

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1124**

Chapter 5, Laws of 1999

56th Legislature  
1999 Regular Session

ELECTRONIC MONITORING OF ALCOHOL VIOLATORS

EFFECTIVE DATE: 3/16/99

Passed by the House February 22, 1999  
Yeas 95 Nays 0

FRANK CHOPP  
**Speaker of the House of  
Representatives**

CLYDE BALLARD  
**Speaker of the House of  
Representatives**

Passed by the Senate March 4, 1999  
Yeas 47 Nays 0

AL BAUER  
**President of the Senate**

Approved March 16, 1999

GARY LOCKE  
**Governor of the State of Washington**

CERTIFICATE

We, Dean R. Foster and Timothy A. Martin, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1124-S** as passed by the House of Representatives and the Senate on the dates hereon set forth.

DEAN R. FOSTER  
**Chief Clerk**

TIMOTHY A. MARTIN  
**Chief Clerk**

FILED

March 16, 1999 - 10:30 a.m.

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1124**

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Passed Legislature - 1999 Regular Session

**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Constantine, Sheahan, Ballasiotes, Lantz, McDonald, Lambert, Stensen, Hurst and Esser)

Read first time 02/12/1999.

1       AN ACT Relating to correcting electronic monitoring provisions in  
2 the penalty schedule for alcohol violators; reenacting and amending RCW  
3 46.61.5055; and declaring an emergency.

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

5       **Sec. 1.** RCW 46.61.5055 and 1998 c 215 s 1, 1998 c 214 s 1, 1998 c  
6 211 s 1, 1998 c 210 s 4, 1998 c 207 s 1, and 1998 c 206 s 1 are each  
7 reenacted and amended to read as follows:

8       (1) A person who is convicted of a violation of RCW 46.61.502 or  
9 46.61.504 and who has no prior offense within seven years shall be  
10 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 one day nor more than one  
16 year. Twenty-four consecutive hours of the imprisonment may not be  
17 suspended or deferred unless the court finds that the imposition of  
18 this mandatory minimum sentence would impose a substantial risk to the  
19 offender's physical or mental well-being. Whenever the mandatory

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

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

17 (iii) By suspension of the offender's license or permit to drive,  
18 or suspension of any nonresident privilege to drive, for a period of  
19 ninety days. The period of license, permit, or privilege suspension  
20 may not be suspended. The court shall notify the department of  
21 licensing of the conviction, and upon receiving notification of the  
22 conviction the department shall suspend the offender's license, permit,  
23 or 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 two days nor more than one  
29 year. Two consecutive 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. In lieu of the mandatory minimum term  
36 of imprisonment required under this subsection (1)(b)(i), the court may  
37 order not less than thirty days of electronic home monitoring. The  
38 offender shall pay the cost of electronic home monitoring. The county  
39 or municipality in which the penalty is being imposed shall determine

1 the cost. The court may also require the offender's electronic home  
2 monitoring device to include an alcohol detection breathalyzer, and the  
3 court may restrict the amount of alcohol the offender may consume  
4 during the time the offender is on electronic home monitoring; and

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

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

16 (iv) By a court-ordered restriction under RCW 46.20.720.

17 (2) A person who is convicted of a violation of RCW 46.61.502 or  
18 46.61.504 and who has one prior offense within seven years shall be  
19 punished as follows:

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

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

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

12 (iv) By a court-ordered restriction under RCW 46.20.720; or

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

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

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

36 (iii) By revocation of the offender's license or permit to drive,  
37 or suspension of any nonresident privilege to drive, for a period of  
38 nine hundred days. The period of license, permit, or privilege  
39 revocation may not be suspended. The court shall notify the department

1 of licensing of the conviction, and upon receiving notification of the  
2 conviction the department shall revoke the offender's license, permit,  
3 or privilege; and

4 (iv) By a court-ordered restriction under RCW 46.20.720.

