

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2885

Chapter 206, Laws of 1998

(partial veto)

55th Legislature
1998 Regular Session

DRUNK DRIVING--ADDITIONAL PENALTY OPTIONS

EFFECTIVE DATE: 6/11/98

Passed by the House March 9, 1998
Yeas 95 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate March 5, 1998
Yeas 48 Nays 0

BRAD OWEN
President of the Senate

Approved March 30, 1998, with the
exception of section 2, which is
vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2885** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

March 30, 1998 - 2:43 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2885

AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By House Committee on Law & Justice (originally sponsored by Representatives Mulliken, Sheahan, Costa, McDonald, Backlund, Mielke, Smith, Boldt and Thompson)

Read first time 02/05/98. Referred to Committee on .

1 AN ACT Relating to drunk driving; reenacting and amending RCW
2 46.61.5055; creating a new section; and prescribing penalties.

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

4 **Sec. 1.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are
5 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 five years shall be
8 punished as follows:

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

13 (i) By imprisonment for not less than one day nor more than one
14 year. Twenty-four consecutive hours of the imprisonment 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

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

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

15 (iii) By suspension of the offender's license or permit to drive,
16 or suspension of any nonresident privilege to drive, for a period of
17 ninety days. The period of license, permit, or privilege suspension
18 may not be suspended. The court shall notify the department of
19 licensing of the conviction, and upon receiving notification of the
20 conviction the department shall suspend the offender's license, permit,
21 or privilege; or

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

26 (i) By imprisonment for not less than two days nor more than one
27 year. Two consecutive days of the imprisonment may not be suspended or
28 deferred unless the court finds that the imposition of this mandatory
29 minimum sentence would impose a substantial risk to the offender's
30 physical or mental well-being. Whenever the mandatory minimum sentence
31 is suspended or deferred, the court shall state in writing the reason
32 for granting the suspension or deferral and the facts upon which the
33 suspension or deferral is based. In lieu of the mandatory minimum term
34 of imprisonment required under this subsection (1)(b)(i), the court may
35 order not less than thirty days of electronic home monitoring. The
36 offender shall pay the cost of electronic home monitoring. The county
37 or municipality in which the penalty is being imposed shall determine
38 the cost. The court may also require the offender's electronic home
39 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 revocation of the offender's license or permit to drive,
8 or suspension of any nonresident privilege to drive, for a period of
9 one year. The period of license, permit, or privilege suspension may
10 not be suspended. The court shall notify the department of licensing
11 of the conviction, and upon receiving notification of the conviction
12 the department shall suspend the offender's license, permit, or
13 privilege.

14 (2) A person who is convicted of a violation of RCW 46.61.502 or
15 46.61.504 and who has one prior offense within five years shall be
16 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 thirty days nor more than one
22 year. Thirty days of the imprisonment may not be suspended or deferred
23 unless the court finds that the imposition of this mandatory minimum
24 sentence would impose a substantial risk to the offender's physical or
25 mental well-being. Whenever the mandatory minimum sentence is
26 suspended or deferred, the court shall state in writing the reason for
27 granting the suspension or deferral and the facts upon which the
28 suspension or deferral is based; and

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

33 (iii) By revocation of the offender's license or permit to drive,
34 or suspension of any nonresident privilege to drive, for a period of
35 two years. The period of license, permit, or privilege revocation may
36 not be suspended. The court shall notify the department of licensing
37 of the conviction, and upon receiving notification of the conviction
38 the department shall revoke the offender's license, permit, or
39 privilege; or

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

5 (i) By imprisonment for not less than forty-five days nor more than
6 one year. Forty-five days of the imprisonment may not be suspended or
7 deferred unless the court finds that the imposition of this mandatory
8 minimum sentence would impose a substantial risk to the offender's
9 physical or mental well-being. Whenever the mandatory minimum sentence
10 is suspended or deferred, the court shall state in writing the reason
11 for granting the suspension or deferral and the facts upon which the
12 suspension or deferral is based; and

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

17 (iii) By revocation of the offender's license or permit to drive,
18 or suspension of any nonresident privilege to drive, for a period of
19 nine hundred days. The period of license, permit, or privilege
20 revocation may not be suspended. The court shall notify the department
21 of licensing of the conviction, and upon receiving notification of the
22 conviction the department shall revoke the offender's license, permit,
23 or privilege.

24 (3) A person who is convicted of a violation of RCW 46.61.502 or
25 46.61.504 and who has two or more prior offenses within five years
26 shall be 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 one
32 year. Ninety days of the imprisonment may not be suspended or deferred
33 unless the court finds that the imposition of this mandatory minimum
34 sentence would impose a substantial risk to the offender's physical or
35 mental well-being. Whenever the mandatory minimum sentence is
36 suspended or deferred, the court shall state in writing the reason for
37 granting the suspension or deferral and the facts upon which the
38 suspension or deferral is based; and

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

5 (iii) By revocation of the offender's license or permit to drive,
6 or suspension of any nonresident privilege to drive, for a period of
7 three years. The period of license, permit, or privilege revocation
8 may not be suspended. The court shall notify the department of
9 licensing of the conviction, and upon receiving notification of the
10 conviction the department shall revoke the offender's license, permit,
11 or privilege; or

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

16 (i) By imprisonment for not less than one hundred twenty days nor
17 more than one year. One hundred twenty days of the imprisonment may
18 not be suspended or deferred unless the court finds that the imposition
19 of this mandatory minimum sentence would impose a substantial risk to
20 the 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 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 revocation of the offender's license or permit to drive,
29 or suspension of any nonresident privilege to drive, for a period of
30 four years. The period of license, permit, or privilege revocation may
31 not be suspended. The court shall notify the department of licensing
32 of the conviction, and upon receiving notification of the conviction
33 the department shall revoke the offender's license, permit, or
34 privilege.

35 (4) In exercising its discretion in setting penalties within the
36 limits allowed by this section, the court shall particularly consider
37 whether the person's driving at the time of the offense was responsible
38 for injury or damage to another or another's property.

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

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

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

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

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

1 extension of a suspension, revocation, or denial imposed under this
2 subsection.

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

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

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

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

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

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

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

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

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

28 (b) "Within five years" means that the arrest for a prior offense
29 occurred within five years of the arrest for the current offense.

30 ****NEW SECTION. Sec. 2. If this act mandates an increased level of***
31 ***service by local governments, the local government may, under RCW***
32 ***43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the***
33 ***legislature. The claims shall be subject to verification by the office***
34 ***of financial management.***

35 ****Sec. 2 was vetoed. See message at end of chapter.***

Passed the House March 9, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor March 30, 1998, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 30, 1998.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 2,
3 Substitute House Bill No. 2885 entitled:

4 "AN ACT Relating to drunk driving;"

5 SHB 2885 allows fifteen to thirty-day periods of home confinement
6 in lieu of one to two days in jail for first-time DUI offenders. This
7 legislation will be effective in reducing the jail costs of local
8 governments.

9 Section 2 of SHB 2885 would require that the Office of Financial
10 Management verify claims from local governments for increased levels of
11 services mandated by the act. This section would add an unnecessary
12 additional bureaucratic layer to the existing statutory and procedural
13 process for handling these claims. I will direct the Office of
14 Financial Management and the Department of General Administration to
15 work collaboratively with the appropriate legislative committees to
16 ensure that timely and accurate information is provided to the
17 Legislature.

18 For this reason, I have vetoed section 2 of Substitute House Bill
19 No. 2885.

20 With the exception of section 2, Substitute House Bill No. 2885 is
21 approved."