

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6408

Chapter 215, Laws of 1998

55th Legislature
1998 Regular Session

ALCOHOL VIOLATORS--INCREASING PENALTIES IF THERE WERE PASSENGERS

EFFECTIVE DATE: 6/11/98

Passed by the Senate March 12, 1998
YEAS 46 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 11, 1998
YEAS 96 NAYS 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved March 30, 1998

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6408** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

Secretary

FILED

March 30, 1998 - 2:52 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6408

AS RECOMMENDED BY CONFERENCE COMMITTEE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators McCaslin, Kline, Long, Fairley, Stevens, Hargrove, Zarelli, Johnson, Thibaudeau, Haugen, Schow, Roach and Oke)

Read first time 02/06/98.

1 AN ACT Relating to penalties for alcohol violators; reenacting and
2 amending RCW 46.61.5055; and prescribing penalties.

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

4 **Sec. 1.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are
5 each reenacted and amended to read as follows:

6 (1) A person who is convicted of a violation of RCW 46.61.502 or
7 46.61.504 and who has no prior offense within five years shall be
8 punished as 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 one day nor more than one
14 year. Twenty-four consecutive hours of the imprisonment may not be
15 suspended or deferred unless the court finds that the imposition of
16 this mandatory minimum sentence would impose a substantial risk to the
17 offender's physical or mental well-being. Whenever the mandatory
18 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 three hundred fifty dollars nor
4 more than five thousand dollars. Three hundred fifty dollars of the
5 fine may not be suspended or deferred unless the court finds the
6 offender to be indigent; and

7 (iii) By suspension of the offender's license or permit to drive,
8 or suspension of any nonresident privilege to drive, for a period of
9 ninety days. The period of license, permit, or privilege suspension
10 may not be suspended. The court shall notify the department of
11 licensing of the conviction, and upon receiving notification of the
12 conviction the department shall suspend the offender's license, permit,
13 or privilege; or

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

18 (i) By imprisonment for not less than two days nor more than one
19 year. Two consecutive days of the imprisonment may not be suspended or
20 deferred unless the court finds that the imposition of this mandatory
21 minimum sentence would impose a substantial risk to the offender's
22 physical or mental well-being. Whenever the mandatory minimum sentence
23 is suspended or deferred, the court shall state in writing the reason
24 for granting the suspension or deferral and the facts upon which the
25 suspension or deferral is based; and

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

30 (iii) By revocation of the offender's license or permit to drive,
31 or suspension of any nonresident privilege to drive, for a period of
32 one year. The period of license, permit, or privilege suspension may
33 not be suspended. The court shall notify the department of licensing
34 of the conviction, and upon receiving notification of the conviction
35 the department shall suspend the offender's license, permit, or
36 privilege.

37 (2) A person who is convicted of a violation of RCW 46.61.502 or
38 46.61.504 and who has one prior offense within five years shall be
39 punished as follows:

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

5 (i) By imprisonment for not less than thirty days nor more than one
6 year. Thirty days of the imprisonment may not be suspended or deferred
7 unless the court finds that the imposition of this mandatory minimum
8 sentence would impose a substantial risk to the offender's physical or
9 mental well-being. Whenever the mandatory minimum sentence is
10 suspended or deferred, the court shall state in writing the reason for
11 granting the suspension or deferral and the facts upon which the
12 suspension or deferral is based; and

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

17 (iii) By revocation of the offender's license or permit to drive,
18 or suspension of any nonresident privilege to drive, for a period of
19 two years. The period of license, permit, or privilege revocation may
20 not be suspended. The court shall notify the department of licensing
21 of the conviction, and upon receiving notification of the conviction
22 the department shall revoke the offender's license, permit, or
23 privilege; or

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

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

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

1 (iii) By revocation of the offender's license or permit to drive,
2 or suspension of any nonresident privilege to drive, for a period of
3 nine hundred days. The period of license, permit, or privilege
4 revocation may not be suspended. The court shall notify the department
5 of licensing of the conviction, and upon receiving notification of the
6 conviction the department shall revoke the offender's license, permit,
7 or privilege.

