
SENATE BILL 5664

State of Washington

57th Legislature

2001 Regular Session

By Senators Eide, Swecker, Rasmussen, Rossi, Carlson, Hale, Kastama, Costa, Oke and Roach

Read first time 01/30/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to increasing the penalty for conviction of driving
2 under the influence; reenacting and amending RCW 46.61.5055; and
3 prescribing penalties.

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

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

7 (1) A person who is convicted of a violation of RCW 46.61.502 or
8 46.61.504 and who has no prior offense within seven years shall be
9 punished as follows:

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

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

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

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

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

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

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

2 (2) A person who is convicted of a violation of RCW 46.61.502 or
3 46.61.504 and who has one prior offense within seven years shall be
4 punished as follows:

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

9 (i) By imprisonment for not less than thirty days nor more than one
10 year and sixty days of electronic home monitoring. The offender shall
11 pay for the cost of the electronic monitoring. The county or
12 municipality where the penalty is being imposed shall determine the
13 cost. The court may also require the offender's electronic home
14 monitoring device include an alcohol detection breathalyzer, and may
15 restrict the amount of alcohol the offender may consume during the time
16 the offender is on electronic home monitoring. Thirty days of
17 imprisonment and sixty days of electronic home monitoring 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
20 offender's physical or mental well-being. Whenever the mandatory
21 minimum sentence is suspended or deferred, the court shall state in
22 writing the reason for granting the suspension or deferral and the
23 facts upon which the suspension or deferral is based; and

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

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

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

33 (i) By imprisonment for not less than forty-five days nor more than
34 one year and ninety days of electronic home monitoring. The offender
35 shall pay for the cost of the electronic monitoring. The county or
36 municipality where the penalty is being imposed shall determine the
37 cost. The court may also require the offender's electronic home
38 monitoring device include an alcohol detection breathalyzer, and may
39 restrict the amount of alcohol the offender may consume during the time

1 the offender is on electronic home monitoring. Forty-five days of
2 imprisonment and ninety days of electronic home monitoring may not be
3 suspended or deferred unless the court finds that the imposition of
4 this mandatory minimum sentence would impose a substantial risk to the
5 offender's physical or mental well-being. Whenever the mandatory
6 minimum sentence is suspended or deferred, the court shall state in
7 writing the reason for granting the suspension or deferral and the
8 facts upon which the suspension or deferral is based; and

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

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

14 (3) A person who is convicted of a violation of RCW 46.61.502 or
15 46.61.504 and who has two or more prior offenses within seven years
16 shall be punished as follows:

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

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

37 (ii) By a fine of not less than one thousand dollars nor more than
38 five thousand dollars. One thousand dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be
2 indigent; and

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

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

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

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

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

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

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

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

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

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

4 (a) If the person's alcohol concentration was less than 0.15, or if
5 for reasons other than the person's refusal to take a test offered
6 under RCW 46.20.308 there is no test result indicating the person's
7 alcohol concentration:

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

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

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

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

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

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

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

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

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

31 (8)(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 five 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 (9) An additional thirty days of imprisonment shall be added to any
27 mandatory minimum jail sentence required by this section for any person
28 who, at the time of the current offense, had as a passenger in the
29 vehicle a child under the age of ten.

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

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

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

35 (c) The court determines that there is reason to believe that the
36 offender would violate the conditions of the electronic home monitoring
37 penalty.

38 Whenever the mandatory minimum term of electronic home monitoring
39 is waived, the court shall state in writing the reason for granting the

1 waiver and the facts upon which the waiver is based, and shall impose
2 an alternative sentence with similar punitive consequences. The
3 alternative sentence may include, but is not limited to, additional
4 jail time, work crew, or work camp.

5 Whenever the combination of jail time and electronic home
6 monitoring or alternative sentence would exceed three hundred sixty-
7 five days, the offender shall serve the jail portion of the sentence
8 first, and the electronic home monitoring or alternative portion of the
9 sentence shall be reduced so that the combination does not exceed three
10 hundred sixty-five days.

11 ~~((10))~~ (11) An offender serving a sentence under this section,
12 whether or not a mandatory minimum term has expired, may be granted an
13 extraordinary medical placement by the jail administrator subject to
14 the standards and limitations set forth in RCW 9.94A.150(4).

15 ~~((11))~~ (12) For purposes of this section:

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

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

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

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

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

25 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
26 9A.36.050 or an equivalent local ordinance, if the conviction is the
27 result of a charge that was originally filed as a violation of RCW
28 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
29 46.61.520 or 46.61.522;

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

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

36 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
37 prosecution for a violation of RCW 46.61.5249, or an equivalent local
38 ordinance, if the charge under which the deferred prosecution was
39 granted was originally filed as a violation of RCW 46.61.502 or

1 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
2 46.61.522; and

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

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