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**Council Bill Number:** 112400

**Ordinance Number:** 119189

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AN ORDINANCE relating to persons under the influence of intoxicating liquor or any drug, amending Sections 11.34.020, 11.56.020 and 16.20.110 and adding sections to Chapters 11.14, 11.20 and 11.56 of the Seattle Municipal Code.

**Status:** PASSED

**Note:** Second quarter 1998 reclassification ordinance

**Vote:** 9-0

**Date of Mayor's signature:** 1998/10/12 ([about the signature date](#))

**Date introduced/referred to committee:** 1998/10/05

**Committee:** Public Safety, Health & Technology

**Sponsor:** PODLODOWSKI

**Committee Recommendation:** Pass

**Index Terms:** DWI, CORRECTIONAL-PUNISHMENT-AND-REHABILITATION, SUBSTANCE-ABUSE

**Electronic Copy:** [PDF scan of Ordinance No. 119189](#)

**Reference:** Amending: Ord 108200, 119011, 118992, 87983, 90653

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**Text:**

AN ORDINANCE relating to persons under the influence of intoxicating liquor or any drug, amending Sections 11.34.020, 11.56.020 and 16.20.110 and adding sections to Chapters 11.14, 11.20 and 11.56 of the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Chapter 11.14 of the Seattle Municipal Code (Ordinance 108200, as amended) is further amended by adding the following section:

11.14.183 Drug.

"Drug" includes, but is not limited to, those drugs and substances regulated by RCW Chapters 69.41 and 69.50. (RCW 46.61.540)

Section 2. Chapter 11.14 of the Seattle Municipal Code (Ordinance 108200, as amended) is further amended by adding the following section:

11.14.257 Ignition interlock device.

"Ignition interlock device" means breath alcohol analyzing ignition equipment, certified by the Washington State Patrol, designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage. (RCW 46.04.215)

Section 3. Chapter 11.14 of the Seattle Municipal Code (Ordinance 108200, as amended) is further amended by adding

the following section:

11.14.403 Other biological or technical device.

"Other biological or technical device" means any device meeting the standards of the National Highway Traffic Safety Administration or the Washington State Patrol, designed to prevent the operation of a motor vehicle by a person who is impaired by alcohol or drugs. (RCW 46.04.215)

Section 4. Chapter 11.20 of the Seattle Municipal Code (Ordinance 108200, as amended) is further amended by adding the following section:

11.20.230 Ignition interlock or other biological or technical device required.

A. The court may order that after a period of suspension, revocation, or denial of driving privileges, and for up to as long as the court has jurisdiction, any person convicted of any offense involving the use, consumption, or possession of alcohol while operating a motor vehicle may drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device.

B. If a person is convicted of a violation of Section 11.56.020A or B, the court shall order that after a period of suspension, revocation, or denial of driving privileges, the person may drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device.

C. The court shall establish a specific calibration setting at which the ignition interlock or other biological or technical device will prevent the motor vehicle from being started and the period of time that the person shall be subject to the restriction.

D. In the case of a person subject to the restriction under subsection B of this section, the duration of the restriction shall be as follows:

1. for a person subject to subsection N1b, N2 or N3 of Section 11.56.020 who has not previously been restricted under this section, RCW 46.20.720 or equivalent local ordinance, a period of not less than one (1) year;
2. for a person who has previously been restricted under subsection D1 of this section, RCW 46.20.720(3)(a), or equivalent local ordinance, a period of not less than five (5) years;
3. for a person who has previously been restricted under subsection D2 of this section, RCW 46.20.720(3)(b), or equivalent local ordinance, a period of not less than ten (10) years.

