
SUBSTITUTE HOUSE BILL 2130

State of Washington **60th Legislature** **2007 Regular Session**

By House Committee on Judiciary (originally sponsored by
Representatives Goodman, Lantz, Moeller and Rodne)

READ FIRST TIME 2/28/07.

1 AN ACT Relating to providing a means to determine "prior offenses"
2 to implement chapter 73, Laws of 2006, regarding driving under the
3 influence; amending RCW 46.61.5055; providing an effective date; and
4 declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 46.61.5055 and 2006 c 73 s 3 are each amended to read
7 as follows:

8 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
9 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
10 and who has no prior offense within seven years shall be punished as
11 follows:

12 (a) In the case of a person whose alcohol concentration was less
13 than 0.15, or for whom for reasons other than the person's refusal to
14 take a test offered pursuant to RCW 46.20.308 there is no test result
15 indicating the person's alcohol concentration:

16 (i) By imprisonment for not less than one day nor more than one
17 year. Twenty-four consecutive hours of the imprisonment may not be
18 suspended or deferred unless the court finds that the imposition of
19 this mandatory minimum sentence would impose a substantial risk to the

1 offender's physical or mental well-being. Whenever the mandatory
2 minimum sentence is suspended or deferred, the court shall state in
3 writing the reason for granting the suspension or deferral and the
4 facts upon which the suspension or deferral is based. In lieu of the
5 mandatory minimum term of imprisonment required under this subsection
6 (1)(a)(i), the court may order not less than fifteen days of electronic
7 home monitoring. The offender shall pay the cost of electronic home
8 monitoring. The county or municipality in which the penalty is being
9 imposed shall determine the cost. The court may also require the
10 offender's electronic home monitoring device to include an alcohol
11 detection breathalyzer, and the court may restrict the amount of
12 alcohol the offender may consume during the time the offender is on
13 electronic home monitoring; and

14 (ii) By a fine of not less than three hundred fifty dollars nor
15 more than five thousand dollars. Three hundred fifty dollars of the
16 fine may not be suspended or deferred unless the court finds the
17 offender to be indigent; or

18 (b) In the case of a person whose alcohol concentration was at
19 least 0.15, or for whom by reason of the person's refusal to take a
20 test offered pursuant to RCW 46.20.308 there is no test result
21 indicating the person's alcohol concentration:

22 (i) By imprisonment for not less than two days nor more than one
23 year. Two consecutive days of the imprisonment may not be suspended or
24 deferred unless the court finds that the imposition of this mandatory
25 minimum sentence would impose a substantial risk to the offender's
26 physical or mental well-being. Whenever the mandatory minimum sentence
27 is suspended or deferred, the court shall state in writing the reason
28 for granting the suspension or deferral and the facts upon which the
29 suspension or deferral is based. In lieu of the mandatory minimum term
30 of imprisonment required under this subsection (1)(b)(i), the court may
31 order not less than thirty days of electronic home monitoring. The
32 offender shall pay the cost of electronic home monitoring. The county
33 or municipality in which the penalty is being imposed shall determine
34 the cost. The court may also require the offender's electronic home
35 monitoring device to include an alcohol detection breathalyzer, and the
36 court may restrict the amount of alcohol the offender may consume
37 during the time the offender is on electronic home monitoring; and

1 (ii) By a fine of not less than five hundred dollars nor more than
2 five thousand dollars. Five hundred dollars of the fine may not be
3 suspended or deferred unless the court finds the offender to be
4 indigent.

5 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
6 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
7 and who has one prior offense within seven years shall be punished as
8 follows:

9 (a) In the case of a person whose alcohol concentration was less
10 than 0.15, or for whom for reasons other than the person's refusal to
11 take a test offered pursuant to RCW 46.20.308 there is no test result
12 indicating the person's alcohol concentration:

13 (i) By imprisonment for not less than thirty days nor more than one
14 year and sixty days of electronic home monitoring. The offender shall
15 pay for the cost of the electronic monitoring. The county or
16 municipality where the penalty is being imposed shall determine the
17 cost. The court may also require the offender's electronic home
18 monitoring device include an alcohol detection breathalyzer, and may
19 restrict the amount of alcohol the offender may consume during the time
20 the offender is on electronic home monitoring. Thirty days of
21 imprisonment and sixty days of electronic home monitoring may not be
22 suspended or deferred unless the court finds that the imposition of
23 this mandatory minimum sentence would impose a substantial risk to the
24 offender's physical or mental well-being. Whenever the mandatory
25 minimum sentence is suspended or deferred, the court shall state in
26 writing the reason for granting the suspension or deferral and the
27 facts upon which the suspension or deferral is based; and

