
HOUSE BILL 2895

State of Washington 58th Legislature 2004 Regular Session

By Representatives Hunt and Sullivan

Read first time 01/22/2004. Referred to Committee on Judiciary.

1 AN ACT Relating to periods of license revocation, suspension, and
2 denial imposed under RCW 46.20.3101 and 46.61.5055; amending RCW
3 46.61.5055; and reenacting and amending RCW 46.20.3101.

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

5 **Sec. 1.** RCW 46.20.3101 and 1998 c 213 s 2, 1998 c 209 s 2, and
6 1998 c 207 s 8 are each reenacted and amended to read as follows:

7 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
8 deny the arrested person's license, permit, or privilege to drive as
9 follows:

10 (1) In the case of a person who has refused a test or tests:

11 (a) For a first refusal within seven years, where there has not
12 been a previous incident within seven years that resulted in
13 administrative action under this section, revocation or denial for one
14 year;

15 (b) For a second or subsequent refusal within seven years, or for
16 a first refusal where there has been one or more previous incidents
17 within seven years that have resulted in administrative action under
18 this section, revocation or denial for two years or until the person
19 reaches age twenty-one, whichever is longer. A revocation imposed

1 under this subsection (1)(b) shall run consecutively to the period of
2 any suspension, revocation, or denial imposed pursuant to a criminal
3 conviction arising out of the same incident.

4 (2) In the case of an incident where a person has submitted to or
5 been administered a test or tests indicating that the alcohol
6 concentration of the person's breath or blood was 0.08 or more:

7 (a) For a first incident within seven years, where there has not
8 been a previous incident within seven years that resulted in
9 administrative action under this section, suspension for ninety days.
10 If the person's test or tests indicated that the person's breath or
11 blood concentration was less than 0.15 and the person has had his or
12 her license suspended, revoked, or denied due to a criminal conviction
13 under RCW 46.61.5055 arising out of the same incident, the department
14 shall give the person credit for the number of days the person's
15 license has already been suspended, revoked, or denied;

16 (b) For a second or subsequent incident within seven years,
17 revocation or denial for two years.

18 (3) In the case of an incident where a person under age twenty-one
19 has submitted to or been administered a test or tests indicating that
20 the alcohol concentration of the person's breath or blood was in
21 violation of RCW 46.61.502, 46.61.503, or 46.61.504:

22 (a) For a first incident within seven years, suspension or denial
23 for ninety days;

24 (b) For a second or subsequent incident within seven years,
25 revocation or denial for one year or until the person reaches age
26 twenty-one, whichever is longer.

27 **Sec. 2.** RCW 46.61.5055 and 2003 c 103 s 1 are each amended to read
28 as follows:

29 (1) A person who is convicted of a violation of RCW 46.61.502 or
30 46.61.504 and who has no prior offense within seven years shall be
31 punished as follows:

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

36 (i) By imprisonment for not less than one day nor more than one
37 year. Twenty-four consecutive hours of the imprisonment may not be

1 suspended or deferred unless the court finds that the imposition of
2 this mandatory minimum sentence would impose a substantial risk to the
3 offender's physical or mental well-being. Whenever the mandatory
4 minimum sentence is suspended or deferred, the court shall state in
5 writing the reason for granting the suspension or deferral and the
6 facts upon which the suspension or deferral is based. In lieu of the
7 mandatory minimum term of imprisonment required under this subsection
8 (1)(a)(i), the court may order not less than fifteen days of electronic
9 home monitoring. The offender shall pay the cost of electronic home
10 monitoring. The county or municipality in which the penalty is being
11 imposed shall determine the cost. The court may also require the
12 offender's electronic home monitoring device to include an alcohol
13 detection breathalyzer, and the court may restrict the amount of
14 alcohol the offender may consume during the time the offender is on
15 electronic home monitoring; and