E. For purposes of this section, "convicted" means being found guilty of an offense or being placed on a deferred prosecution program under RCW Chapter 10.05. (RCW 46.20.720)

Section 5. Section 11.34.020 of the Seattle Municipal Code (Ordinance 108200 Section (11.34.020), as last amended by Ordinance 119011 Section 10) is further amended as follows:

11.34.020 Penalties for criminal offenses.

A. Any person convicted of any of the following offenses may be punished by a fine in any sum not to exceed Five Thousand Dollars (\$5,000.00) or by imprisonment for a term not to exceed one (1) year, or by both such fine and imprisonment:

1. Section 11.22.070 B, Licenses and plates required -- Penalties -- Exemptions;
2. Section 11.22.090, Vehicle trip permits -- Restrictions and requirements -- Penalty;

3. Section 11.23.400, Disabled parking -- Enforcement;
4. Section 11.55.340, Vehicles carrying explosives, flammable liquids and poison gas, liquefied petroleum gas (LPG) and cryogenics must stop at all railroad grade crossings;
5. Section 11.56.120, Reckless driving;
6. Section 11.56.130, Reckless endangerment of roadway workers;
7. Section 11.56.320 B, Driving while license is suspended or revoked in the first degree;
8. Section 11.56.320 C, Driving while license is suspended or revoked in the second degree;
9. Section 11.56.340, Operation of motor vehicle prohibited while license is suspended or revoked;
10. Section 11.56.420, Hit and run (attended);
11. Section 11.56.355, Assisting another in starting and operating motor vehicle in violation of court order regarding ignition interlock or other biological or technical device;
12. Section 11.56.445, Hit and run (by an unattended vehicle);
13. ~~12.~~ Section 11.56.450, Hit and run (pedestrian or person on a device propelled by human power);
14. ~~13.~~ Section 11.60.690, Transportation of liquefied petroleum gas;
15. ~~14.~~ Section 11.62.020, Flammable liquids, combustible liquids and hazardous chemicals;
16. ~~15.~~ Section 11.62.040, Explosives;
17. ~~16.~~ Section 11.80.140 B, Certain vehicles to carry flares or other warning devices (subsection B only);
18. ~~17.~~ Section 11.80.160 E, Display of warning devices when vehicle disabled (subsection E only);
19. ~~18.~~ Section 11.84.380, Fire extinguishers;
20. ~~19.~~ Section 11.86.080, Flammable or combustible labeling;
21. ~~20.~~ Section 11.86.100, Explosive cargo labeling;
22. ~~21.~~ Section 11.34.040, with respect to aiding and abetting the foregoing criminal offenses.

B. Any person convicted of any of the following offenses may be punished by a fine in any sum not to exceed One Thousand Dollars (\$1,000.00) or by imprisonment for a term not to exceed ninety (90) days, or by both such fine and imprisonment:

1. Section 11.20.010, Driver's license required -- Exception -- Penalty, unless the person cited for the violation provided the citing officer with an expired driver's license or other valid identifying documentation under RCW 46.20.035 at the time of the stop and was not in violation of Section 11.56.320 or Section 11.56.340, in which case the violation is an infraction;
2. Section 11.20.100, Display of nonvalid driver's license;
3. Section 11.20.120, Loaning driver's license;

4. Section 11.20.140, Displaying the driver's license of another;
5. Section 11.20.160, Unlawful use of driver's license;
6. Section 11.20.350 C, Providing false evidence of financial responsibility;
7. Section 11.22.025, Transfer of ownership;
8. Section 11.22.070 A, Licenses and plates required -- Penalties -- Exceptions;
9. Section 11.31.090, Failure to respond -- Written and signed promise;
10. Section 11.31.100, Failure to respond -- Parked, stopped or standing notice;
11. Section 11.32.100, Failure to appear;
12. Section 11.40.430, Prohibited entry to no admittance area;
13. Section 11.56.320 D, Driving while license is suspended or revoked in the third degree;
14. Section 11.56.350, Operation of a motor vehicle without required ignition interlock or other biological or technical device;
- ~~15.~~ Section 11.56.430, Hit and run (unattended vehicle) -- Duty in case of accident with unattended vehicle;
- ~~16. 15:~~ Section 11.56.440, Hit and run (property damage) -- Duty in case of accident with property;
- ~~17. 16:~~ Section 11.58.005 A, Negligent driving in the first degree;
- ~~18. 17:~~ Section 11.58.190, Leaving minor children in unattended vehicle;
- ~~19. 18:~~ Section 11.59.010, Obedience to peace officers, flaggers, and firefighters;
- ~~20. 19:~~ Section 11.59.040, Refusal to give information to or to cooperate with officer;
- ~~21. 20:~~ Section 11.59.060, Refusal to stop;
- ~~22. 21:~~ Section 11.59.080, Examination of equipment;
- ~~23. 22:~~ Section 11.59.090, Duty to obey peace officer -- Traffic infraction;
- ~~24. 23:~~ Section 11.34.040, Aiding and abetting with respect to the criminal offenses in this subsection.

