
HOUSE BILL 1746

State of Washington 61st Legislature 2009 Regular Session

By Representatives Van De Wege, Kessler, and Kelley

Read first time 01/28/09. Referred to Committee on Judiciary.

1 AN ACT Relating to vehicular homicide sentencing provisions;
2 amending RCW 46.61.5055; and reenacting and amending RCW 9.94A.533.

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

4 **Sec. 1.** RCW 9.94A.533 and 2008 c 276 s 301 and 2008 c 219 s 3 are
5 each reenacted and amended to read as follows:

6 (1) The provisions of this section apply to the standard sentence
7 ranges determined by RCW 9.94A.510 or 9.94A.517.

8 (2) For persons convicted of the anticipatory offenses of criminal
9 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
10 standard sentence range is determined by locating the sentencing grid
11 sentence range defined by the appropriate offender score and the
12 seriousness level of the completed crime, and multiplying the range by
13 seventy-five percent.

14 (3) The following additional times shall be added to the standard
15 sentence range for felony crimes committed after July 23, 1995, if the
16 offender or an accomplice was armed with a firearm as defined in RCW
17 9.41.010 and the offender is being sentenced for one of the crimes
18 listed in this subsection as eligible for any firearm enhancements
19 based on the classification of the completed felony crime. If the

1 offender is being sentenced for more than one offense, the firearm
2 enhancement or enhancements must be added to the total period of
3 confinement for all offenses, regardless of which underlying offense is
4 subject to a firearm enhancement. If the offender or an accomplice was
5 armed with a firearm as defined in RCW 9.41.010 and the offender is
6 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
7 commit one of the crimes listed in this subsection as eligible for any
8 firearm enhancements, the following additional times shall be added to
9 the standard sentence range determined under subsection (2) of this
10 section based on the felony crime of conviction as classified under RCW
11 9A.28.020:

12 (a) Five years for any felony defined under any law as a class A
13 felony or with a statutory maximum sentence of at least twenty years,
14 or both, and not covered under (f) of this subsection;

15 (b) Three years for any felony defined under any law as a class B
16 felony or with a statutory maximum sentence of ten years, or both, and
17 not covered under (f) of this subsection;

18 (c) Eighteen months for any felony defined under any law as a class
19 C felony or with a statutory maximum sentence of five years, or both,
20 and not covered under (f) of this subsection;

21 (d) If the offender is being sentenced for any firearm enhancements
22 under (a), (b), and/or (c) of this subsection and the offender has
23 previously been sentenced for any deadly weapon enhancements after July
24 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
25 (4)(a), (b), and/or (c) of this section, or both, all firearm
26 enhancements under this subsection shall be twice the amount of the
27 enhancement listed;

28 (e) Notwithstanding any other provision of law, all firearm
29 enhancements under this section are mandatory, shall be served in total
30 confinement, and shall run consecutively to all other sentencing
31 provisions, including other firearm or deadly weapon enhancements, for
32 all offenses sentenced under this chapter. However, whether or not a
33 mandatory minimum term has expired, an offender serving a sentence
34 under this subsection may be granted an extraordinary medical placement
35 when authorized under RCW 9.94A.728(4);

36 (f) The firearm enhancements in this section shall apply to all
37 felony crimes except the following: Possession of a machine gun,

1 possessing a stolen firearm, drive-by shooting, theft of a firearm,
2 unlawful possession of a firearm in the first and second degree, and
3 use of a machine gun in a felony;

4 (g) If the standard sentence range under this section exceeds the
5 statutory maximum sentence for the offense, the statutory maximum
6 sentence shall be the presumptive sentence unless the offender is a
7 persistent offender. If the addition of a firearm enhancement
8 increases the sentence so that it would exceed the statutory maximum
9 for the offense, the portion of the sentence representing the
10 enhancement may not be reduced.