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

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

24 (i) By imprisonment for not less than two days nor more than one
25 year. Two consecutive days of the imprisonment may not be suspended or
26 deferred unless the court finds that the imposition of this mandatory
27 minimum sentence would impose a substantial risk to the offender's
28 physical or mental well-being. Whenever the mandatory minimum sentence
29 is suspended or deferred, the court shall state in writing the reason
30 for granting the suspension or deferral and the facts upon which the
31 suspension or deferral is based. In lieu of the mandatory minimum term
32 of imprisonment required under this subsection (1)(b)(i), the court may
33 order not less than thirty days of electronic home monitoring. The
34 offender shall pay the cost of electronic home monitoring. The county
35 or municipality in which the penalty is being imposed shall determine
36 the cost. The court may also require the offender's electronic home
37 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 a court-ordered restriction under RCW 46.20.720.

8 (2) A person who is convicted of a violation of RCW 46.61.502 or
9 46.61.504 and who has one prior offense within seven years shall be
10 punished as follows:

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

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

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

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

1 (i) By imprisonment for not less than forty-five days nor more than
2 one year and ninety days of electronic home monitoring. The offender
3 shall pay for the cost of the electronic monitoring. The county or
4 municipality where the penalty is being imposed shall determine the
5 cost. The court may also require the offender's electronic home
6 monitoring device include an alcohol detection breathalyzer, and may
7 restrict the amount of alcohol the offender may consume during the time
8 the offender is on electronic home monitoring. Forty-five days of
9 imprisonment and ninety days of electronic home monitoring may not be
10 suspended or deferred unless the court finds that the imposition of
11 this mandatory minimum sentence would impose a substantial risk to the
12 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 the
15 facts upon which the suspension or deferral is based; and

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

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

21 (3) A person who is convicted of a violation of RCW 46.61.502 or
22 46.61.504 and who has two or more prior offenses within seven years
23 shall be punished as follows:

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

28 (i) By imprisonment for not less than ninety days nor more than one
29 year and one hundred twenty days of electronic home monitoring. The
30 offender shall pay for the cost of the electronic monitoring. The
31 county or municipality where the penalty is being imposed shall
32 determine the cost. The court may also require the offender's
33 electronic home monitoring device include an alcohol detection
34 breathalyzer, and may restrict the amount of alcohol the offender may
35 consume during the time the offender is on electronic home monitoring.
36 Ninety days of imprisonment and one hundred twenty days of electronic
37 home monitoring may not be suspended or deferred unless the court finds
38 that the imposition of this mandatory minimum sentence would impose a

1 substantial risk to the offender's physical or mental well-being.
2 Whenever the mandatory minimum sentence is suspended or deferred, the
3 court shall state in writing the reason for granting the suspension or
4 deferral and the facts upon which the suspension or deferral is based;
5 and

6 (ii) By a fine of not less than one thousand dollars nor more than
7 five thousand dollars. One thousand 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 a court-ordered restriction under RCW 46.20.720; or

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

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

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

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

36 (4) If a person who is convicted of a violation of RCW 46.61.502 or
37 46.61.504 committed the offense while a passenger under the age of
38 sixteen was in the vehicle, the court shall:

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

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

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

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

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

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

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

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

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

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

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

31 (b) If the person's alcohol concentration was at least 0.15, or if
32 by reason of the person's refusal to take a test offered under RCW
33 46.20.308 there is no test result indicating the person's alcohol
34 concentration:

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

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

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

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

6 (8) If a person has had his or her license suspended, revoked, or
7 denied due to an administrative action under RCW 46.20.3101(2) arising
8 out of the same incident, the department shall give the person credit
9 for the number of days the person's license has already been suspended,
10 revoked, or denied if the person submitted to or has been administered
11 a test or tests indicating that the person's breath or blood
12 concentration was less than 0.15 and the person has not had a previous
13 incident within seven years that resulted in administrative action
14 under RCW 46.20.3101.

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

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

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