
SENATE BILL 5354

State of Washington

54th Legislature

1995 Regular Session

By Senators McAuliffe, Long, Sheldon, Smith, Quigley, Drew, Haugen, Snyder, Gaspard, Rasmussen, Bauer, Winsley and Oke

Read first time 01/20/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to increasing penalties for alcohol or drug-
2 impaired operators of motor vehicles with minor passengers; amending
3 RCW 46.61.5051, 46.61.5052, and 46.61.5053; and prescribing penalties.

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

5 **Sec. 1.** RCW 46.61.5051 and 1994 c 275 s 4 are each amended to read
6 as follows:

7 (1) A person whose driver's license is not in a probationary,
8 suspended, or revoked status, and who has not been convicted of a
9 violation of RCW 46.61.502 or 46.61.504 that was committed within five
10 years before the commission of the current violation, and who violates
11 RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an alcohol
12 concentration of at least 0.10 but less than 0.15, or a person who
13 violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c) and for
14 any reason other than the person's refusal to take a test offered
15 pursuant to RCW 46.20.308 the person's alcohol concentration is not
16 proved, is guilty of a gross misdemeanor and shall be punished as
17 follows:

18 (a) By imprisonment for not less than one day nor more than one
19 year. Twenty-four consecutive hours of the imprisonment may not be

1 suspended or deferred unless the court finds that the imposition of
2 this mandatory minimum sentence would impose a substantial risk to the
3 offender's physical or mental well-being. Whenever the mandatory
4 minimum sentence is suspended or deferred, the court shall state in
5 writing the reason for granting the suspension or deferral and the
6 facts upon which the suspension or deferral is based; and

7 (b) By a fine of not less than three hundred fifty dollars nor more
8 than five thousand dollars. Three hundred fifty dollars of the fine
9 may not be suspended or deferred unless the court finds the offender to
10 be indigent; and

11 (c) By suspension of the offender's license or permit to drive, or
12 suspension of any nonresident privilege to drive, for a period of
13 ninety days. The court may suspend all or part of the ninety-day
14 period of suspension upon a plea agreement executed by the defendant
15 and the prosecutor. The court shall notify the department of licensing
16 of the conviction and of any period of suspension and shall notify the
17 department of the person's completion of any period of suspension.
18 Upon receiving notification of the conviction, or if applicable, upon
19 receiving notification of the completion of any period of suspension,
20 the department shall issue the offender a probationary license in
21 accordance with RCW 46.20.355.

22 (2) A person whose driver's license is not in a probationary,
23 suspended, or revoked status, and who has not been convicted of a
24 violation of RCW 46.61.502 or 46.61.504 that was committed within five
25 years before the commission of the current violation, and who either:

26 (a) Violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an
27 alcohol concentration of 0.15 or more; or

28 (b) Violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c)
29 and, because of the person's refusal to take a test offered pursuant to
30 RCW 46.20.308, there is no test result indicating the person's alcohol
31 concentration, is guilty of a gross misdemeanor and shall be punished
32 as follows:

33 (i) By imprisonment for not less than two days nor more than one
34 year. Forty-eight consecutive hours of the imprisonment may not be
35 suspended or deferred unless the court finds that the imposition of
36 this mandatory minimum sentence would impose a substantial risk to the
37 offender's physical or mental well-being. Whenever the mandatory
38 minimum sentence is suspended or deferred, the court shall state in

1 writing the reason for granting the suspension or deferral and the
2 facts upon which the suspension or deferral is based; and

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

7 (iii) By suspension by the department of the offender's license or
8 permit to drive, or suspension of any nonresident privilege to drive,
9 for a period of one hundred twenty days. The court shall notify the
10 department of the conviction, and upon receiving notification of the
11 conviction the department shall suspend the offender's license and
12 shall issue the offender a probationary license in accordance with RCW
13 46.20.355.

14 (3) In exercising its discretion in setting penalties within the
15 limits allowed by this section, the court shall particularly consider
16 whether the person's driving at the time of the offense was responsible
17 for injury or damage to another or another's property.