Section 6. Section 11.56.020 of the Seattle Municipal Code (Ordinance 108200 Section 2 (11.56.020), as last amended by Ordinance 118992 Section 1) is further amended as follows:

11.56.020 Persons under the influence of intoxicating liquor or any drug -- Chemical analysis -- Tests, evidence and penalties.

A. Driving While Intoxicated.

1. A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within the City:

- a. and the person has, within two (2) hours after driving, an alcohol concentration of 0.08 ~~0.10~~ or higher, as shown by analysis of the person's breath or blood made under the provisions of this section; or
  - b. while the person is under the influence of or affected by intoxicating liquor or any drug; or
  - c. while the person is under the combined influence of or affected by intoxicating liquor and any drug.
2. The fact that any person charged with a violation of this subsection is or has been entitled to use a drug under the laws of this state shall not constitute a defense against any charge of violating this subsection.
3. It is an affirmative defense to a violation of subsection A1a of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 ~~0.10~~ or more within two (2) hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.
4. Analysis of blood or breath samples obtained more than two (2) hours after the alleged driving may be used as evidence that within two (2) hours after the alleged driving a person had an alcohol concentration of 0.08 ~~0.10~~ or more in violation of subsection A1a of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsections A1b or A1c of this section.
5. Driving while under the influence of intoxicating liquor or any drug is a gross misdemeanor.

#### B. Physical Control.

1. A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within the City:
  - a. and the person has, within two (2) hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 ~~0.10~~ or higher, as shown by analysis of the person's breath or blood made under the provisions of this section; or
  - b. while the person is under the influence of or affected by intoxicating liquor or any drug; or
  - c. while the person is under the combined influence of or affected by intoxicating liquor and any drug.
2. The fact that any person charged with a violation of this subsection is or has been entitled to use a drug under the laws of this state shall not constitute a defense against any charge of violating this subsection. No person may be convicted under this subsection if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.
3. It is an affirmative defense to a violation of subsection B1a of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 ~~0.10~~ or more within two (2) hours after being in actual physical control of the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.
4. Analysis of blood or breath samples obtained more than two (2) hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two (2) hours after the alleged being in actual physical control of a vehicle a person had an alcohol concentration of 0.08 ~~0.10~~ or more in violation of subsection B1a of this section,

and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsections B1b or B1c of this section.

5. Being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug is a gross misdemeanor.

#### C. Minor Driving Or Being In Actual Physical Control Of A Motor Vehicle After Consuming Alcohol.

1. Notwithstanding any other provision of this title, a person is guilty of minor driving or being in actual physical control of a motor vehicle after consuming alcohol if the person:

a. operates or is in actual physical control of a motor vehicle in the City;

b. is under the age of twenty-one (21); and

c. has, within two (2) hours after operating or being in actual physical control of the motor vehicle, an alcohol concentration of at least 0.02 but less than 0.08 ~~0.02 or more~~, as shown by an analysis of the person's breath or blood made under the provisions of this section.

2. It is an affirmative defense to a violation of this subsection which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving or being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be at least 0.02 but less than 0.08 ~~0.02 or more~~ within two (2) hours after driving or being in actual physical control of the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the earlier of (i) seven (7) days prior to trial or (ii) the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

3. Analysis of blood or breath samples obtained more than two (2) hours after the alleged driving or being in actual physical control of the vehicle may be used as evidence that within two (2) hours after the alleged driving or being in actual physical control of the vehicle a person had an alcohol concentration of ~~0.02 or more~~ in violation of this subsection.