28 (ii) By a fine of not less than five hundred dollars nor more than
29 five thousand dollars. Five hundred dollars of the fine may not be
30 suspended or deferred unless the court finds the offender to be
31 indigent; or

32 (b) In the case of a person whose alcohol concentration was at
33 least 0.15, or for whom by reason of the person's refusal to take a
34 test offered pursuant to RCW 46.20.308 there is no test result
35 indicating the person's alcohol concentration:

36 (i) By imprisonment for not less than forty-five days nor more than
37 one year and ninety days of electronic home monitoring. The offender
38 shall pay for the cost of the electronic monitoring. The county or

1 municipality where the penalty is being imposed shall determine the
2 cost. The court may also require the offender's electronic home
3 monitoring device include an alcohol detection breathalyzer, and may
4 restrict the amount of alcohol the offender may consume during the time
5 the offender is on electronic home monitoring. Forty-five days of
6 imprisonment and ninety days of electronic home monitoring may not be
7 suspended or deferred unless the court finds that the imposition of
8 this mandatory minimum sentence would impose a substantial risk to the
9 offender's physical or mental well-being. Whenever the mandatory
10 minimum sentence is suspended or deferred, the court shall state in
11 writing the reason for granting the suspension or deferral and the
12 facts upon which the suspension or deferral is based; and

13 (ii) By a fine of not less than seven hundred fifty dollars nor
14 more than five thousand dollars. Seven hundred fifty dollars of the
15 fine may not be suspended or deferred unless the court finds the
16 offender to be indigent.

17 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
18 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
19 and who has two or three prior offenses within seven years shall be
20 punished as follows:

21 (a) In the case of a person whose alcohol concentration was less
22 than 0.15, or for whom for reasons other than the person's refusal to
23 take a test offered pursuant to RCW 46.20.308 there is no test result
24 indicating the person's alcohol concentration:

25 (i) By imprisonment for not less than ninety days nor more than one
26 year and one hundred twenty days of electronic home monitoring. The
27 offender shall pay for the cost of the electronic monitoring. The
28 county or municipality where the penalty is being imposed shall
29 determine the cost. The court may also require the offender's
30 electronic home monitoring device include an alcohol detection
31 breathalyzer, and may restrict the amount of alcohol the offender may
32 consume during the time the offender is on electronic home monitoring.
33 Ninety days of imprisonment and one hundred twenty days of electronic
34 home monitoring may not be suspended or deferred unless the court finds
35 that the imposition of this mandatory minimum sentence would impose a
36 substantial risk to the offender's physical or mental well-being.
37 Whenever the mandatory minimum sentence is suspended or deferred, the

1 court shall state in writing the reason for granting the suspension or
2 deferral and the facts upon which the suspension or deferral is based;
3 and

4 (ii) By a fine of not less than one thousand dollars nor more than
5 five thousand dollars. One thousand dollars of the fine may not be
6 suspended or deferred unless the court finds the offender to be
7 indigent; or

8 (b) In the case of a person whose alcohol concentration was at
9 least 0.15, or for whom by reason of the person's refusal to take a
10 test offered pursuant to RCW 46.20.308 there is no test result
11 indicating the person's alcohol concentration:

12 (i) By imprisonment for not less than one hundred twenty days nor
13 more than one year and one hundred fifty days of electronic home
14 monitoring. The offender shall pay for the cost of the electronic
15 monitoring. The county or municipality where the penalty is being
16 imposed shall determine the cost. The court may also require the
17 offender's electronic home monitoring device include an alcohol
18 detection breathalyzer, and may restrict the amount of alcohol the
19 offender may consume during the time the offender is on electronic home
20 monitoring. One hundred twenty days of imprisonment and one hundred
21 fifty days of electronic home monitoring may not be suspended or
22 deferred unless the court finds that the imposition of this mandatory
23 minimum sentence would impose a substantial risk to the offender's
24 physical or mental well-being. Whenever the mandatory minimum sentence
25 is suspended or deferred, the court shall state in writing the reason
26 for granting the suspension or deferral and the facts upon which the
27 suspension or deferral is based; and

28 (ii) By a fine of not less than one thousand five hundred dollars
29 nor more than five thousand dollars. One thousand five hundred dollars
30 of the fine may not be suspended or deferred unless the court finds the
31 offender to be indigent.