11 (4) The following additional times shall be added to the standard
12 sentence range for felony crimes committed after July 23, 1995, if the
13 offender or an accomplice was armed with a deadly weapon other than a
14 firearm as defined in RCW 9.41.010 and the offender is being sentenced
15 for one of the crimes listed in this subsection as eligible for any
16 deadly weapon enhancements based on the classification of the completed
17 felony crime. If the offender is being sentenced for more than one
18 offense, the deadly weapon enhancement or enhancements must be added to
19 the total period of confinement for all offenses, regardless of which
20 underlying offense is subject to a deadly weapon enhancement. If the
21 offender or an accomplice was armed with a deadly weapon other than a
22 firearm as defined in RCW 9.41.010 and the offender is being sentenced
23 for an anticipatory offense under chapter 9A.28 RCW to commit one of
24 the crimes listed in this subsection as eligible for any deadly weapon
25 enhancements, the following additional times shall be added to the
26 standard sentence range determined under subsection (2) of this section
27 based on the felony crime of conviction as classified under RCW
28 9A.28.020:

29 (a) Two years for any felony defined under any law as a class A
30 felony or with a statutory maximum sentence of at least twenty years,
31 or both, and not covered under (f) of this subsection;

32 (b) One year for any felony defined under any law as a class B
33 felony or with a statutory maximum sentence of ten years, or both, and
34 not covered under (f) of this subsection;

35 (c) Six months for any felony defined under any law as a class C
36 felony or with a statutory maximum sentence of five years, or both, and
37 not covered under (f) of this subsection;

1 (d) If the offender is being sentenced under (a), (b), and/or (c)
2 of this subsection for any deadly weapon enhancements and the offender
3 has previously been sentenced for any deadly weapon enhancements after
4 July 23, 1995, under (a), (b), and/or (c) of this subsection or
5 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
6 weapon enhancements under this subsection shall be twice the amount of
7 the enhancement listed;

8 (e) Notwithstanding any other provision of law, all deadly weapon
9 enhancements under this section are mandatory, shall be served in total
10 confinement, and shall run consecutively to all other sentencing
11 provisions, including other firearm or deadly weapon enhancements, for
12 all offenses sentenced under this chapter. However, whether or not a
13 mandatory minimum term has expired, an offender serving a sentence
14 under this subsection may be granted an extraordinary medical placement
15 when authorized under RCW 9.94A.728(4);

16 (f) The deadly weapon enhancements in this section shall apply to
17 all felony crimes except the following: Possession of a machine gun,
18 possessing a stolen firearm, drive-by shooting, theft of a firearm,
19 unlawful possession of a firearm in the first and second degree, and
20 use of a machine gun in a felony;

21 (g) If the standard sentence range under this section exceeds the
22 statutory maximum sentence for the offense, the statutory maximum
23 sentence shall be the presumptive sentence unless the offender is a
24 persistent offender. If the addition of a deadly weapon enhancement
25 increases the sentence so that it would exceed the statutory maximum
26 for the offense, the portion of the sentence representing the
27 enhancement may not be reduced.

28 (5) The following additional times shall be added to the standard
29 sentence range if the offender or an accomplice committed the offense
30 while in a county jail or state correctional facility and the offender
31 is being sentenced for one of the crimes listed in this subsection. If
32 the offender or an accomplice committed one of the crimes listed in
33 this subsection while in a county jail or state correctional facility,
34 and the offender is being sentenced for an anticipatory offense under
35 chapter 9A.28 RCW to commit one of the crimes listed in this
36 subsection, the following additional times shall be added to the
37 standard sentence range determined under subsection (2) of this
38 section:

- 1 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
2 (a) or (b) or 69.50.410;
3 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
4 (c), (d), or (e);
5 (c) Twelve months for offenses committed under RCW 69.50.4013.

6 For the purposes of this subsection, all of the real property of a
7 state correctional facility or county jail shall be deemed to be part
8 of that facility or county jail.

9 (6) An additional twenty-four months shall be added to the standard
10 sentence range for any ranked offense involving a violation of chapter
11 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
12 9.94A.605. All enhancements under this subsection shall run
13 consecutively to all other sentencing provisions, for all offenses
14 sentenced under this chapter.

15 (7) An additional two years shall be added to the standard sentence
16 range for vehicular homicide committed while under the influence of
17 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
18 prior offense as defined in RCW 46.61.5055. These enhancements shall
19 be mandatory, shall be served in total confinement, and shall run
20 consecutively to all other sentencing provisions.