4. Minor driving or being in actual physical control of a motor vehicle after consuming alcohol is a misdemeanor.

#### D. Implied Consent.

Any person who operates a motor vehicle within the City is deemed to have given consent, subject to the provisions of this section, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has probable cause to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of subsection C of this section. The test or tests of breath shall be administered at the direction of a law enforcement officer having probable cause to believe the person to have been driving or in actual physical control of a motor vehicle within the City while under the influence of intoxicating liquor or in violation of subsection C of this section. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility in which a breath testing instrument is not present or where the officer has probable cause to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(4).

The officer shall inform the person of the person's right to refuse the breath or blood test, and of the person's right to have additional tests administered by any qualified person of the person's choosing as provided elsewhere in this section. The officer shall warn the driver that (i) the driver's license, permit, or privilege to drive will be revoked or

denied if the driver refuses to submit to the test, (ii) the driver's license, permit, or privilege to drive will be suspended, revoked, ~~or denied, or placed in probationary status~~ if the test is administered and the test indicates the alcohol concentration of the driver's breath or blood is 0.08 ~~0.10~~ or more in the case of a person age twenty-one (21) or over, or in violation of this section ~~0.02 or more~~ in the case of a person under age twenty-one (21), and (iii) the driver's refusal to take the test may be used in a criminal trial. Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520, or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in this section, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

#### E. Person Incapable of Refusal.

Any person who is dead, unconscious, or who is otherwise in a condition rendering the person incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection D of this section and the test or tests may be administered, subject to the provisions of this section ~~hereof~~, and the person shall be deemed to have received the warnings required under subsection D of this section.

#### F. Refusal to Submit to Test.

If, following his/her arrest and receipt of warnings under subsection D of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test of his/her breath or blood, no test shall be given except as authorized under subsection D or E of this section.

#### G. Notices to Person After Arrest.

If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 ~~0.10~~ or more if the person is age twenty-one (21) or over, or in violation of this section ~~0.02 or more~~ if the person is under the age of twenty-one (21), or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given shall give the person the notices and mark the person's Washington state driver's license or permit to drive, if any, as provided by RCW 46.20.308.

#### H. Notification of Arrest and Test Result or Refusal to Department of Licensing.

After giving the notices to the person and marking the person's Washington state driver's license or permit to drive, if any, the law enforcement officer shall, within seventy-two (72) hours, except as delayed as the result of a blood test, transmit to the Washington State Department of Licensing a sworn report or report under a declaration authorized by RCW 9A.72.085 stating: (i) that the officer had probable cause to believe that the arrested person had been driving or was in actual physical control of a motor vehicle within the City while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one (21) years and had been driving or was in actual physical control of a motor vehicle while having an alcohol concentration in violation of subsection C of this section ~~of 0.02 or more~~; (ii) that after receipt of the warnings required by subsection D of this section the person refused to submit to a test of the person's breath or blood, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 ~~0.10~~ or more if the person was age twenty-one (21) or over, or was in violation of this section ~~0.02 or more~~ if the person was under the age of twenty-one (21); and (iii) any other information that the Director of the Washington State Department of Licensing may require by rule.

#### I. Admissibility of Evidence.

Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08 ~~0.10~~, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug. The

breath analysis shall be based upon grams of alcohol per two hundred ten (210) liters of breath. The foregoing provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

#### J. Methods of Analysis.

Analysis of the person's blood or breath to be considered valid under the provisions of this section shall have been performed according to methods approved by the State Toxicologist and by an individual possessing a valid permit issued by the State Toxicologist for this purpose.

#### K. Blood Tests.

When a blood test is administered in accordance with this section, the withdrawal of blood for the purpose of determining its alcoholic or drug content may be performed only by a physician, a registered nurse, or a qualified technician. This limitation shall not apply to the taking of breath specimens.

