilty and sentenced without further trial) if you are convicted of an offense similar to the one with which you are currently charged. You may and probably will be removed from the Deferred Prosecution program (and be found guilty and sentenced without further trial) if you fail to follow and complete the treatment program or otherwise fail to comply with all of the terms of the Court order placing you on the Deferred Prosecution.

Even if you decide not to petition for Deferred Prosecution, and if you are subsequently found guilty of the offense(s) charged, you may still seek suspension of some of the fine or jail sentence on condition that you seek and obtain treatment for your alcohol, drug, or mental problem. Also, you may always seek treatment from public or private agencies at any time without regard to whether or not you are found guilty. In addition, you are advised that if you are found guilty, the Court or Department of Licensing may still require you to enter and complete a treatment program even if you do not petition for Deferred Prosecution.

If you wish to investigate the advisability of petitioning for Deferred Prosecution, tell the Judge when you are arraigned, and you will be referred to a state approved alcohol (or drug or mental health) treatment agency for an evaluation, and your case will be continued (postponed) to allow time for an evaluation to be made. After the evaluation is completed, you can decide whether or not you wish to enter the Deferred Prosecution program, or proceed to trial on the charge(s).

## **DUI Penalty Information**

The maximum penalty for conviction of DUI is one year in jail and/or a \$5,000 fine. If you are convicted of DUI, the law requires the Court to impose a minimum sentence as shown on the following pages. The mandatory minimum length of imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the defendant's physical or mental well-being. Fines, costs, and assessments may be reduced for indigent defendants.

All defendants convicted of DUI must—(1) obtain a chemical dependency evaluation through a state approved agency and successfully comply with all recommendations, and (2) attend a DUI Victim's Panel, and (3) pay restitution if applicable, and (4) surrender any driver's license to the Department of Licensing.

For the next five years, the Court must also sentence you to jail for a minimum of 30 days and suspend your driving privilege (license) for 30 days each time you—(1) drive without a driver's license or insurance, or (2) drive with an alcohol concentration of 0.08 or more, or (3) refuse to submit to a breath or blood test when there is reasonable grounds to believe you were DUI. This sanction will occur whether or not you are ultimately convicted of the new DUI offense.

The Department of Licensing will suspend your driving privilege (license) for the time period shown if you are convicted of DUI. The Department of Licensing will also take action ("administrative sanctions") concerning your driving privilege (license) regardless of whether you are convicted herein.

Once your driving privilege (license) is suspended or revoked, your ability to drive remains suspended or revoked for the minimum period applicable **and** until your driving privilege (license) is restored to you upon your application to and reinstatement by the Department of Licensing. To have your driving privilege (license) restored to you, you must maintain liability insurance and file proof with the Department of Licensing, and pay a reinstatement fee, and you may be required to successfully complete up to sixty days of chemical dependency treatment.

If you are convicted of DUI or physical control (for offenses occurring January 1, 2009 or later), the court will order you to apply for an ignition interlock driver's license from DOL and to have a functioning ignition interlock device installed on all motor vehicles operated by you. The Department of Licensing may waive this requirement if an interlock is unnecessary on an employer's vehicle. The court may waive this requirement if the court makes a written finding that the devices are not reasonably available in the area, or you do not operate a vehicle, or you are not eligible for an ignition interlock license under the law. If a court waives this requirement, the court will order you to submit to alcohol monitoring through a device designed to detect alcohol in a person's system.

Conviction of three major traffic offenses (such as DUI, physical control, reckless driving, second degree driving while license suspended or revoked, hit and run-attended, vehicular homicide, vehicular assault, felony hit and run, felony elude) in a five year period may result in the Department of Licensing classifying you as an Habitual Traffic Offender, and revoking your driving privilege (license) for a minimum of seven years and until the Department of Licensing reinstates your driving privilege (license).

If the Court has jurisdiction over your DUI case for at least one year and this conviction is a second or subsequent misdemeanor DUI or Physical Control conviction over your lifetime, you can not relocate to another state without applying for approval under the Interstate Compact for Adult Offender Supervision.