18 (4) Upon conviction under this section, the offender's driver's
19 license is deemed to be in a probationary status for five years from
20 the date of the issuance of a probationary license under RCW 46.20.355.
21 Being on probationary status does not authorize a person to drive
22 during any period of license suspension imposed as a penalty for the
23 infraction.

24 (5) An offender punishable under this section is subject to the
25 alcohol assessment and treatment provisions of RCW 46.61.5056.

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

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

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

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

19 (7)(a) In addition to any other penalty prescribed in this section,
20 if a person has been convicted under RCW 46.61.502 or 46.61.504 while
21 a child under the age of fourteen years was a passenger in the vehicle
22 at the time of the offense, the court shall impose the following
23 penalties, which may not be suspended or deferred:

24 (i) Imprisonment for four days; and

25 (ii) A fee of three hundred dollars.

26 (b) The fee assessed under (a)(ii) of this subsection shall be
27 collected by the clerk of the court and distributed as follows:

28 (i) Two hundred dollars shall be forwarded to the governing unit
29 responsible for the jail where the offender has been sentenced, for use
30 in the operation, supervision, or maintenance of the jail; and

31 (ii) One hundred dollars shall be retained by the local governing
32 body and deposited as provided by law.

33 (8)(a) In addition to any other penalty prescribed in this section,
34 if a person has been convicted under RCW 46.61.502 or 46.61.504 while
35 a child under the age of fourteen years was a passenger in the vehicle
36 at the time of the offense, and the person is convicted for a second
37 time within five years of the date of the first conviction under RCW
38 46.61.502 or 46.61.504 while a child under the age of fourteen years
39 was a passenger in the vehicle at the time of the offense, the court

1 shall impose the following penalties, which may not be suspended or
2 deferred:

3 (i) Imprisonment for eight days; and

4 (ii) A fee of six hundred dollars.

5 (b) The fee assessed under (a)(ii) of this subsection shall be
6 collected by the clerk of the court and distributed as follows:

7 (i) Four hundred dollars shall be forwarded to the governing unit
8 responsible for the jail where the offender has been sentenced, for use
9 in the operation, supervision, or maintenance of the jail; and

10 (ii) Two hundred dollars shall be retained by the local governing
11 body and deposited as provided by law.

12 (9)(a) In addition to any other penalty prescribed in this section,
13 if a person has been convicted under RCW 46.61.502 or 46.61.504 while
14 a child under the age of fourteen years was a passenger in the vehicle
15 at the time of the offense, and the person is convicted for a third or
16 subsequent time within five years of the date of the first conviction
17 under RCW 46.61.502 or 46.61.504 while a child under the age of
18 fourteen years was a passenger in the vehicle at the time of the
19 offense, the court shall impose the following penalties, which may not
20 be suspended or deferred:

21 (i) Imprisonment for twenty days; and

22 (ii) A fee of two thousand dollars.

23 (b) The fee assessed under (a)(ii) of this subsection shall be
24 collected by the clerk of the court and distributed as follows:

25 (i) One thousand five hundred dollars shall be forwarded to the
26 governing unit responsible for the jail where the offender has been
27 sentenced, for use in the operation, supervision, or maintenance of the
28 jail; and

29 (ii) Five hundred dollars shall be retained by the local governing
30 body and deposited as provided by law.

31 **Sec. 2.** RCW 46.61.5052 and 1994 c 275 s 5 are each amended to read
32 as follows:

33 (1) A person whose driver's license is in a probationary status and
34 who violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an
35 alcohol concentration of at least 0.10 but less than 0.15 is guilty of
36 a gross misdemeanor and shall be punished as follows:

37 (a) By imprisonment for not less than seven days nor more than one
38 year. Seven consecutive days of the imprisonment may not be suspended

