
SENATE BILL 5229

State of Washington

63rd Legislature

2013 Regular Session

By Senators Shin, Roach, Benton, Chase, Harper, Delvin, Honeyford, and Schlicher

Read first time 01/23/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to the penalty schedule for alcohol and drug
2 violators; and reenacting and amending RCW 46.61.5055.

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

4 **Sec. 1.** RCW 46.61.5055 and 2012 c 183 s 12, 2012 c 42 s 2, and
5 2012 c 28 s 1 are each reenacted and amended to read as follows:

6 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
7 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
8 and who has no prior offense within seven years shall be punished as
9 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 three
15 hundred sixty-four days. Twenty-four consecutive hours of the
16 imprisonment may not be suspended or deferred unless the court finds
17 that the imposition of this mandatory minimum sentence would impose a
18 substantial risk to the offender's physical or mental well-being.
19 Whenever the mandatory minimum sentence is suspended or deferred, the

1 court shall state in writing the reason for granting the suspension or
2 deferral and the facts upon which the suspension or deferral is based.
3 In lieu of the mandatory minimum term of imprisonment required under
4 this subsection (1)(a)(i), the court may order not less than fifteen
5 days of electronic home monitoring. The offender shall pay the cost of
6 electronic home monitoring. The county or municipality in which the
7 penalty is being imposed shall determine the cost. The court may also
8 require the offender's electronic home monitoring device to include an
9 alcohol detection breathalyzer, and the court may restrict the amount
10 of 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 three
21 hundred sixty-four days. Two consecutive days of the imprisonment may
22 not be suspended or deferred unless the court finds that the imposition
23 of this mandatory minimum sentence would impose a substantial risk to
24 the offender's physical or mental well-being. Whenever the mandatory
25 minimum sentence is suspended or deferred, the court shall state in
26 writing the reason for granting the suspension or deferral and the
27 facts upon which the suspension or deferral is based. In lieu of the
28 mandatory minimum term of imprisonment required under this subsection
29 (1)(b)(i), the court may order not less than thirty days of electronic
30 home monitoring. The offender shall pay the cost of electronic home
31 monitoring. The county or municipality in which the penalty is being
32 imposed shall determine the cost. The court may also require the
33 offender's electronic home monitoring device to include an alcohol
34 detection breathalyzer, and the court may restrict the amount of
35 alcohol the offender may consume during the time the offender is on
36 electronic home monitoring; and

37 (ii) By a fine of not less than five hundred dollars nor more than

1 five thousand dollars. Five hundred dollars of the fine may not be
2 suspended or deferred unless the court finds the offender to be
3 indigent.

4 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
5 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
6 and who has one prior offense within seven years shall be punished as
7 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 thirty days nor more than
13 three hundred sixty-four days and sixty days of electronic home
14 monitoring. In lieu of the mandatory minimum term of sixty days
15 electronic home monitoring, the court may order at least an additional
16 four days in jail. The offender shall pay for the cost of the
17 electronic monitoring. The county or municipality where the penalty is
18 being imposed shall determine the cost. The court may also require the
19 offender's electronic home monitoring device include an alcohol
20 detection breathalyzer, and may restrict the amount of alcohol the
21 offender may consume during the time the offender is on electronic home
22 monitoring. Thirty days of imprisonment and sixty days of electronic
23 home monitoring may not be suspended or deferred unless the court finds
24 that the imposition of this mandatory minimum sentence would impose a
25 substantial risk to the offender's physical or mental well-being.
26 Whenever the mandatory minimum sentence is suspended or deferred, the
27 court shall state in writing the reason for granting the suspension or
28 deferral and the facts upon which the suspension or deferral is based;
29 and

