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SENATE BILL 5558

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State of Washington

57th Legislature

2001 Regular Session

By Senators Rossi, Kline, Finkbeiner, Roach, Morton, Oke, Johnson, Long, Swecker, Stevens and Sheahan

Read first time 01/26/2001. Referred to Committee on Judiciary.

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 1999 c 324 s 5, 1999 c 274 s 6, and  
5 1999 c 5 s 1 are 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 seven years shall be  
8 punished as follows:

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

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

1 court may restrict the amount of alcohol the offender may consume  
2 during the time the offender is on electronic home monitoring; 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.

8 (2) A person who is convicted of a violation of RCW 46.61.502 or  
9 46.61.504 and who has one prior offense within seven years shall be  
10 punished as follows:

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

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

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

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

38 (b) (~~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 at least 0.15, as shown by  
2 analysis of the person's breath or blood made under RCW 46.61.506, or  
3 for whom by reason of the person's refusal to take a test offered  
4 pursuant to RCW 46.20.308 there is no test result indicating the  
5 person's alcohol concentration:

6 (i) By imprisonment for not less than forty-five days nor more than  
7 one year and ninety days of electronic home monitoring. The offender  
8 shall pay for the cost of the electronic monitoring. The county or  
9 municipality where the penalty is being imposed shall determine the  
10 cost. The court may also require the offender's electronic home  
11 monitoring device include an alcohol detection breathalyzer, and may  
12 restrict the amount of alcohol the offender may consume during the time  
13 the offender is on electronic home monitoring. Forty-five days of  
14 imprisonment and ninety days of electronic home monitoring 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  
19 writing the reason for granting the suspension or deferral and the  
20 facts upon which the suspension or deferral is based; and

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

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

26 (3) A person who is convicted of a violation of RCW 46.61.502 or  
27 46.61.504 and who has two or more prior offenses within seven years  
28 shall be punished as follows:

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

36 (i) By imprisonment for not less than ninety days nor more than one  
37 year and one hundred twenty days of electronic home monitoring. The  
38 offender shall pay for the cost of the electronic monitoring. The  
39 county or municipality where the penalty is being imposed shall

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

13 (ii) By a fine of not less than one thousand dollars nor more than  
14 five thousand dollars. One thousand 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 a court-ordered restriction under RCW 46.20.720; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (c) For each incident involving a violation of a mandatory  
39 condition of probation imposed under this subsection, the license,

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

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

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

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

14 (c) The court determines that there is reason to believe that the  
15 offender would violate the conditions of the electronic home monitoring  
16 penalty.

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

23 Whenever the combination of jail time and electronic home  
24 monitoring or alternative sentence would exceed three hundred sixty-  
25 five days, the offender shall serve the jail portion of the sentence  
26 first, and the electronic home monitoring or alternative portion of the  
27 sentence shall be reduced so that the combination does not exceed three  
28 hundred sixty-five days.

29 (10) An offender serving a sentence under this section, whether or  
30 not a mandatory minimum term has expired, may be granted an  
31 extraordinary medical placement by the jail administrator subject to  
32 the standards and limitations set forth in RCW 9.94A.150(4).

33 (11) For purposes of this section:

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

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

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



1 (iii) A conviction for a violation of RCW 46.61.520 committed while  
2 under the influence of intoxicating liquor or any drug;  
3 (iv) A conviction for a violation of RCW 46.61.522 committed while  
4 under the influence of intoxicating liquor or any drug;  
5 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
6 9A.36.050 or an equivalent local ordinance, if the conviction is the  
7 result of a charge that was originally filed as a violation of RCW  
8 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
9 46.61.520 or 46.61.522;  
10 (vi) An out-of-state conviction for a violation that would have  
11 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this  
12 subsection if committed in this state;  
13 (vii) A deferred prosecution under chapter 10.05 RCW granted in a  
14 prosecution for a violation of RCW 46.61.502, 46.61.504, or an  
15 equivalent local ordinance; or  
16 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
17 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
18 ordinance, if the charge under which the deferred prosecution was  
19 granted was originally filed as a violation of RCW 46.61.502 or  
20 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
21 46.61.522; and  
22 (b) "Within seven years" means that the arrest for a prior offense  
23 occurred within seven years of the arrest for the current offense.

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