1 or deferred unless the court finds that the imposition of this
2 mandatory minimum sentence would pose a substantial risk to the
3 offender's physical or mental well-being. Whenever the mandatory
4 minimum sentence is suspended or deferred, the court shall state in
5 writing the reason for granting the suspension or deferral and the
6 facts upon which the suspension or deferral is based; and

7 (b) By a fine of not less than five hundred dollars nor more than
8 five thousand dollars. Five hundred dollars of the fine may not be
9 suspended or deferred unless the court finds the offender to be
10 indigent; and

11 (c) By suspension of the offender's license or permit to drive, or
12 suspension of any nonresident privilege to drive, for a period of one
13 year. The court shall notify the department of the conviction, and
14 upon receiving notification the department shall suspend the offender's
15 license and shall issue the offender a probationary license in
16 accordance with RCW 46.20.355.

17 (2) A person whose driver's license is in a probationary status and
18 who either:

19 (a) Violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an
20 alcohol concentration of 0.15 or more; or

21 (b) Violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c)
22 and, because of the person's refusal to take a test offered pursuant to
23 RCW 46.20.308, there is no test result indicating the person's alcohol
24 concentration, is guilty of a gross misdemeanor and shall be punished
25 as follows:

26 (i) By imprisonment for not less than ten days nor more than one
27 year. Ten consecutive days of the imprisonment may not be suspended or
28 deferred unless the court finds that the imposition of this mandatory
29 minimum sentence would pose a substantial risk to the offender's
30 physical or mental well-being. Whenever the mandatory minimum sentence
31 is suspended or deferred, the court shall state in writing the reason
32 for granting the suspension or deferral and the facts upon which the
33 suspension or deferral is based; and

34 (ii) By a fine of not less than seven hundred fifty dollars nor
35 more than five thousand dollars. Seven hundred fifty dollars of the
36 fine may not be suspended or deferred unless the court finds the
37 offender to be indigent; and

38 (iii) By revocation of the offender's license or permit to drive or
39 of any nonresident privilege to drive, for a period of four hundred

1 fifty days. The court shall notify the department of the conviction,
2 and upon receiving notification of the conviction the department shall
3 revoke the offender's license, and upon determining that the offender
4 is otherwise qualified in accordance with RCW 46.20.311, the department
5 shall issue the offender a probationary license in accordance with RCW
6 46.20.355.

7 (3) In exercising its discretion in setting penalties within the
8 limits allowed by this section, the court shall particularly consider
9 whether the person's driving at the time of the offense was responsible
10 for injury or damage to another or another's property.

11 (4) An offender punishable under this section is subject to the
12 alcohol assessment and treatment provisions of RCW 46.61.5056. An
13 offender punishable under subsection (1) or (2) of this section is
14 subject to the vehicle seizure and forfeiture provisions of RCW
15 (~~46.61.511~~) 46.61.5058. No offender punishable under this section is
16 eligible for an occupational license under RCW 46.20.391.

17 (5)(a) In addition to any nonsuspendable and nondeferrable jail
18 sentence required by this section, whenever the court imposes less than
19 one year in jail, the court shall also suspend but shall not defer a
20 period of confinement for a period not exceeding two years. The court
21 shall impose conditions of probation that include: (i) Not driving a
22 motor vehicle within this state without a valid license to drive and
23 proof of financial responsibility for the future; (ii) not driving a
24 motor vehicle within this state while having an alcohol concentration
25 of 0.08 or more within two hours after driving; and (iii) not refusing
26 to submit to a test of his or her breath or blood to determine alcohol
27 concentration upon request of a law enforcement officer who has
28 reasonable grounds to believe the person was driving or was in actual
29 physical control of a motor vehicle within this state while under the
30 influence of intoxicating liquor. The court may impose conditions of
31 probation that include nonrepetition, alcohol or drug treatment,
32 supervised probation, or other conditions that may be appropriate. The
33 sentence may be imposed in whole or in part upon violation of a
34 condition of probation during the suspension period.