## DUI & PHYSICAL CONTROL OFFENSES OCCURRING JANUARY 1, 2009 & LATER (PER SE LEVEL .08)

# of Prior Offenses <sup>1</sup>	BAC Result	Mandatory Jail <sup>2</sup>	Mandatory EHM <sup>2</sup>	Mandatory IID <sup>3,4</sup>	Mandatory \$ Penalty <sup>5</sup>	Maximum Fine	Length of D/L Suspension
0	< .15	24 hours	or 15 days	mandatory	\$ 865.50	\$5,000	90 days
	≥ .15	48 hours	or 30 days	mandatory	\$ 1,120.50		1 year
	refusal						2 years
1	< .15	30 days	and 60 days	mandatory	\$ 1,120.50	\$5,000	2 years
	≥ .15	45 days	and 90 days		\$ 1,545.50		900 days
	refusal				3 years		
2 or 3	< .15	90 days	and 120 days	mandatory	\$ 1,970.50	\$5,000	3 years
	≥ .15 or refusal	120 days	and 150 days		\$ 2,820.50		4 years

- <sup>1</sup> **Prior Offenses.** Count all prior offenses where the arrest date of the prior offense occurred within 7 years before the arrest date on the current offense. RCW 46.61.5055(14)(b); *City of Seattle v. Winebrenner*, 167 Wn.2d 451, 219 P.3d 686 (2009). “Prior offense” is defined by RCW 46.61.5055(14)(a) to include—
- ☉ any conviction for DUI, Physical Control, Vehicular Assault (DUI), or Vehicular Homicide (DUI).
  - ☉ any deferred prosecution granted for a DUI or Physical Control charge. See *Bremerton v. Tucker*, 126 Wn.App. 26, 103 P.3d 1285 (Div. 2 2005);
  - ☉ any conviction for first degree negligent driving, reckless driving, or reckless endangerment reduced from a DUI or Physical Control charge if the “prior driving conviction involved use of intoxicating liquor or drugs.” *Walla Walla v. Greene*, 154 Wn.2d 722, ¶ 14, 116 P.3d 1008 (2005), cert. denied, 546 U.S. 1174, 126 S.Ct. 1339, 164 L.Ed.2d 54 (2006).
- <sup>2</sup> **Mandatory Jail and Electronic Home Monitoring.** If there are prior offenses within 7 years of arrest date, the mandatory jail shall be served by imprisonment for the minimum statutory term and may not be suspended or deferred unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender’s physical or mental well-being. The mandatory statutory term may not be converted to EHM. *Bremerton v. Bradshaw*, 121 Wn.App. 410, 88 P.3d 438 (Div. 2 2004). When there are no prior offenses within 7 years of arrest date, the court may grant EHM instead of mandatory minimum jail. If there are prior offenses, the mandatory EHM may not be suspended or deferred unless the court finds that imposition of this mandatory minimum sentence would impose a substantial risk to the offender’s physical or mental well-being. RCW 46.61.5055(1)(a)(i), (2)(a)(i), (3)(a)(i).
- <sup>3</sup> **Ignition Interlock Driver’s License, RCW 46.20.720(2), RCW 46.61.5055(5)**—For all alcohol-related DUI or Physical Control convictions occurring January 1, 2009 or later, the court shall order the person to apply for an ignition interlock driver’s license from DOL and to have a functioning ignition interlock device installed on all motor vehicles operated by the person. DOL may waive this requirement if an interlock is unnecessary on an employer’s vehicle. RCW 46.61.5055(5)(b). The court may waive this requirement if the court makes a written finding that the devices are not reasonably available in the area, or the person does not operate a vehicle, or the person is not eligible for an ignition interlock license pursuant to Laws of 2008, ch. 282, §9. RCW 46.61.5055(5)(d). If a court waives this requirement, the court shall order the person to submit to alcohol monitoring through an alcohol detection breathalyzer device, transdermal sensor device, or other technology designed to detect alcohol in a person’s system. RCW 46.61.5055(5)(e). The period for ignition interlock use or alcohol monitoring shall be 1, 5, or 10 years. RCW 46.61.5055(5)(f).
- <sup>3</sup> **Driver’s License With Ignition Interlock Restriction, RCW 46.20.720(3)**—For all alcohol-related DUI or Physical Control convictions occurring June 10, 2004 or later, DOL shall require that, after any applicable period of suspension, revocation, or denial of driving privileges, the person may drive only a motor vehicle equipped with a functioning ignition interlock device. DOL may waive this requirement if such devices are not reasonably available or an interlock device is unnecessary on an employer’s vehicle. The period of ignition interlock restriction will be as follows—
- ☉ 1 year if not previously IID restricted
  - ☉ 5 years if previously 1 year IID restricted
  - ☉ 10 years if previously 5 year IID restricted

<sup>4</sup> **Passenger Under Age 16, RCW 46.61.5055(6).** The Court shall order the installation and use of an interlock device for not less than 60 days if an IID is not mandatory under RCW 46.20.720 and for an additional 60 days if an IID is otherwise mandatory.

