
HOUSE BILL 2778

State of Washington

58th Legislature

2004 Regular Session

By Representatives Tom, Kagi, Rockefeller, O'Brien, Hudgins, Moeller and Kenney

Read first time 01/20/2004. Referred to Committee on Judiciary.

1 AN ACT Relating to required community service for drunk driving
2 offenders; 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 2003 c 103 s 1 are each amended to read
5 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 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 being required to perform not less than two hundred hours
16 of community service. The two hundred hours of community service may
17 not be suspended or deferred unless the court finds that the imposition
18 of this mandatory minimum sentence would impose a substantial risk to
19 the offender's physical or mental well-being. Whenever the mandatory
20 minimum sentence is suspended or deferred, the court shall state in
21 writing the reason for granting the suspension or deferral and facts
22 upon which the suspension or deferral is based; or

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

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

1 or municipality in which the penalty is being imposed shall determine
2 the cost. The court may also require the offender's electronic home
3 monitoring device to include an alcohol detection breathalyzer, and the
4 court may restrict the amount of alcohol the offender may consume
5 during the time the offender is on electronic home monitoring; and

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

10 (iii) By being required to perform not less than two hundred hours
11 of community service. The two hundred hours of community service may
12 not be suspended or deferred unless the court finds that the imposition
13 of this mandatory minimum sentence would impose a substantial risk to
14 the offender's physical or mental well-being. Whenever the mandatory
15 minimum sentence is suspended or deferred, the court shall state in
16 writing the reason for granting the suspension or deferral and facts
17 upon which the suspension or deferral is based; and

18 (iv) By a court-ordered restriction under RCW 46.20.720.

19 (2) A person who is convicted of a violation of RCW 46.61.502 or
20 46.61.504 and who has one prior offense within seven years shall be
21 punished as follows:

22 (a) In the case of a person whose alcohol concentration was less
23 than 0.15, or for whom for reasons other than the person's refusal to
24 take a 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 thirty days nor more than one
27 year and sixty days of electronic home monitoring. The offender shall
28 pay for the cost of the electronic monitoring. The county or
29 municipality where the penalty is being imposed shall determine the
30 cost. The court may also require the offender's electronic home
31 monitoring device include an alcohol detection breathalyzer, and may
32 restrict the amount of alcohol the offender may consume during the time
33 the offender is on electronic home monitoring. Thirty days of
34 imprisonment and sixty days of electronic home monitoring may not be
35 suspended or deferred unless the court finds that the imposition of
36 this mandatory minimum sentence would impose a substantial risk to the
37 offender's physical or mental well-being. Whenever the mandatory

1 minimum sentence is suspended or deferred, the court shall state in
2 writing the reason for granting the suspension or deferral and the
3 facts upon which the suspension or deferral is based; and

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

8 (iii) By being required to perform not less than two hundred hours
9 of community service. The two hundred hours of community service may
10 not be suspended or deferred unless the court finds that the imposition
11 of this mandatory minimum sentence would impose a substantial risk to
12 the offender's physical or mental well-being. Whenever the mandatory
13 minimum sentence is suspended or deferred, the court shall state in
14 writing the reason for granting the suspension or deferral and facts
15 upon which the suspension or deferral is based; and

16 (iv) By a court-ordered restriction under RCW 46.20.720; or

17 (b) In the case of a person whose alcohol concentration was at
18 least 0.15, or for whom by reason of the person's refusal to take a
19 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 forty-five days nor more than
22 one year and ninety days of electronic home monitoring. The offender
23 shall pay for the cost of the electronic monitoring. The county or
24 municipality where the penalty is being imposed shall determine the
25 cost. The court may also require the offender's electronic home
26 monitoring device include an alcohol detection breathalyzer, and may
27 restrict the amount of alcohol the offender may consume during the time
28 the offender is on electronic home monitoring. Forty-five days of
29 imprisonment and ninety days of electronic home monitoring may not be
30 suspended or deferred unless the court finds that the imposition of
31 this mandatory minimum sentence would impose a substantial risk to the
32 offender's physical or mental well-being. Whenever the mandatory
33 minimum sentence is suspended or deferred, the court shall state in
34 writing the reason for granting the suspension or deferral and the
35 facts upon which the suspension or deferral is based; and

36 (ii) By a fine of not less than seven hundred fifty dollars nor
37 more than five thousand dollars. Seven hundred fifty dollars of the

1 fine may not be suspended or deferred unless the court finds the
2 offender to be indigent; and

3 (iii) By being required to perform not less than two hundred hours
4 of community service. The two hundred hours of community service may
5 not be suspended or deferred unless the court finds that the imposition
6 of this mandatory minimum sentence would impose a substantial risk to
7 the offender's physical or mental well-being. Whenever the mandatory
8 minimum sentence is suspended or deferred, the court shall state in
9 writing the reason for granting the suspension or deferral and facts
10 upon which the suspension or deferral is based; and

11 (iv) By a court-ordered restriction under RCW 46.20.720.