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

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

11 (6)(a) In addition to any other penalty prescribed in this section,
12 if a person has been convicted under RCW 46.61.502 or 46.61.504 while
13 a child under the age of fourteen years was a passenger in the vehicle
14 at the time of the offense, the court shall impose the following
15 penalties, which may not be suspended or deferred:

16 (i) Imprisonment for four days; and

17 (ii) A fee of three hundred dollars.

18 (b) The fee assessed under (a)(ii) of this subsection shall be
19 collected by the clerk of the court and distributed as follows:

20 (i) Two hundred dollars shall be forwarded to the governing unit
21 responsible for the jail where the offender has been sentenced, for use
22 in the operation, supervision or maintenance of the jail; and

23 (ii) One hundred dollars shall be retained by the local governing
24 body and deposited as provided by law.

25 (7)(a) In addition to any other penalty prescribed in this section,
26 if a person has been convicted under RCW 46.61.502 or 46.61.504 while
27 a child under the age of fourteen years was a passenger in the vehicle
28 at the time of the offense, and the person is convicted for a second
29 time within five years of the date of the first conviction under RCW
30 46.61.502 or 46.61.504 while a child under the age of fourteen years
31 was a passenger in the vehicle at the time of the offense, the court
32 shall impose the following penalties, which may not be suspended or
33 deferred:

34 (i) Imprisonment for eight days; and

35 (ii) A fee of six hundred dollars.

36 (b) The fee assessed under (a)(ii) of this subsection shall be
37 collected by the clerk of the court and distributed as follows:

1 (i) Four hundred dollars shall be forwarded to the governing unit
2 responsible for the jail where the offender has been sentenced, for use
3 in the operation, supervision, or maintenance of the jail; and

4 (ii) Two hundred dollars shall be retained by the local governing
5 body and deposited as provided by law.

6 (8)(a) In addition to any other penalty prescribed in this section,
7 if a person has been convicted under RCW 46.61.502 or 46.61.504 while
8 a child under the age of fourteen years was a passenger in the vehicle
9 at the time of the offense, and the person is convicted for a third or
10 subsequent time within five years of the date of the first conviction
11 under RCW 46.61.502 or 46.61.504 while a child under the age of
12 fourteen years was a passenger in the vehicle at the time of the
13 offense, the court shall impose the following penalties, which may not
14 be suspended or deferred:

15 (i) Imprisonment for twenty days; and

16 (ii) A fee of two thousand dollars.

17 (b) The fee assessed under (a)(ii) of this subsection shall be
18 collected by the clerk of the court and distributed as follows:

19 (i) One thousand five hundred dollars shall be forwarded to the
20 governing unit responsible for the jail where the offender has been
21 sentenced, for use in the operation, supervision, or maintenance of the
22 jail; and

23 (ii) Five hundred dollars shall be retained by the local governing
24 body and deposited as provided by law.

25 **Sec. 3.** RCW 46.61.5053 and 1994 c 275 s 6 are each amended to read
26 as follows:

27 (1) A person who violates RCW 46.61.502 or 46.61.504 and who either
28 has a driver's license in a suspended or revoked status or who has been
29 convicted under RCW 46.61.5052 or 46.61.502 or 46.61.504 of an offense
30 that was committed within five years before the commission of the
31 current violation, is guilty of a gross misdemeanor and shall be
32 punished as follows:

33 (a) By imprisonment for not less than ninety days nor more than one
34 year. Ninety consecutive days of the imprisonment may not be suspended
35 or deferred unless the court finds that the imposition of this
36 mandatory minimum sentence would pose a substantial risk to the
37 offender's physical or mental well-being. Whenever the mandatory
38 minimum sentence is suspended or deferred, the court shall state in

1 writing the reason for granting the suspension or deferral and the
2 facts upon which the suspension or deferral is based; and

3 (b) By a fine of not less than seven hundred fifty dollars nor more
4 than five thousand dollars. Seven hundred fifty dollars of the fine
5 may not be suspended or deferred unless the court finds the offender to
6 be indigent; and

7 (c) By revocation by the department of licensing of the offender's
8 license or permit to drive or of any nonresident privilege to drive,
9 for a period of two years. The court shall notify the department of
10 the conviction, and upon receiving notification of the conviction the
11 department shall revoke the offender's license. Following the
12 revocation and upon determining that the offender is otherwise
13 qualified in accordance with RCW 46.20.311, the department shall issue
14 the offender a probationary license in accordance with RCW 46.20.355.

