



Judges in the Classroom

Drunk Driving Legislative Session

Source:

Adapted from a lesson written by Street Law, Inc. by Margaret Fisher, Institute for Citizen Education in the Law, Seattle, Washington. Staff at the Washington State Administrative Office of the Courts (AOC) updated the lesson in 2019. For more information, contact AOC, Temple of Justice, 415 12th Ave SW, PO Box 41174, Olympia, WA 98504-1174. For an electronic copy of this lesson, or to view other lesson plans, visit Judges in the Classroom on the Washington Courts Web site at: www.courts.wa.gov/education/.

Objectives:

1. Students will discuss policy reasons for enacting a law to deal with driving under the influence of alcohol or other drugs.
2. Students will draft a law to deal with driving under the influence of alcohol or other drugs.
3. Students will analyze Washington's law against driving under the influence (DUI) and compare it to the law they draft.

Grade Level:

Grades 9-12

Time:

One class period (approximately 50 minutes)

Materials:

- One copy of Handout 1 (Drafting a Law) for each student
- One copy of Handout 2 (Driving Under the Influence – Washington State Laws) for each student
- Six large sheets of paper
- Markers

Procedures:

1. Begin the class by introducing yourself to the students, and telling a little bit about what you do, if this is your first class.

2. Introduce the topic by asking students whether driving under the influence (DUI) is a problem in their town or city. Ask why there might be a need for a law related to DUI.
3. Brainstorm with students for about five minutes. Ask students what should be included in a DUI law. In other words, what issues should the law address? On the board, list any issues the students raise. For example:
 - Are drugs included in the law, as well as alcohol?
 - What level of drugs and/or alcohol?
 - How do you determine who should be stopped and tested?
 - How is the refusal to be tested handled?
 - What penalties should be enforced?
 - What penalties should there be for people who have more than one DUI?
 - Should the law treat those under 21 years of age differently than those 21 years and older?

With the help of students, pick the five or six most important issues to include in the law.

4. Divide students into groups of three to five students. There should be the same number of groups as the number of issues you decided to include in the draft DUI law (five or six). Assign each group one issue.
5. Pass out Handout 1 to each group. Review the directions in the handout, which describe what each group should do. Ask students if they understand the assignment. Allow 15 minutes for the groups to draft their provisions of the law. Ask each group to print its portion of the law on a large piece of paper.
6. Ask a spokesperson from each group to describe the part of the law the group drafted. Lead the class to discuss and analyze the law by asking questions including:
 - What is the purpose of this part of the law, and will it achieve that purpose?
 - Is it clear and understandable?
 - Is it enforceable?
7. After each group has presented its part of the law, pass out Handout 2, which covers selected provisions of Washington State's statute. Give them up to 10 minutes to review at least the portion of Washington's law that corresponds with the section they wrote. Ask students to compare the two laws by asking questions such as:
 - Which law is easier to read and understand?
 - Which law do you think is more effective?
 - Should Washington's law be revised?
 - What would you add or change?
8. Share your experience in dealing with DUI cases. Other areas that could be discussed (time permitting) are Washington State's open container law and the loss of driving

privileges for alcohol offenses.

Handout 1

Drafting a Law

Directions:

1. You will draft a drunk driving law. Before you begin, select a student reporter to write down the sentences for the final law drafted by the group. Also, select a spokesperson to explain the law to the rest of the class. All members of the group should work on drafting the law as it is discussed.

2. Your bill should be divided into sections. The first section should explain the purpose or intent of the bill. Discuss the purpose of the part of the law you are drafting. Agree on one sentence to summarize the purpose behind that provision.

For example: To keep our streets safe, drunk drivers should lose their right to drive.

3. Draft a paragraph for each issue covered by intent.

For example: To take away the “privilege to drive” from “drunk drivers,” you must define “drunk.” This law would need a paragraph explaining how “drunk” will be defined and tested for.