32 (4) A person who is convicted of a violation of RCW 46.61.502 or
33 46.61.504 and who has four or more prior offenses within ten years, or
34 who has ever previously been convicted of a violation of RCW 46.61.520
35 committed while under the influence of intoxicating liquor or any drug
36 or RCW 46.61.522 committed while under the influence of intoxicating
37 liquor or any drug, shall be punished in accordance with chapter 9.94A
38 RCW.

1 (5) If a person who is convicted of a violation of RCW 46.61.502 or
2 46.61.504 committed the offense while a passenger under the age of
3 sixteen was in the vehicle, the court shall:

4 (a) In any case in which the installation and use of an interlock
5 or other device is not mandatory under RCW 46.20.720 or other law,
6 order the use of such a device for not less than sixty days following
7 the restoration of the person's license, permit, or nonresident driving
8 privileges; and

9 (b) In any case in which the installation and use of such a device
10 is otherwise mandatory, order the use of such a device for an
11 additional sixty days.

12 (6) In exercising its discretion in setting penalties within the
13 limits allowed by this section, the court shall particularly consider
14 the following:

15 (a) Whether the person's driving at the time of the offense was
16 responsible for injury or damage to another or another's property; and

17 (b) Whether at the time of the offense the person was driving or in
18 physical control of a vehicle with one or more passengers.

19 (7) An offender punishable under this section is subject to the
20 alcohol assessment and treatment provisions of RCW 46.61.5056.

21 (8) The license, permit, or nonresident privilege of a person
22 convicted of driving or being in physical control of a motor vehicle
23 while under the influence of intoxicating liquor or drugs must:

24 (a) If the person's alcohol concentration was less than 0.15, or if
25 for reasons other than the person's refusal to take a test offered
26 under RCW 46.20.308 there is no test result indicating the person's
27 alcohol concentration:

28 (i) Where there has been no prior offense within seven years, be
29 suspended or denied by the department for ninety days;

30 (ii) Where there has been one prior offense within seven years, be
31 revoked or denied by the department for two years; or

32 (iii) Where there have been two or more prior offenses within seven
33 years, be revoked or denied by the department for three years;

34 (b) If the person's alcohol concentration was at least 0.15:

35 (i) Where there has been no prior offense within seven years, be
36 revoked or denied by the department for one year;

37 (ii) Where there has been one prior offense within seven years, be
38 revoked or denied by the department for nine hundred days; or

1 (iii) Where there have been two or more prior offenses within seven
2 years, be revoked or denied by the department for four years; or

3 (c) If by reason of the person's refusal to take a test offered
4 under RCW 46.20.308, there is no test result indicating the person's
5 alcohol concentration:

6 (i) Where there have been no prior offenses within seven years, be
7 revoked or denied by the department for two years;

8 (ii) Where there has been one prior offense within seven years, be
9 revoked or denied by the department for three years; or

10 (iii) Where there have been two or more previous offenses within
11 seven years, be revoked or denied by the department for four years.

12 The department shall grant credit on a day-for-day basis for any
13 portion of a suspension, revocation, or denial already served under
14 this subsection for a suspension, revocation, or denial imposed under
15 RCW 46.20.3101 arising out of the same incident.

16 For purposes of this subsection (8), the department shall refer to
17 the driver's record maintained under RCW 46.52.120 when determining the
18 existence of prior offenses.

19 (9) After expiration of any period of suspension, revocation, or
20 denial of the offender's license, permit, or privilege to drive
21 required by this section, the department shall place the offender's
22 driving privilege in probationary status pursuant to RCW 46.20.355.

