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**SUBSTITUTE SENATE BILL 5558**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Rossi, Kline, Finkbeiner, Roach, Morton, Oke, Johnson, Long, Swecker, Stevens and Sheahan)

READ FIRST TIME 03/05/01.

1 AN ACT Relating to penalties for alcohol violators; amending RCW  
2 46.20.720; reenacting and amending RCW 46.61.5055; and prescribing  
3 penalties.

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

5 **Sec. 1.** RCW 46.20.720 and 1999 c 331 s 3 are each amended to read  
6 as follows:

7 (1) The court may order that after a period of suspension,  
8 revocation, or denial of driving privileges, and for up to as long as  
9 the court has jurisdiction, any person convicted of any offense  
10 involving the use, consumption, or possession of alcohol while  
11 operating a motor vehicle may drive only a motor vehicle equipped with  
12 a functioning ignition interlock or other biological or technical  
13 device.

14 (2) If a person is convicted of a violation of RCW 46.61.502 or  
15 46.61.504 or an equivalent local ordinance and it is: (a) The person's  
16 first conviction or a deferred prosecution under chapter 10.05 RCW and  
17 his or her alcohol concentration was at least 0.15, or by reason of the  
18 person's refusal to take a test offered pursuant to RCW 46.20.308 there  
19 is no test result indicating the person's alcohol concentration; or (b)

1 the person's second or subsequent conviction; or (c) the person's first  
2 conviction and the person has a previous deferred prosecution under  
3 chapter 10.05 RCW or it is a deferred prosecution under chapter 10.05  
4 RCW and the person has a previous conviction, the court shall order  
5 that after any applicable period of suspension, revocation, or denial  
6 of driving privileges, the person may drive only a motor vehicle  
7 equipped with a functioning ignition interlock or other biological or  
8 technical device. The requirement to drive only a motor vehicle  
9 equipped with a functioning ignition interlock or other biological or  
10 technical device may not be suspended. The court may waive the  
11 requirement for the use of such a device if the court makes a specific  
12 finding in writing that such devices are not reasonably available in  
13 the local area. Nothing in this section may be interpreted as  
14 entitling a person to more than one deferred prosecution.

15 (3) The court shall establish a specific calibration setting at  
16 which the ignition interlock or other biological or technical device  
17 will prevent the motor vehicle from being started and the period of  
18 time that the person shall be subject to the restriction. In the case  
19 of a person under subsection (2) of this section, the period of time of  
20 the restriction will be as follows:

21 (a) For a person (i) who is subject to RCW 46.61.5055 (1)(b), (2),  
22 or (3), or who is subject to a deferred prosecution program under  
23 chapter 10.05 RCW, and (ii) who has not previously been restricted  
24 under this section, a period of not less than one year;

25 (b) For a person who has previously been restricted under (a) of  
26 this subsection, a period of not less than five years;

27 (c) For a person who has previously been restricted under (b) of  
28 this subsection, a period of not less than ten years.

29 For purposes of this section, "convicted" means being found guilty  
30 of an offense or being placed on a deferred prosecution program under  
31 chapter 10.05 RCW.

32 **Sec. 2.** RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and  
33 1999 c 5 s 1 are each reenacted and amended to read as follows:

34 (1) A person who is convicted of a violation of RCW 46.61.502 or  
35 46.61.504 and who has no prior offense within seven years shall be  
36 punished as follows:

37 (a) (~~In the case of a person whose~~) If, within two hours after  
38 operating or being in physical control of the motor vehicle, the person

1 had an alcohol concentration ((was)) of less than 0.15, as shown by  
2 analysis of the person's breath or blood made under RCW 46.61.506, or  
3 for whom for reasons other than the person's refusal to take a test  
4 offered pursuant to RCW 46.20.308 there is no test result indicating  
5 the person's alcohol concentration:

6 (i) By imprisonment for not less than one day nor more than one  
7 year. Twenty-four consecutive hours of the imprisonment may not be  
8 suspended or deferred unless the court finds that the imposition of  
9 this mandatory minimum sentence would impose a substantial risk to the  
10 offender's physical or mental well-being. Whenever the mandatory  
11 minimum sentence is suspended or deferred, the court shall state in  
12 writing the reason for granting the suspension or deferral and the  
13 facts upon which the suspension or deferral is based. In lieu of the  
14 mandatory minimum term of imprisonment required under this subsection  
15 (1)(a)(i), the court may order not less than fifteen days of electronic  
16 home monitoring. The offender shall pay the cost of electronic home  
17 monitoring. The county or municipality in which the penalty is being  
18 imposed shall determine the cost. The court may also require the  
19 offender's electronic home monitoring device to include an alcohol  
20 detection breathalyzer, and the court may restrict the amount of  
21 alcohol the offender may consume during the time the offender is on  
22 electronic home monitoring; and

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

27 (b) (~~In the case of a person whose~~) If, within two hours after  
28 operating or being in physical control of the motor vehicle, the person  
29 had an alcohol concentration ((was)) of at least 0.15, as shown by  
30 analysis of the person's breath or blood made under RCW 46.61.506, or  
31 for whom by reason of the person's refusal to take a test offered  
32 pursuant to RCW 46.20.308 there is no test result indicating the  
33 person's alcohol concentration:

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

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

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

15 (iii) By a court-ordered restriction under RCW 46.20.720.