15 (2) In exercising its discretion in setting penalties within the
16 limits allowed by this section, the court shall particularly consider
17 whether the person's driving at the time of the offense was responsible
18 for injury or damage to another or another's property.

19 (3) An offender punishable under this section is subject to the
20 alcohol assessment and treatment provisions of RCW 46.61.5056. An
21 offender punishable under this section is subject to the vehicle
22 seizure and forfeiture provisions of RCW (~~46.61.511~~) 46.61.5058. No
23 offender punishable under this section is eligible for an occupational
24 license under RCW 46.20.391.

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

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

4 (b) For each violation of mandatory conditions of probation under
5 (a) (i) and (ii) or (a) (i) and (iii) of this subsection, the court
6 shall order the convicted person to be confined for thirty days, which
7 shall not be 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 (5)(a) In addition to any other penalty prescribed in this section,
19 if a person has been convicted under RCW 46.61.502 or 46.61.504 while
20 a child under the age of fourteen years was a passenger in the vehicle
21 at the time of the offense, the court shall impose the following
22 penalties, which may not be suspended or deferred:

23 (i) Imprisonment for four days; and

24 (ii) A fee of three hundred dollars.

25 (b) The fee assessed under (a)(ii) of this subsection shall be
26 collected by the clerk of the court and distributed as follows:

27 (i) Two hundred dollars shall be forwarded to the governing unit
28 responsible for the jail where the offender has been sentenced, for use
29 in the operation, supervision, or maintenance of the jail; and

30 (ii) One hundred dollars shall be retained by the local governing
31 body and deposited as provided by law.

32 (6)(a) In addition to any other penalty prescribed in this section,
33 if a person has been convicted under RCW 46.61.502 or 46.61.504 while
34 a child under the age of fourteen years was a passenger in the vehicle
35 at the time of the offense, and the person is convicted for a second
36 time within five years of the date of the first conviction under RCW
37 46.61.502 or 46.61.504 while a child under the age of fourteen years
38 was a passenger in the vehicle at the time of the offense, the court

1 shall impose the following penalties, which may not be suspended or
2 deferred:

3 (i) Imprisonment for eight days; and

4 (ii) A fee of six hundred dollars.

5 (b) The fee assessed under (a)(ii) of this subsection shall be
6 collected by the clerk of the court and distributed as follows:

7 (i) Four hundred dollars shall be forwarded to the governing unit
8 responsible for the jail where the offender has been sentenced, for use
9 in the operation, supervision, or maintenance of the jail; and

10 (ii) Two hundred dollars shall be retained by the local governing
11 body and deposited as provided by law.

12 (7)(a) In addition to any other penalty prescribed in this section,
13 if a person has been convicted under RCW 46.61.502 or 46.61.504 while
14 a child under the age of fourteen years was a passenger in the vehicle
15 at the time of the offense, and the person is convicted for a third or
16 subsequent time within five years of the date of the first conviction
17 under RCW 46.61.502 or 46.61.504 while a child under the age of
18 fourteen years was a passenger in the vehicle at the time of the
19 offense, the court shall impose the following penalties, which may not
20 be suspended or deferred:

21 (i) Imprisonment for twenty days; and

22 (ii) A fee of two thousand dollars.

23 (b) The fee assessed under (a)(ii) of this subsection shall be
24 collected by the clerk of the court and distributed as follows:

25 (i) One thousand five hundred dollars shall be forwarded to the
26 governing unit responsible for the jail where the offender has been
27 sentenced, for use in the operation, supervision, or maintenance of the
28 jail; and

29 (ii) Five hundred dollars shall be retained by the local governing
30 body and deposited as provided by law.

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