<sup>5</sup> **Mandatory Monetary Penalty.** See DUI & Physical Control Sentencing Grid Monetary Worksheet.

**Jurisdiction.** Court has 5 years jurisdiction.

<sup>6</sup> **Felony DUI and Felony Physical Control.** Laws of 2006, ch. 73, §§ 1-3 (effective July 1, 2007) created new class C felony crimes of Felony DUI and Felony Physical Control.

RCW 46.61.502(6) (DUI), RCW 46.61.504(6) (Physical Control), and RCW 46.61.5055(4) provide that a felony is committed if a person commits DUI or Physical Control and—

- the person has 4 or more prior offenses in 10 years, or
- the person has ever previously been convicted of vehicular homicide while under the influence, RCW 46.61.520(1)(a), or vehicular assault while under the influence, RCW 46.61.522(1)(b).

“Within 10 years” means that the arrest for the prior offense occurred within 10 years of the arrest for the current offense. Laws of 2007, ch. 474 (effective July 1, 2007); RCW 46.61.5055(13)(c).

Laws of 2006, ch. 73, § 3 also amended RCW 46.61.5055(3) to provide for the mandatory minimum DUI and Physical Control penalties when the defendant has “two or three prior offenses” within 7 years (the previous language said “two or more prior offenses” within 7 years).

## DUI & Physical Control Sentencing Grid Monetary Worksheet (Offenses July 24, 2005 & Later)

Priors <sup>1</sup>	BAC <sup>2</sup>	Min. Fine <sup>2</sup>	Fine PSEA <sup>3</sup>	Tox Fee <sup>4</sup>	Title 46 Penalty <sup>5</sup>	Ct Funding Fee <sup>6</sup>	Mandatory \$\$\$ <sup>7</sup>
0	< 0.15	\$ 350	\$ 245	\$ 125	\$ 102.50	\$ 43	\$ 865.50
	≥ 0.15	\$ 500	\$ 350	\$ 125	\$ 102.50	\$ 43	\$ 1,120.50
1	< 0.15	\$ 500	\$ 350	\$ 125	\$ 102.50	\$ 43	\$ 1,120.50
	≥ 0.15	\$ 750	\$ 525	\$ 125	\$ 102.50	\$ 43	\$ 1,545.50
2 or more	< 0.15	\$ 1,000	\$ 700	\$ 125	\$ 102.50	\$ 43	\$ 1,970.50
	≥ 0.15	\$ 1,500	\$ 1,050	\$ 125	\$ 102.50	\$ 43	\$ 2,820.50

<sup>1</sup> All prior offenses wherein the arrest date of the prior offense occurred within 7 years of arrest date on current offense. RCW 46.61.5055(12)(b); *City of Seattle v. Winebrenner*, 167 Wn.2d 451, 219 P.3d 686 (2009). “Prior offense” includes any conviction for DUI, physical control, vehicular assault (DUI), or vehicular homicide (DUI), any deferred prosecution granted for a DUI or physical control, and any first degree negligent driving or reckless driving conviction reduced from a DUI or physical control charge if the “prior driving conviction involved use of intoxicating liquor or drugs.” See RCW 46.61.5055(12)(a); *Bremerton v. Tucker*, 126 Wn.App. 26, 103 P.3d 1285 (Div. 2 2005) (statute counting prior deferred prosecution as “prior offense” to enhance subsequent DUI sentence does not violate due process); *Walla Walla v. Greene*, 154 Wn.2d 722, ¶ 14, 116 P.3d 1008 (2005) (first degree negligent driving and reckless driving convictions reduced from DUI charge are prior offenses if the “prior driving conviction involved use of intoxicating liquor or drugs”).

<sup>2</sup> See RCW 46.61.5055(1), (2), (3).

<sup>3</sup> PSEA 1 (70%), RCW 3.62.090(1), applies to DUI and physical control mandatory minimum fines.

<sup>4</sup> RCW 46.61.5054(1) Washington State Toxicology Laboratory \$125 Fee.

<sup>5</sup> RCW 46.64.055(1) Title 46 \$50 Penalty. PSEA (105%), RCW 3.62.090(1) and (2), of \$50 is \$52.50. Total amount is \$102.50 (\$50 + \$52.50).

<sup>6</sup> RCW 3.62.085 Court Funding \$43 Fee. Laws of 2005, Chapter 457, Section 10. Effective July 24, 2005.

<sup>7</sup> This is the mandatory minimum monetary fines, costs and assessments. See RCW 46.61.5055(1), (2), (3).