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

19 (a) (~~In the case of a person whose~~) If, within two hours after  
20 operating or being in physical control of the motor vehicle, the person  
21 had an alcohol concentration ((was)) of less than 0.15, as shown by  
22 analysis of the person's breath or blood made under RCW 46.61.506, or  
23 for whom for reasons other than the person's refusal to take a test  
24 offered pursuant to RCW 46.20.308 there is no test result indicating  
25 the person's alcohol concentration:

26 (i) By imprisonment for not less than thirty days nor more than one  
27 year and sixty days of electronic home monitoring. The offender shall  
28 pay for the cost of the electronic monitoring. The county or  
29 municipality where the penalty is being imposed shall determine the  
30 cost. The court may also require the offender's electronic home  
31 monitoring device include an alcohol detection breathalyzer, and may  
32 restrict the amount of alcohol the offender may consume during the time  
33 the offender is on electronic home monitoring. Thirty days of  
34 imprisonment and sixty days of electronic home monitoring 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 a court-ordered restriction under RCW 46.20.720; or

8 (b) (~~(In the case of a person whose)~~) If, within two hours after  
9 operating or being in physical control of the motor vehicle, the person  
10 had an alcohol concentration ((was)) of at least 0.15, as shown by  
11 analysis of the person's breath or blood made under RCW 46.61.506, or  
12 for whom by reason of the person's refusal to take a test offered  
13 pursuant to RCW 46.20.308 there is no test result indicating the  
14 person's alcohol concentration:

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

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

34 (iii) By a court-ordered restriction under RCW 46.20.720.

35 (3) A person who is convicted of a violation of RCW 46.61.502 or  
36 46.61.504 and who has two or more prior offenses within seven years  
37 shall be punished as follows:

38 (a) (~~(In the case of a person whose)~~) If, within two hours after  
39 operating or being in physical control of the motor vehicle, the person

1 had an alcohol concentration ((was)) of less than 0.15, as shown by  
2 analysis of the person's breath or blood made under RCW 46.61.506, or  
3 for whom for reasons other than the person's refusal to take a test  
4 offered pursuant to RCW 46.20.308 there is no test result indicating  
5 the person's alcohol concentration:

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

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

26 (iii) By a court-ordered restriction under RCW 46.20.720; or

27 (b) (~~In the case of a person whose~~) If, within two hours after  
28 operating or being in physical control of the motor vehicle, the person  
29 had an alcohol concentration ((was)) of at least 0.15, as shown by  
30 analysis of the person's breath or blood made under RCW 46.61.506, or  
31 for whom by reason of the person's refusal to take a test offered  
32 pursuant to RCW 46.20.308 there is no test result indicating the  
33 person's alcohol concentration:

34 (i) By imprisonment for not less than one hundred twenty days nor  
35 more than one year and one hundred fifty days of electronic home  
36 monitoring. The offender shall pay for the cost of the electronic  
37 monitoring. The county or municipality where the penalty is being  
38 imposed shall determine the cost. The court may also require the  
39 offender's electronic home monitoring device include an alcohol

1 detection breathalyzer, and may restrict the amount of alcohol the  
2 offender may consume during the time the offender is on electronic home  
3 monitoring. One hundred twenty days of imprisonment and one hundred  
4 fifty days of electronic home monitoring may not be suspended or  
5 deferred unless the court finds that the imposition of this mandatory  
6 minimum sentence would impose a substantial risk to the offender's  
7 physical or mental well-being. Whenever the mandatory minimum sentence  
8 is suspended or deferred, the court shall state in writing the reason  
9 for granting the suspension or deferral and the facts upon which the  
10 suspension or deferral is based; and

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

15 (iii) By a court-ordered restriction under RCW 46.20.720.

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

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

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

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

25 (6) The license, permit, or nonresident privilege of a person  
26 convicted of driving or being in physical control of a motor vehicle  
27 while under the influence of intoxicating liquor or drugs must:

28 (a) (~~If the person's~~) If, within two hours after operating or  
29 being in physical control of the motor vehicle, the person had an  
30 alcohol concentration (~~was~~) of less than 0.15, as shown by analysis  
31 of the person's breath or blood made under RCW 46.61.506, or if for  
32 reasons other than the person's refusal to take a test offered under  
33 RCW 46.20.308 there is no test result indicating the person's alcohol  
34 concentration:

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

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

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

3 (b) (~~If the person's~~) If, within two hours after operating or  
4 being in physical control of the motor vehicle, the person had an  
5 alcohol concentration ((was)) of at least 0.15, as shown by analysis of  
6 the person's breath or blood made under RCW 46.61.506, or if by reason  
7 of the person's refusal to take a test offered under RCW 46.20.308  
8 there is no test result indicating the person's alcohol concentration:

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

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

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

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

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

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



1 in whole or in part upon violation of a condition of probation during  
2 the suspension period.

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

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

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

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

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

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

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

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

37 (10) An offender serving a sentence under this section, whether or  
38 not a mandatory minimum term has expired, may be granted an

1 extraordinary medical placement by the jail administrator subject to  
2 the standards and limitations set forth in RCW 9.94A.150(4).

3 (11) For purposes of this section:

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

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

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

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

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

13 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
14 9A.36.050 or an equivalent local ordinance, if the conviction is the  
15 result of a charge that was originally filed as a violation of RCW  
16 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
17 46.61.520 or 46.61.522;

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

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

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

30 (b) "Within seven years" means that the arrest for a prior offense  
31 occurred within seven years of the arrest for the current offense.

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