8 (3) A person who is convicted of a violation of RCW 46.61.502 or
9 46.61.504 and who has two or more prior offenses within five years
10 shall be punished as follows:

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

15 (i) By imprisonment for not less than ninety days nor more than one
16 year. Ninety days of the imprisonment may not be suspended or deferred
17 unless the court finds that the imposition of this mandatory minimum
18 sentence would impose a substantial risk to the offender's physical or
19 mental well-being. Whenever the mandatory minimum sentence is
20 suspended or deferred, the court shall state in writing the reason for
21 granting the suspension or deferral and the facts upon which the
22 suspension or deferral is based; and

23 (ii) By a fine of not less than one thousand dollars nor more than
24 five thousand dollars. One thousand dollars of the fine may not be
25 suspended or deferred unless the court finds the offender to be
26 indigent; and

27 (iii) By revocation of the offender's license or permit to drive,
28 or suspension of any nonresident privilege to drive, for a period of
29 three years. The period of license, permit, or privilege revocation
30 may not be suspended. The court shall notify the department of
31 licensing of the conviction, and upon receiving notification of the
32 conviction the department shall revoke the offender's license, permit,
33 or privilege; or

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

38 (i) By imprisonment for not less than one hundred twenty days nor
39 more than one year. One hundred twenty days of the imprisonment may

1 not be suspended or deferred unless the court finds that the imposition
2 of this mandatory minimum sentence would impose a substantial risk to
3 the 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 (ii) By a fine of not less than one thousand five hundred dollars
8 nor more than five thousand dollars. One thousand five hundred dollars
9 of the fine may not be suspended or deferred unless the court finds the
10 offender to be indigent; and

11 (iii) By revocation of the offender's license or permit to drive,
12 or suspension of any nonresident privilege to drive, for a period of
13 four years. The period of license, permit, or privilege revocation may
14 not be suspended. The court shall notify the department of licensing
15 of the conviction, and upon receiving notification of the conviction
16 the department shall revoke the offender's license, permit, or
17 privilege.

18 (4) In exercising its discretion in setting penalties within the
19 limits allowed by this section, the court shall particularly consider
20 the following:

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

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

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

27 (6) After expiration of any period of suspension or revocation of
28 the offender's license, permit, or privilege to drive required by this
29 section, the department shall place the offender's driving privilege in
30 probationary status pursuant to RCW 46.20.355.

31 (7)(a) In addition to any nonsuspendable and nondeferrable jail
32 sentence required by this section, whenever the court imposes less than
33 one year in jail, the court shall also suspend but shall not defer a
34 period of confinement for a period not exceeding two years. The court
35 shall impose conditions of probation that include: (i) Not driving a
36 motor vehicle within this state without a valid license to drive and
37 proof of financial responsibility for the future; (ii) not driving a
38 motor vehicle within this state while having an alcohol concentration
39 of 0.08 or more within two hours after driving; and (iii) not refusing

1 to submit to a test of his or her breath or blood to determine alcohol
2 concentration upon request of a law enforcement officer who has
3 reasonable grounds to believe the person was driving or was in actual
4 physical control of a motor vehicle within this state while under the
5 influence of intoxicating liquor. The court may impose conditions of
6 probation that include nonrepetition, installation of an ignition
7 interlock or other biological or technical device on the probationer's
8 motor vehicle, alcohol or drug treatment, supervised probation, or
9 other conditions that may be appropriate. The sentence may be imposed
10 in whole or in part upon violation of a condition of probation during
11 the suspension period.

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

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

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

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

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

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

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

35 (v) A conviction for a violation of RCW 46.61.5249 or an equivalent
36 local ordinance, if the conviction is the result of a charge that was
37 originally filed as a violation of RCW 46.61.502 or 46.61.504, or an
38 equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

7 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
8 prosecution for a violation of RCW 46.61.5249, or an equivalent local
9 ordinance, if the charge under which the deferred prosecution was
10 granted was originally filed as a violation of RCW 46.61.502 or
11 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
12 46.61.522.

13 (b) "Within five years" means that the arrest for a prior offense
14 occurred within five years of the arrest for the current offense.

Passed the Senate March 12, 1998.

Passed the House March 11, 1998.

Approved by the Governor March 30, 1998.

Filed in Office of Secretary of State March 30, 1998.