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

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

1 (i) By imprisonment for not less than forty-five days nor more than
2 three hundred sixty-four days and ninety days of electronic home
3 monitoring. In lieu of the mandatory minimum term of ninety days
4 electronic home monitoring, the court may order at least an additional
5 six days in jail. The offender shall pay for the cost of the
6 electronic monitoring. The county or municipality where the penalty is
7 being imposed shall determine the cost. The court may also require the
8 offender's electronic home monitoring device include an alcohol
9 detection breathalyzer, and may restrict the amount of alcohol the
10 offender may consume during the time the offender is on electronic home
11 monitoring. Forty-five days of imprisonment and ninety days of
12 electronic home monitoring may not be suspended or deferred unless the
13 court finds that the imposition of this mandatory minimum sentence
14 would impose a substantial risk to the offender's physical or mental
15 well-being. Whenever the mandatory minimum sentence is suspended or
16 deferred, the court shall state in writing the reason for granting the
17 suspension or deferral and the facts upon which the suspension or
18 deferral is based; and

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

23 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
24 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
25 and who has two or three prior offenses within seven years shall be
26 punished as follows:

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

31 (i) By imprisonment for not less than ninety days nor more than
32 three hundred sixty-four days and one hundred twenty days of electronic
33 home monitoring. In lieu of the mandatory minimum term of one hundred
34 twenty days of electronic home monitoring, the court may order at least
35 an additional eight days in jail. The offender shall pay for the cost
36 of the electronic monitoring. The county or municipality where the
37 penalty is being imposed shall determine the cost. The court may also
38 require the offender's electronic home monitoring device include an

1 alcohol detection breathalyzer, and may restrict the amount of alcohol
2 the offender may consume during the time the offender is on electronic
3 home monitoring. Ninety days of imprisonment and one hundred twenty
4 days of electronic home monitoring may not be suspended or deferred
5 unless the court finds that the imposition of this mandatory minimum
6 sentence would impose a substantial risk to the offender's physical or
7 mental well-being. Whenever the mandatory minimum sentence is
8 suspended or deferred, the court shall state in writing the reason for
9 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 dollars nor more than
12 five thousand dollars. One thousand dollars of the fine may not be
13 suspended or deferred unless the court finds the offender to be
14 indigent; or

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

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

37 (ii) By a fine of not less than one thousand five hundred dollars

1 nor more than five thousand dollars. One thousand five hundred dollars
2 of the fine may not be suspended or deferred unless the court finds the
3 offender to be indigent.

4 (4) A person who is convicted of a violation of RCW 46.61.502 or
5 46.61.504 shall be punished under chapter 9.94A RCW if:

6 (a) The person has four or more prior offenses within ten years; or

7 (b) The person has ever previously been convicted of:

8 (i) A violation of RCW 46.61.520 committed while under the
9 influence of intoxicating liquor or any drug;

10 (ii) A violation of RCW 46.61.522 committed while under the
11 influence of intoxicating liquor or any drug;

12 (iii) An out-of-state offense comparable to the offense specified
13 in (b)(i) or (ii) of this subsection; or

14 (iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

15 (5)(a) The court shall require any person convicted of a violation
16 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to
17 comply with the rules and requirements of the department regarding the
18 installation and use of a functioning ignition interlock device
19 installed on all motor vehicles operated by the person.

20 (b) If the court orders that a person refrain from consuming any
21 alcohol, the court may order the person to submit to alcohol monitoring
22 through an alcohol detection breathalyzer device, transdermal sensor
23 device, or other technology designed to detect alcohol in a person's
24 system. The person shall pay for the cost of the monitoring, unless
25 the court specifies that the cost of monitoring will be paid with funds
26 that are available from an alternative source identified by the court.
27 The county or municipality where the penalty is being imposed shall
28 determine the cost.

29 (6) In addition to any other penalty provided by law, if a person
30 who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed
31 the offense while a passenger under the age of sixteen was in the
32 vehicle, the ~~((court shall))~~ following must occur:

33 (a) ~~((Order))~~ The department of licensing must require the use of
34 an ignition interlock or other device for an additional six months;

35 (b) In any case in which the person has no prior offenses within
36 seven years, and except as provided in RCW 46.61.502(6) or
37 46.61.504(6), the court must order ~~((a))~~ an additional penalty by ~~((a))~~
38 an additional fine of not less than one thousand dollars and not more

1 than five thousand dollars. One thousand dollars of the fine may not
2 be suspended or deferred unless the court finds the offender to be
3 indigent;