5 (3) A person who is convicted of a violation of RCW 46.61.502 or  
6 46.61.504 and who has two or more prior offenses within seven years  
7 shall be punished as follows:

8 (a) In the case of a person whose alcohol concentration was less  
9 than 0.15, or for whom for reasons other than the person's refusal to  
10 take a 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 ninety days nor more than one  
13 year and one hundred twenty days of electronic home monitoring. The  
14 offender shall pay for the cost of the electronic monitoring. The  
15 county or municipality where the penalty is being imposed shall  
16 determine the cost. The court may also require the offender's  
17 electronic home monitoring device include an alcohol detection  
18 breathalyzer, and may restrict the amount of alcohol the offender may  
19 consume during the time the offender is on electronic home monitoring.  
20 Ninety days of imprisonment and one hundred twenty days of electronic  
21 home monitoring may not be suspended or deferred unless the court finds  
22 that the imposition of this mandatory minimum sentence would impose a  
23 substantial risk to the offender's physical or mental well-being.  
24 Whenever the mandatory minimum sentence is suspended or deferred, the  
25 court shall state in writing the reason for granting the suspension or  
26 deferral and the facts upon which the suspension or deferral is based;  
27 and

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

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

39 (iv) By a court-ordered restriction under RCW 46.20.720; or

1 (b) In the case of a person whose alcohol concentration was at  
2 least 0.15, or for whom by reason of the person's refusal to take a  
3 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 one hundred twenty days nor  
6 more than one year and one hundred fifty days of electronic home  
7 monitoring. The offender shall pay for the cost of the electronic  
8 monitoring. The county or municipality where the penalty is being  
9 imposed shall determine the cost. The court may also require the  
10 offender's electronic home monitoring device include an alcohol  
11 detection breathalyzer, and may restrict the amount of alcohol the  
12 offender may consume during the time the offender is on electronic home  
13 monitoring. One hundred twenty days of imprisonment and one hundred  
14 fifty days of electronic home monitoring may not be suspended or  
15 deferred unless the court finds that the imposition of this mandatory  
16 minimum sentence would impose a substantial risk to the offender's  
17 physical or mental well-being. Whenever the mandatory minimum sentence  
18 is suspended or deferred, the court shall state in writing the reason  
19 for granting the suspension or deferral and the facts upon which the  
20 suspension or deferral is based; and

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

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

32 (iv) By a court-ordered restriction under RCW 46.20.720.

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

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

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

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

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

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

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

31 (c) For each incident involving a violation of a mandatory  
32 condition of probation imposed under this subsection, the license,  
33 permit, or privilege to drive of the person shall be suspended by the  
34 court for thirty days or, if such license, permit, or privilege to  
35 drive already is suspended, revoked, or denied at the time the finding  
36 of probation violation is made, the suspension, revocation, or denial  
37 then in effect shall be extended by thirty days. The court shall  
38 notify the department of any suspension, revocation, or denial or any



1 extension of a suspension, revocation, or denial imposed under this  
2 subsection.

3 (8) A court may waive the electronic home monitoring requirements  
4 of this chapter when:

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

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

8 (c) The court determines that there is reason to believe that the  
9 offender would violate the conditions of the electronic home monitoring  
10 penalty.

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

17 Whenever the combination of jail time and electronic home  
18 monitoring or alternative sentence would exceed three hundred sixty-  
19 five days, the offender shall serve the jail portion of the sentence  
20 first, and the electronic home monitoring or alternative portion of the  
21 sentence shall be reduced so that the combination does not exceed three  
22 hundred sixty-five days.

23 (9) For purposes of this section:

24 (a) (~~("Electronic home monitoring" shall not be considered~~  
25 ~~confinement as defined in RCW 9.94A.030;~~

26 ~~(b))~~) 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, 46.61.500, or  
36 9A.36.050 or an equivalent local ordinance, if the conviction is the  
37 result of a charge that was originally filed as a violation of RCW  
38 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
39 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 ~~((b))~~ (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; and

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

16 NEW SECTION. **Sec. 2.** If any provision of this act or its  
17 application to any person or circumstance is held invalid, the  
18 remainder of the act or the application of the provision to other  
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 3.** This act is necessary for the immediate  
21 preservation of the public peace, health, or safety, or support of the  
22 state government and its existing public institutions, and takes effect  
23 immediately.

Passed the House February 22, 1999.

Passed the Senate March 4, 1999.

Approved by the Governor March 16, 1999.

Filed in Office of Secretary of State March 16, 1999.