#### L. Right to Additional Tests.

The person tested may have a physician or a qualified technician, chemist, registered nurse or other qualified person of his or her own choosing administer one (1) or more tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

#### M. Right to Information.

Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning this test or tests shall be made available to him/her or his/her attorney.

#### N. Penalty.

1. a. A person who is convicted of a violation of subsection A or B of this section, who has no prior offense within seven (7) five (5) years and whose alcohol concentration was less than 0.15, or for any reason other than the person's refusal to take a test offered pursuant to subsection D of this section there is no test result indicating the person's alcohol concentration, shall be punished by imprisonment for not less than twenty-four (24) consecutive hours nor more than one (1) year and by a fine of not less than Three Hundred Fifty Dollars (\$350.00) and not more than Five Thousand Dollars (\$5,000.00). In lieu of the mandatory minimum term of imprisonment required under this subsection N1a, the court may order not less than fifteen (15) days of electronic home monitoring.

b. A person who is convicted of a violation of subsection A or B of this section, who has no prior offense within seven (7) five (5) years and whose alcohol concentration was 0.15 or more, or who refused to take a test offered pursuant to subsection D of this section, shall be punished by imprisonment for not less than two (2) consecutive days nor more than one (1) year, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) and a court-ordered restriction under Section 11.20.230. In lieu of the mandatory minimum term of imprisonment required under this subsection N1b, the court may order not less than thirty (30) days of electronic home monitoring.

2. a. A person who is convicted of a violation of subsection A or B of this section, who has one (1) prior offense within seven (7) five (5) years and whose alcohol concentration was less than 0.15, or for any reason other than the person's refusal to take a test offered pursuant to subsection D of this section there is no test result indicating the person's alcohol concentration, shall be punished by imprisonment for not less than thirty (30) consecutive days nor more than one (1) year, sixty (60) days of electronic home monitoring, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) and a court-ordered restriction under Section 11.20.230.

b. A person who is convicted of a violation of subsection A or B of this section, who has one (1) prior offense within



~~seven (7) five (5)~~ years and whose alcohol concentration was 0.15 or more, or who refused to take a test offered pursuant to subsection D of this section, shall be punished by imprisonment for not less than forty-five (45) consecutive days nor more than one (1) year, ninety (90) days of electronic home monitoring, ~~and by~~ a fine of not less than Seven Hundred Fifty Dollars (\$750.00) nor more than Five Thousand Dollars (\$5,000.00) and a court-ordered restriction under Section 11.20.230.

3. a. A person who is convicted of a violation of subsection A or B of this section, who has two (2) or more prior offenses within ~~seven (7) five (5)~~ years and whose alcohol concentration was less than 0.15, or for any reason other than the person's refusal to take a test offered pursuant to subsection D of this section there is no test result indicating the person's alcohol concentration, shall be punished by imprisonment for not less than ninety (90) consecutive days nor more than one (1) year, one hundred twenty (120) days of electronic home monitoring, ~~and by~~ a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) and a court-ordered restriction under Section 11.20.230.

b. A person who is convicted of a violation of subsection A or B of this section, who has two (2) or more prior offenses within ~~seven (7) five (5)~~ years and whose alcohol concentration was 0.15 or more, or who refused to take a test offered pursuant to subsection D of this section, shall be punished by imprisonment for not less than one hundred twenty (120) consecutive days nor more than one (1) year, one hundred fifty (150) days of electronic home monitoring, ~~and by~~ a fine of not less than One Thousand Five Hundred Dollars (\$1,500.00) nor more than Five Thousand Dollars (\$5,000.00) and a court-ordered restriction under Section 11.20.230.