23 (10)(a) In addition to any nonsuspendable and nondeferrable jail
24 sentence required by this section, whenever the court imposes less than
25 one year in jail, the court shall also suspend but shall not defer a
26 period of confinement for a period not exceeding five years. The court
27 shall impose conditions of probation that include: (i) Not driving a
28 motor vehicle within this state without a valid license to drive and
29 proof of financial responsibility for the future; (ii) not driving a
30 motor vehicle within this state while having an alcohol concentration
31 of 0.08 or more within two hours after driving; and (iii) not refusing
32 to submit to a test of his or her breath or blood to determine alcohol
33 concentration upon request of a law enforcement officer who has
34 reasonable grounds to believe the person was driving or was in actual
35 physical control of a motor vehicle within this state while under the
36 influence of intoxicating liquor. The court may impose conditions of
37 probation that include nonrepetition, installation of an ignition
38 interlock device on the probationer's motor vehicle, alcohol or drug

1 treatment, supervised probation, or other conditions that may be
2 appropriate. The sentence may be imposed in whole or in part upon
3 violation of a condition of probation during the suspension period.

4 (b) For each violation of mandatory conditions of probation under
5 (a)(i), (ii), or (iii) of this subsection, the court shall order the
6 convicted person to be confined for thirty days, which shall not be
7 suspended or deferred.

8 (c) For each incident involving a violation of a mandatory
9 condition of probation imposed under this subsection, the license,
10 permit, or privilege to drive of the person shall be suspended by the
11 court for thirty days or, if such license, permit, or privilege to
12 drive already is suspended, revoked, or denied at the time the finding
13 of probation violation is made, the suspension, revocation, or denial
14 then in effect shall be extended by thirty days. The court shall
15 notify the department of any suspension, revocation, or denial or any
16 extension of a suspension, revocation, or denial imposed under this
17 subsection.

18 (11) A court may waive the electronic home monitoring requirements
19 of this chapter when:

20 (a) The offender does not have a dwelling, telephone service, or
21 any other necessity to operate an electronic home monitoring system;

22 (b) The offender does not reside in the state of Washington; or

23 (c) The court determines that there is reason to believe that the
24 offender would violate the conditions of the electronic home monitoring
25 penalty.

26 Whenever the mandatory minimum term of electronic home monitoring
27 is waived, the court shall state in writing the reason for granting the
28 waiver and the facts upon which the waiver is based, and shall impose
29 an alternative sentence with similar punitive consequences. The
30 alternative sentence may include, but is not limited to, additional
31 jail time, work crew, or work camp.

32 Whenever the combination of jail time and electronic home
33 monitoring or alternative sentence would exceed three hundred sixty-
34 five days, the offender shall serve the jail portion of the sentence
35 first, and the electronic home monitoring or alternative portion of the
36 sentence shall be reduced so that the combination does not exceed three
37 hundred sixty-five days.

1 (12) An offender serving a sentence under this section, whether or
2 not a mandatory minimum term has expired, may be granted an
3 extraordinary medical placement by the jail administrator subject to
4 the standards and limitations set forth in RCW 9.94A.728(4).

5 (13) For purposes of this section and RCW 46.61.502 and 46.61.504:

6 (a) A "prior offense" means any of the following:

7 (i) A conviction for a violation of RCW 46.61.502 or an equivalent
8 local ordinance;

9 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent
10 local ordinance;

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

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

15 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
16 9A.36.050 or an equivalent local ordinance, if the conviction is the
17 result of a charge that was originally filed as a violation of RCW
18 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
19 46.61.520 or 46.61.522;

20 (vi) An out-of-state conviction for a violation that would have
21 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this
22 subsection if committed in this state;

23 (vii) A deferred prosecution under chapter 10.05 RCW granted in a
24 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
25 equivalent local ordinance; or

26 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
27 prosecution for a violation of RCW 46.61.5249, or an equivalent local
28 ordinance, if the charge under which the deferred prosecution was
29 granted was originally filed as a violation of RCW 46.61.502 or
30 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
31 46.61.522; (~~and~~)

32 (b) "Within seven years" means that the arrest for a prior offense
33 occurred within seven years of the arrest for the current offense; and

34 (c) "Within ten years" means that the arrest for a prior offense
35 occurred within ten years of the arrest for the current offense.

36 NEW SECTION. **Sec. 2.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the
2 state government and its existing public institutions, and takes effect
3 July 1, 2007.

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