CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2130

Chapter 474, Laws of 2007

60th Legislature
2007 Regular Session

DRIVING UNDER THE INFLUENCE--PRIOR OFFENSES

EFFECTIVE DATE: 07/01/07

Passed by the House March 13, 2007
Yeas 96  Nays 0

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate April 11, 2007
Yeas 48  Nays 0

BRAD OWEN
President of the Senate

Approved May 14, 2007, 3:50 p.m.

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 2130 as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER
Chief Clerk

FILED
May 15, 2007

CHRISTINE GREGOIRE
Governor of the State of Washington

SECRETARY OF STATE
State of Washington
AN ACT Relating to providing a means to determine "prior offenses" to implement chapter 73, Laws of 2006, regarding driving under the influence; amending RCW 46.61.5055; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 46.61.5055 and 2006 c 73 s 3 are each amended to read as follows:

(1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

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

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

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

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

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

(2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

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

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

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

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

(i) By imprisonment for not less than forty-five days nor more than one year and ninety days of electronic home monitoring. The offender shall pay for the cost of the electronic monitoring. The county or
municipality where the penalty is being imposed shall determine the
cost. The court may also require the offender's electronic home
monitoring device include an alcohol detection breathalyzer, and may
restrict the amount of alcohol the offender may consume during the time
the offender is on electronic home monitoring. Forty-five days of
imprisonment and ninety days of electronic home monitoring may not be
suspended or deferred unless the court finds that the imposition of
this mandatory minimum sentence would impose a substantial risk to the
offender's physical or mental well-being. Whenever the mandatory
minimum sentence is suspended or deferred, the court shall state in
writing the reason for granting the suspension or deferral and the
facts upon which the suspension or deferral is based; and
(ii) By a fine of not less than seven hundred fifty dollars nor
more than five thousand dollars. Seven hundred fifty dollars of the
fine may not be suspended or deferred unless the court finds the
offender to be indigent.
(3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
person who is convicted of a violation of RCW 46.61.502 or 46.61.504
and who has two or three prior offenses within seven years shall be
punished as follows:
(a) In the case of a person whose alcohol concentration was less
than 0.15, or for whom for reasons other than the person's refusal to
take a test offered pursuant to RCW 46.20.308 there is no test result
indicating the person's alcohol concentration:
(i) By imprisonment for not less than ninety days nor more than one
year and one hundred twenty days of electronic home monitoring. The
offender shall pay for the cost of the electronic monitoring. The
county or municipality where the penalty is being imposed shall
determine the cost. The court may also require the offender's
electronic home monitoring device include an alcohol detection
breathalyzer, and may restrict the amount of alcohol the offender may
consume during the time the offender is on electronic home monitoring.
Ninety days of imprisonment and one hundred twenty days of electronic
home monitoring may not be suspended or deferred unless the court finds
that the imposition of this mandatory minimum sentence would impose a
substantial risk to the offender's physical or mental well-being.
Whenever the mandatory minimum sentence is suspended or deferred, the
court shall state in writing the reason for granting the suspension or
deferral and the facts upon which the suspension or deferral is based; and

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

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

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

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

(4) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has four or more prior offenses within ten years, or who has ever previously been convicted of a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug or RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug, shall be punished in accordance with chapter 9.94A RCW.
(5) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) In any case in which the installation and use of an interlock or other device is not mandatory under RCW 46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and

(b) In any case in which the installation and use of such a device is otherwise mandatory, order the use of such a device for an additional sixty days.

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

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

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

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

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

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

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

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

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

(b) If the person's alcohol concentration was at least 0.15:

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

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or
(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

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

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

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

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

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

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

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

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

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

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

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

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

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

Whenever the combination of jail time and electronic home monitoring or alternative sentence would exceed three hundred sixty-five days, the offender shall serve the jail portion of the sentence first, and the electronic home monitoring or alternative portion of the sentence shall be reduced so that the combination does not exceed three hundred sixty-five days.
1. An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(4).

2. For purposes of this section and RCW 46.61.502 and 46.61.504:
   (a) A "prior offense" means any of the following:
      (i) A conviction for a violation of RCW 46.61.502 or an equivalent local ordinance;
      (ii) A conviction for a violation of RCW 46.61.504 or an equivalent local ordinance;
      (iii) A conviction for a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug;
      (iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug;
      (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;
      (vi) An out-of-state conviction for a violation that would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of this subsection if committed in this state;
      (vii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance; or
      (viii) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.5249, or an equivalent local ordinance, if the charge under which the deferred prosecution was granted was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522; ((and))
   (b) "Within seven years" means that the arrest for a prior offense occurred within seven years of the arrest for the current offense; and
   (c) "Within ten years" means that the arrest for a prior offense occurred within ten years of the arrest for the current offense.

NEW SECTION. Sec. 2. This act is necessary for the immediate
preservation of the public peace, health, or safety, or support of the
state government and its existing public institutions, and takes effect
July 1, 2007.

Passed by the House March 13, 2007.
Passed by the Senate April 11, 2007.
Approved by the Governor May 14, 2007.
Filed in Office of Secretary of State May 15, 2007.