4. a. "Prior offense" means any of the following:

(i) a conviction for a violation of subsection A of this section, RCW 46.61.502 or equivalent local ordinance;

(ii) a conviction for a violation of subsection B of this section, RCW 46.61.504 or equivalent local ordinance;

(iii) a conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;

(iv) a conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;

(v) a conviction for a violation of Section 11.58.005 A, RCW 46.61.5249, Section 11.56.120, RCW 46.61.500, Section 12A.06.050, RCW 9A.36.050 ~~46.61.525(1)~~ or equivalent local ordinance, if the conviction was the result of a charge that was originally filed as a violation of subsection A or B of this section, RCW 46.61.502 or RCW 46.61.504, or equivalent local ordinance, or RCW 46.61.520 or RCW 46.61.522;

(vi) an out-of-state conviction for a violation that would have been a violation of subsections N4a(i), (ii), (iii), (iv) or (v) of this section if committed within this state; ~~or~~

(vii) a deferred prosecution under RCW Chapter 10.05 granted in a prosecution for a violation of subsection A or B of this section, RCW 46.61.502 or RCW 46.61.504 or equivalent local ordinance; or

(viii) a deferred prosecution under RCW Chapter 10.05 granted in a prosecution for a violation of Section 11.58.005 A, RCW 46.61.5249 ~~46.61.525(1)~~, or equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of subsection A or B of this section, RCW 46.61.502 or RCW 46.61.504, or equivalent local ordinance, or RCW 46.61.520 or RCW 46.61.522.

b. "Within ~~seven (7) five (5)~~ years" means that the arrest for the prior offense occurred within ~~seven (7) five (5)~~ years of the arrest for the current offense.

5. For purposes of sentencing pursuant to subsections N1, N2, and N3 of this section, the judge shall determine, based on a preponderance of the evidence, the number of prior offenses within ~~seven (7) five (5)~~ years the person has,

whether the person's alcohol concentration was less than 0.15 or 0.15 or more, whether the person refused to take a test offered pursuant to subsection D of this section or whether for any reason other than the person's refusal to take a test offered pursuant to subsection D of this section there is no test result indicating the person's alcohol concentration. The prosecutor or the court may obtain an abstract of the person's driving record, which shall be prima facie evidence of the person's prior offenses.

6. Unless the judge finds the person to be indigent, the mandatory minimum fine shall not be suspended or deferred.

~~Neither the~~ The mandatory minimum jail sentence nor the mandatory minimum period of electronic home monitoring shall ~~not~~ be suspended or deferred unless the judge finds that the imposition of this ~~jail~~ sentence will pose a substantial risk to the defendant's physical or mental well-being. Whenever the mandatory minimum ~~jail~~ sentence is suspended or deferred, the judge must state, in writing, the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Whenever the court sentences an offender to a period of electronic home monitoring, the court may also require the offender's home electronic monitoring device to include an alcohol detection breathalyzer and may restrict the amount of alcohol the offender may consume during the period of electronic home monitoring. The cost of electronic home monitoring shall be paid for by the offender and determined by the City. In exercising its discretion in setting penalties within the limits allowed by this subsection, the court shall particularly consider whether the person's driving at the time of the offense was responsible for injury or damage to another or another's property, whether the person's license, permit or privilege to drive was suspended, revoked, denied or in probationary status at the time of the offense, whether the person was in compliance with Section 11.20.340 at the time of the offense and whether the person was driving or in actual physical control of a vehicle with one (1) or more passengers at the time of the offense.

7. A person convicted under this section shall be required to complete a course in an alcohol information school approved by the Washington State Department of Social and Health Services or more intensive treatment at a program approved by the Washington State Department of Social and Health Services, as determined by the court. The court shall notify the Washington State Department of Licensing of a conviction under this section and whenever it orders a person to complete a course or treatment under this subsection N7 of this section. A diagnostic evaluation and treatment recommendation shall be prepared under the direction of the court by an alcoholism agency approved by the Washington State Department of Social and Health Services or a qualified probation department approved by the Washington State Department of Social and Health Services. A copy of the report shall be sent to the Washington State Department of Licensing. Based on the diagnostic evaluation, the court shall determine whether the person shall be required to complete a course in an alcohol information school or more intensive treatment.