4 (c) In any case in which the person has one prior offense within
5 seven years, and except as provided in RCW 46.61.502(6) or
6 46.61.504(6), the court must order ((a)) an additional penalty by ((a))
7 an additional fine of not less than two thousand dollars and not more
8 than five thousand dollars. One thousand dollars of the fine may not
9 be suspended or deferred unless the court finds the offender to be
10 indigent;

11 (d) In any case in which the person has two or three prior offenses
12 within seven years, and except as provided in RCW 46.61.502(6) or
13 46.61.504(6), the court must order ((a)) an additional penalty by ((a))
14 an additional fine of not less than three thousand dollars and not more
15 than ten thousand dollars. One thousand dollars of the fine may not be
16 suspended or deferred unless the court finds the offender to be
17 indigent.

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

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

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

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

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

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

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

36 (ii) Where there has been one prior offense within seven years, be
37 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 alcohol concentration was at least 0.15:

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

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

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

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

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

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

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

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

23 Upon its own motion or upon motion by a person, a court may find,
24 on the record, that notice to the department under RCW 46.20.270 has
25 been delayed for three years or more as a result of a clerical or court
26 error. If so, the court may order that the person's license, permit,
27 or nonresident privilege shall not be revoked, suspended, or denied for
28 that offense. The court shall send notice of the finding and order to
29 the department and to the person. Upon receipt of the notice from the
30 court, the department shall not revoke, suspend, or deny the license,
31 permit, or nonresident privilege of the person for that offense.

32 For purposes of this subsection (9), the department shall refer to
33 the driver's record maintained under RCW 46.52.120 when determining the
34 existence of prior offenses.

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

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

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

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

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

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

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

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

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

11 Whenever the combination of jail time and electronic home
12 monitoring or alternative sentence would exceed three hundred sixty-
13 four days, the offender shall serve the jail portion of the sentence
14 first, and the electronic home monitoring or alternative portion of the
15 sentence shall be reduced so that the combination does not exceed three
16 hundred sixty-four days.

17 (13) An offender serving a sentence under this section, whether or
18 not a mandatory minimum term has expired, may be granted an
19 extraordinary medical placement by the jail administrator subject to
20 the standards and limitations set forth in RCW 9.94A.728(3).

21 (14) For purposes of this section and RCW 46.61.502 and 46.61.504:

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

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

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

27 (iii) A conviction for a violation of RCW 46.61.520 committed while
28 under the influence of intoxicating liquor or any drug, or a conviction
29 for a violation of RCW 46.61.520 committed in a reckless manner or with
30 the disregard for the safety of others if the conviction is the result
31 of a charge that was originally filed as a violation of RCW 46.61.520
32 committed while 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, or a conviction
35 for a violation of RCW 46.61.522 committed in a reckless manner or with
36 the disregard for the safety of others if the conviction is the result
37 of a charge that was originally filed as a violation of RCW 46.61.522
38 committed while under the influence of intoxicating liquor or any drug;

1 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
2 9A.36.050 or an equivalent local ordinance, if the conviction is the
3 result of a charge that was originally filed as a violation of RCW
4 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
5 46.61.520 or 46.61.522;

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

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

12 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
13 prosecution for a violation of RCW 46.61.5249, or an equivalent local
14 ordinance, if the charge under which the deferred prosecution was
15 granted was originally filed as a violation of RCW 46.61.502 or
16 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
17 46.61.522; or

18 (ix) A deferred prosecution granted in another state for a
19 violation of driving or having physical control of a vehicle while
20 under the influence of intoxicating liquor or any drug if the out-of-
21 state deferred prosecution is equivalent to the deferred prosecution
22 under chapter 10.05 RCW, including a requirement that the defendant
23 participate in a chemical dependency treatment program;

24 If a deferred prosecution is revoked based on a subsequent
25 conviction for an offense listed in this subsection (14)(a), the
26 subsequent conviction shall not be treated as a prior offense of the
27 revoked deferred prosecution for the purposes of sentencing;

28 (b) "Within seven years" means that the arrest for a prior offense
29 occurred within seven years before or after the arrest for the current
30 offense; and

31 (c) "Within ten years" means that the arrest for a prior offense
32 occurred within ten years before or after the arrest for the current
33 offense.

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