12 (3) A person who is convicted of a violation of RCW 46.61.502 or
13 46.61.504 and who has two or more prior offenses within seven years
14 shall be punished as follows:

15 (a) In the case of a person whose alcohol concentration was less
16 than 0.15, or for whom for reasons other than the person's refusal to
17 take a 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 ninety days nor more than one
20 year and one hundred twenty days of electronic home monitoring. The
21 offender shall pay for the cost of the electronic monitoring. The
22 county or municipality where the penalty is being imposed shall
23 determine the cost. The court may also require the offender's
24 electronic home monitoring device include an alcohol detection
25 breathalyzer, and may restrict the amount of alcohol the offender may
26 consume during the time the offender is on electronic home monitoring.
27 Ninety days of imprisonment and one hundred twenty days of electronic
28 home monitoring may not be suspended or deferred unless the court finds
29 that the imposition of this mandatory minimum sentence would impose a
30 substantial risk to the offender's physical or mental well-being.
31 Whenever the mandatory minimum sentence is suspended or deferred, the
32 court shall state in writing the reason for granting the suspension or
33 deferral and the facts upon which the suspension or deferral is based;
34 and

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

1 (iii) By being required to perform not less than two hundred hours
2 of community service. The two hundred hours of community service may
3 not be suspended or deferred unless the court finds that the imposition
4 of this mandatory minimum sentence would impose a substantial risk to
5 the 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 facts
8 upon which the suspension or deferral is based; and

9 (iv) By a court-ordered restriction under RCW 46.20.720; or

10 (b) In the case of a person whose alcohol concentration was at
11 least 0.15, or for whom by reason of the person's refusal to take a
12 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 hundred twenty days nor
15 more than one year and one hundred fifty days of electronic home
16 monitoring. The offender shall pay for the cost of the electronic
17 monitoring. The county or municipality where the penalty is being
18 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. One hundred twenty days of imprisonment and one hundred
23 fifty days of electronic home monitoring may not be suspended or
24 deferred unless the court finds that the imposition of this mandatory
25 minimum sentence would impose a substantial risk to the offender's
26 physical or mental well-being. Whenever the mandatory minimum sentence
27 is suspended or deferred, the court shall state in writing the reason
28 for granting the suspension or deferral and the facts upon which the
29 suspension or deferral is based; and

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

34 (iii) By being required to perform not less than two hundred hours
35 of community service. The two hundred hours of community service may
36 not be suspended or deferred unless the court finds that the imposition
37 of this mandatory minimum sentence would impose a substantial risk to
38 the offender's physical or mental well-being. Whenever the mandatory

1 minimum sentence is suspended or deferred, the court shall state in
2 writing the reason for granting the suspension or deferral and facts
3 upon which the suspension or deferral is based; and

4 (iv) By a court-ordered restriction under RCW 46.20.720.

5 (4) If a person who is convicted of a violation of RCW 46.61.502 or
6 46.61.504 committed the offense while a passenger under the age of
7 sixteen was in the vehicle, the court shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 Whenever the combination of jail time and electronic home
30 monitoring or alternative sentence would exceed three hundred sixty-
31 five days, the offender shall serve the jail portion of the sentence
32 first, and the electronic home monitoring or alternative portion of the
33 sentence shall be reduced so that the combination does not exceed three
34 hundred sixty-five days.

35 (11) An offender serving a sentence under this section, whether or
36 not a mandatory minimum term has expired, may be granted an
37 extraordinary medical placement by the jail administrator subject to
38 the standards and limitations set forth in RCW 9.94A.728(4).

1 (12) For purposes of this section:
2 (a) A "prior offense" means any of the following:
3 (i) A conviction for a violation of RCW 46.61.502 or an equivalent
4 local ordinance;
5 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent
6 local ordinance;
7 (iii) A conviction for a violation of RCW 46.61.520 committed while
8 under the influence of intoxicating liquor or any drug;
9 (iv) A conviction for a violation of RCW 46.61.522 committed while
10 under the influence of intoxicating liquor or any drug;
11 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
12 9A.36.050 or an equivalent local ordinance, if the conviction is the
13 result of a charge that was originally filed as a violation of RCW
14 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
15 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; (~~and~~)
28 (b) "Within seven years" means that the arrest for a prior offense
29 occurred within seven years of the arrest for the current offense(~~(-)~~);
30 and
31 (c) "Community service" means service that is performed in aid of
32 the parks department or equivalent agency or department of the county
33 or municipality in which the offense occurred and that is performed
34 while wearing distinctive and highly visible clothing such as may be
35 worn by inmates of the local jail facility and which is prominently
36 marked with the words "DUI Offender."

--- END ---