8. In addition to any nonsuspendable and nondeferrable jail sentence required by this subsection, whenever the court imposes less than one (1) year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five (5) years. The court shall impose conditions of probation that include:~~(i) not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two (2) hours after driving; and (iii) not refusing 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 probable cause to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. For each violation of mandatory conditions of probation (i) and (ii) or (i) and (iii) of this subsection N8 of this section, the court shall order the convicted person to be confined for thirty (30) days, which shall not be suspended or deferred. For each incident involving a violation of a mandatory condition of probation imposed under this subsection N8 of this section, the court shall suspend the person's license, permit or privilege to drive for thirty (30) days or, if the person's license, permit or privilege to drive already is suspended, revoked or denied at the time the finding of probation violation is made, then the suspension, revocation or denial then in effect shall be extended by thirty (30) days. The court shall notify the Washington State Department of Licensing of a person's violation of any mandatory condition of probation imposed under subsection N8 of this section and the suspension of or extension of the suspension, revocation or denial of a person's license, permit or privilege to drive. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock or other biological or technical device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

~~9. At the time a person is convicted on the third occasion within five (5) years of driving a motor vehicle while under the influence of intoxicating liquor or any drug, the convicting court shall notify the person, orally and in writing, that the person may not possess a firearm unless the person's right to do so is restored by a court of record. The convicting court also shall forward a copy of the person's driver's license or identicard, or comparable information, to the Washington State Department of Licensing, along with the date of conviction.~~

~~10.~~ In addition to the penalties set forth in this subsection, a fee of One Hundred Twenty-five Dollars (\$125.00) shall be assessed to a person who is either convicted, sentenced to a lesser charge or given a deferred prosecution as a result of an arrest for violating subsection A or B of this section, RCW 46.61.520 or RCW 46.61.522. Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay. The fee shall be collected by the clerk of the court and distributed according to RCW 46.61.5054.

#### O. Vehicle Seizure and Forfeiture.

1. Upon conviction for a violation of subsection A or B of this section, where the person has a prior offense within seven (7) ~~five (5)~~ years, as defined in subsection N4 of this section, the motor vehicle the person was driving or over which the person had actual physical control at the time of the offense, if the person has a financial interest in the vehicle, is subject to seizure and forfeiture pursuant to RCW 46.61.5058.

2. Upon the arrest or filing of a complaint or citation in Municipal Court based on probable cause to believe that a person has violated subsection A or B of this section, if such person has a prior offense within seven (7) ~~five (5)~~ years, as defined in subsection N4 of this section, the person shall be provided written notice that any transfer, sale or encumbrance of the person's interest in the vehicle the person was driving or over which the person had actual physical control at the time of the offense is unlawful pending acquittal, dismissal, sixty (60) days after conviction or other termination of the charge, except that:

- a. A vehicle encumbered by a bona fide security interest may be transferred to the secured party or a person designated by the secured party;
- b. A leased or rented vehicle may be transferred to the lessor, rental agency or a person designated by the lessor or rental agency; and
- c. A vehicle may be transferred to a third party or a vehicle dealer who is a bona fide purchaser or may be subject to a bona fide security interest unless it is established that either (i) the purchaser had actual notice that the vehicle was subject to the prohibition prior to the transfer of title or (ii) the holder of the security interest had actual notice that the vehicle was subject to the prohibition prior to the encumbrance of title.

#### P. Refusal Admissible.

The refusal of a person to submit to a test of the alcoholic content of the person's blood or breath under ~~Seattle Municipal Code~~ Section 11.56.020 D is admissible into evidence at a subsequent criminal trial.

#### Q. Mandatory Appearance after Arrest or Charging.

1. A defendant who is arrested for a violation of this section shall be required to appear in person before a judge or magistrate within one (1) judicial day after the arrest if the defendant is served with a citation or complaint at the time of the arrest.

2. A defendant who is charged by citation, complaint or information with a violation of this section and who is not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen (14) days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

3. At the time of an appearance required by this subsection, the court shall determine the necessity of imposing conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment.

4. Appearances required by this subsection are mandatory and may not be waived.

5. Failure of the court to comply with the requirements of this subsection shall not be grounds for dismissal of any charge under this section nor the establishment of a constructive date of arraignment for purposes of Criminal Rule for Courts of Limited Jurisdiction 3.3.