4. As you are writing, think about these questions: Is your law clear and understandable? Is it enforceable?

Handout 2

Driving Under the Influence – Washington State Laws

RCW 46.61.502: DRIVING WHILE UNDER INFLUENCE OF INTOXICATING LIQUOR OR DRUG – WHAT CONSTITUTES

- (1) A person is guilty of driving while under the influence of intoxicating liquor, marijuana, or any drug if the person drives a vehicle within this state:
 - (a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood; or
 - (b) The person has, within two hours after driving, a THC concentration of 5.00 or higher as shown by analysis of the person's blood; or
 - (c) While the person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or
 - (d) While the person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

A violation of this section is a gross misdemeanor. It is a class B felony if:

- (a) The person has three or more prior offenses within ten years; or
- (b) The person has ever previously been convicted of:
 - (i) Vehicular homicide while under the influence of intoxicating liquor or any drug,
 - (ii) Vehicular assault while under the influence of intoxicating liquor or any drug.

RCW 46.61.503: DRIVER UNDER TWENTY-ONE CONSUMING ALCOHOL OR MARIJUANA – PENALTIES

- (1) A person is guilty of driving or being in physical control of a motor vehicle after consuming alcohol or marijuana if the person operates or is in physical control of a motor vehicle within this state and the person:

- (a) Is under the age of 21; and
- (b) Has, within 2 hours after operating or being in physical control of the motor vehicle either:
 - (i) An alcohol concentration of at least 0.02 but less than 0.08, as shown by analysis of the person's breath or blood.
 - (ii) A THC concentration above 0.00 but less than 5.00.

A violation of this section is a misdemeanor.

**RCW 46.61.5055:
CRIMINAL SANCTIONS
As of July 23, 2017**

- (1) A person who is convicted of a violation of driving under the influence and who has no prior offense within seven years shall be punished as follows:
 - (a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test, there is no test result indicating the person's alcohol concentration:
 - (i) By imprisonment for not less than one day nor more than 364 days (provisions are made in cases for persons who are physically or mentally unable to serve the minimum jail time). The court may suspend the mandatory minimum sentence with reasons in writing and then impose electronic home monitoring of no less than 15 days or a 90-day period of 24/7 sobriety program monitoring; and
 - (ii) By a fine of not less than \$350 nor more than \$5,000; and
 - (iii) Their license privileges must be suspended or denied by the department for 90 days.
 - (b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test, there is no test result indicating the person's alcohol concentration:
 - (i) By imprisonment for not less than two days nor more than 364 days (provisions are made in cases for persons who are physically or mentally unable to serve the minimum jail time); and
 - (ii) By a fine of not less than \$500 nor more than \$5,000.

- (2) For a person with one prior offense within the last seven years:
- (a) In the case of a person whose alcohol concentration was less than 0.15 or for whom for reasons other than the person's refusal to take a test, there is no test result indicating the person's alcohol concentration:
 - (i) By imprisonment for not less than 30 days nor more than 364 days and 60 days of electronic home monitoring. Instead of the mandatory minimum term of 60 days of electronic home monitoring, the court may order at least an additional four days in jail, or if available, a six-month period of 24/7 sobriety program monitoring and the court shall order an expanded alcohol assessment and treatment, if deemed appropriate. The offender shall pay the cost of the electronic monitoring. The court may also require that the electronic home monitoring device include an alcohol detection breathalyzer or other monitoring device; and
 - (ii) By a fine of not less than \$500 nor more than \$5,000; and
 - (iii) Their license privileges must be suspended or denied by the department for two years.
 - (b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test, there is no test result indicating the person's alcohol concentration:
 - (i) By imprisonment for not less than 45 days nor more than 364 days and 90 days of electronic home monitoring. The court may also require an additional six days in jail, or if available, a six-month period of 24/7 sobriety program monitoring and the court shall order an expanded alcohol assessment and treatment, if deemed appropriate. The offender's electronic home monitoring device may include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time in home monitoring. The offender pays the cost of the home monitoring; and
 - (ii) By a fine of not less than \$750 nor more than \$5,000.
- (3) A person who is convicted of a violation of driving under the influence and who has two or more prior offenses within seven years shall be punished as follows:
- (a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the person's refusal to take a test offered there is no test result indicating the person's alcohol concentration:

- (i) By imprisonment for not less than 90 days nor more than 364 days, if available, a six-month sobriety program monitoring, and 120 days of electronic home monitoring, paid for by the offender. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time in home monitoring. The offender pays the cost of the home monitoring; and
 - (ii) By a fine of not less than \$1,000 nor more than \$5,000; and
 - (iii) Their license privileges must be suspended or denied by the department for three years.
- (b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered there is no test result indicating the person's alcohol concentration:
- (i) By imprisonment for not less than 120 days nor more than 364 days, if available, a six-month 24/7 sobriety program monitoring, and 150 days of electronic home monitoring to be paid for by the offender. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time in home monitoring. The offender pays the cost of the home monitoring; and
 - (ii) By a fine of not less than \$1,500 nor more than \$5,000.
- (4) A person who is convicted of a violation and has four or more prior offenses within 10 years or who has previously been convicted of either vehicular homicide or vehicular assault while under the influence of intoxicating liquor or drugs shall be punished as a level V seriousness crime on the sentencing grid.

In all cases of a person convicted of DUI, the court shall require the person to apply for an ignition interlock driver's device and have it installed on the driver's vehicles.

If a person convicted of DUI had a passenger under the age of 16 in the vehicle, the court must order an additional six months of ignition interlock device. In cases where the offender had no prior DUIs within the past seven years, the court must order an additional 24 hours of imprisonment and a fine of not less than \$1,000 and no more than \$5,000. In cases where the person had one prior offense within seven years, the court must order an additional five days of imprisonment and a fine not less than \$2,000 and not more than \$5,000. If the person had two or three prior offenses within seven years, the court has to order an additional ten days of imprisonment and a fine of not less than \$3,000 and not more than \$10,000.

Additional probation conditions are required. If a person violates any of these conditions, they must spend 30 days in jail.

**RCW 46.61.503:
DRIVERS UNDER 21 CONSUMING ALCOHOL OR MARIJUANA**

A person under 21 years of age is guilty of driving or being in physical control of a motor vehicle after consuming alcohol if the person operates or is in physical control of a motor vehicle in Washington or has within two hours after operating or being in physical control of a motor vehicle a blood alcohol concentration of at least 0.02 but less than 0.08 OR a THC concentration above 0.00 but less than 0.50. This is a misdemeanor.

**RCW 46.61.5058:
ALCOHOL VIOLATORS – VEHICLE SEIZURE AND FORFEITURE**

On conviction of driving under the influence, where the offender has a prior alcohol or drug offense in the past seven years, the motor vehicle the person was driving or over which the person had actual control at the time of offense, if the person has a financial interest in the vehicle, is subject to seizure and forfeiture.

**RCW 46.61.5054:
ALCOHOL VIOLATORS – ADDITIONAL FEE DISTRIBUTION**

In addition to penalties set forth, \$250 fee 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 driving under the influence.

**RCW 46.20.308:
IMPLIED CONSENT – REVOCATION OF DRIVING PRIVILEGES
FOR REFUSAL TO SUBMIT TO BREATH TEST
SELECTED PROVISIONS**

- (1) Any person who operates a motor vehicle within this state is deemed to have given consent to a test or tests of his or her breath for the purpose of determining the alcoholic concentration or presence of any drug in his or her breath if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds 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 the law against driving under the influence.

- (2) The officer shall inform the person of his or her right under this section to refuse the breath test, and of his or her right to have additional tests administered by any qualified person of his or her choosing. The officer shall warn the driver, in substantially the following language, that:
- (a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and
 - (b) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and
 - (c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if:
 - (i) The driver is age twenty-one or over and the test indicates either that the alcohol concentration of the driver's breath is 0.08 or more; or
 - (ii) The driver is under age twenty-one and the test indicates either that the alcohol concentration of the driver's breath is 0.02 or more; or
 - (iii) The driver is under age twenty-one and the driver is in violation (should there be more to this sentence?)
 - (d) If the driver's license, permit, or privilege to drive is suspended, revoked, or denied the driver may be eligible to immediately apply for an ignition interlock driver's license.