Section 7. Chapter 11.56 of the Seattle Municipal Code (Ordinance 108200, as amended) is further amended by adding the following section:

11.56.350 Operation of motor vehicle without required ignition interlock or other biological or technical device.

No person whose driver's license includes a notation, pursuant to RCW 46.20.740, that the person may operate only a motor vehicle equipped with an ignition interlock or other biological or technical device shall operate a motor vehicle that is not so equipped. Violation of this section is a misdemeanor. (RCW 46.20.740)

Section 8. Chapter 11.56 of the Seattle Municipal Code (Ordinance 108200, as amended) is further amended by adding the following section:

11.56.355 Assisting another in starting and operating motor vehicle in violation of court order regarding ignition interlock or other biological or technical device.

A. No person shall knowingly assist another person who is restricted to the use of a motor vehicle equipped with an ignition interlock or other biological or technical device to start and operate such a motor vehicle in violation of a court order regarding such device.

B. This section shall not apply to the starting of a motor vehicle or the request to start a motor vehicle equipped with an ignition interlock or other biological or technical device if done for the purpose of safety or mechanical repair of the device or the vehicle and the person subject to the court order does not operate the vehicle.

C. "Knowingly" has the same meaning as in Section 12A.04.030 B.

D. Violation of this section is a gross misdemeanor. (RCW 46.20.750)

Section 9. Section 16.20.110 of the Seattle Municipal Code (Ordinance 87983 Section 13, as last amended by Ordinance 90653 Section 3) is further amended as follows:

16.20.110 Intoxication.

A. ~~1. It shall be unlawful for any person who is under the influence of intoxicating liquor or narcotic or habit-forming drugs to operate or be in actual physical control of any vessel or watercraft~~

a. and the person has, within two (2) hours after operating or being in actual physical control, an alcohol concentration of 0.08 or more, as shown by analysis of the person's breath or blood made under Section 11.56.020;

b. while the person is under the influence of or affected by intoxicating liquor or any drug; or

c. while the person is under the combined influence of or affected by intoxicating liquor and any drug.

2. The fact that a person charged with a violation of this subsection is or has been entitled to use a drug under the laws of this state shall not constitute a defense against a charge of violating this subsection.

3. Analysis of blood or breath samples obtained more than two (2) hours after the alleged operating or being in actual physical control may be used as evidence that within two (2) hours after the alleged operating or being in actual physical control a person had an alcohol concentration of 0.08 or more in violation of subsection A1a of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsections A1b or A1c of this section

4. "Alcohol concentration" has the same meaning as in Section 11.14.023.

5. "Drug" has the same meaning as in Section 11.14.183.

6. Notwithstanding Section 16.64.040, violation of this subsection is a misdemeanor.

B. It shall be unlawful for the owner of any vessel or watercraft or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who is under the influence of intoxicating liquor or any drug , ~~narcotic or habit-forming drugs~~.

C. Whenever it appears reasonably certain to any police or harbor officer that any person under the influence of, or affected by the use of, intoxicating liquor or of any ~~narcotic~~ drug is about to operate a watercraft or vessel in violation of subsection A of this section, the officer may take reasonable measures to prevent any such person from so doing, either by taking from him the keys of such watercraft or vessel and locking the same, or by some other appropriate means. In any such case, the officer shall immediately report the facts to his Commanding Officer of the Harbor Department, and shall, as soon as possible, deposit the keys or other articles, if any, taken from the watercraft or vessel or person with the Commanding Officer. Such keys or other articles may be returned to any person upon his demand and proper identification of himself when it appears that he is no longer under the influence of intoxicating liquor or any narcotic drug.

Section 10. This ordinance shall take effect and be in force from and after January 1, 1999.

Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 1998, and signed by me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_

President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_

Mayor

Filed by me this \_\_\_\_ day of \_\_\_\_\_, 1998.

\_\_\_\_\_

City Clerk