21 (8)(a) The following additional times shall be added to the
22 standard sentence range for felony crimes committed on or after July 1,
23 2006, if the offense was committed with sexual motivation, as that term
24 is defined in RCW 9.94A.030. If the offender is being sentenced for
25 more than one offense, the sexual motivation enhancement must be added
26 to the total period of total confinement for all offenses, regardless
27 of which underlying offense is subject to a sexual motivation
28 enhancement. If the offender committed the offense with sexual
29 motivation and the offender is being sentenced for an anticipatory
30 offense under chapter 9A.28 RCW, the following additional times shall
31 be added to the standard sentence range determined under subsection (2)
32 of this section based on the felony crime of conviction as classified
33 under RCW 9A.28.020:

34 (i) Two years for any felony defined under the law as a class A
35 felony or with a statutory maximum sentence of at least twenty years,
36 or both;

37 (ii) Eighteen months for any felony defined under any law as a

1 class B felony or with a statutory maximum sentence of ten years, or
2 both;

3 (iii) One year for any felony defined under any law as a class C
4 felony or with a statutory maximum sentence of five years, or both;

5 (iv) If the offender is being sentenced for any sexual motivation
6 enhancements under (i), (ii), and/or (iii) of this subsection and the
7 offender has previously been sentenced for any sexual motivation
8 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
9 this subsection, all sexual motivation enhancements under this
10 subsection shall be twice the amount of the enhancement listed;

11 (b) Notwithstanding any other provision of law, all sexual
12 motivation enhancements under this subsection are mandatory, shall be
13 served in total confinement, and shall run consecutively to all other
14 sentencing provisions, including other sexual motivation enhancements,
15 for all offenses sentenced under this chapter. However, whether or not
16 a mandatory minimum term has expired, an offender serving a sentence
17 under this subsection may be granted an extraordinary medical placement
18 when authorized under RCW 9.94A.728(4);

19 (c) The sexual motivation enhancements in this subsection apply to
20 all felony crimes;

21 (d) If the standard sentence range under this subsection exceeds
22 the statutory maximum sentence for the offense, the statutory maximum
23 sentence shall be the presumptive sentence unless the offender is a
24 persistent offender. If the addition of a sexual motivation
25 enhancement increases the sentence so that it would exceed the
26 statutory maximum for the offense, the portion of the sentence
27 representing the enhancement may not be reduced;

28 (e) The portion of the total confinement sentence which the
29 offender must serve under this subsection shall be calculated before
30 any earned early release time is credited to the offender;

31 (f) Nothing in this subsection prevents a sentencing court from
32 imposing a sentence outside the standard sentence range pursuant to RCW
33 9.94A.535.

34 (9) An additional one-year enhancement shall be added to the
35 standard sentence range for the felony crimes of RCW 9A.44.073,
36 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
37 or after July 22, 2007, if the offender engaged, agreed, or offered to
38 engage the victim in the sexual conduct in return for a fee. If the

1 offender is being sentenced for more than one offense, the one-year
2 enhancement must be added to the total period of total confinement for
3 all offenses, regardless of which underlying offense is subject to the
4 enhancement. If the offender is being sentenced for an anticipatory
5 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
6 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
7 solicited another, or conspired to engage, agree, or offer to engage
8 the victim in the sexual conduct in return for a fee, an additional
9 one-year enhancement shall be added to the standard sentence range
10 determined under subsection (2) of this section. For purposes of this
11 subsection, "sexual conduct" means sexual intercourse or sexual
12 contact, both as defined in chapter 9A.44 RCW.

13 (10)(a) For a person age eighteen or older convicted of any
14 criminal street gang-related felony offense for which the person
15 compensated, threatened, or solicited a minor in order to involve the
16 minor in the commission of the felony offense, the standard sentence
17 range is determined by locating the sentencing grid sentence range
18 defined by the appropriate offender score and the seriousness level of
19 the completed crime, and multiplying the range by one hundred twenty-
20 five percent. If the standard sentence range under this subsection
21 exceeds the statutory maximum sentence for the offense, the statutory
22 maximum sentence is the presumptive sentence unless the offender is a
23 persistent offender.

24 (b) This subsection does not apply to any criminal street gang-
25 related felony offense for which involving a minor in the commission of
26 the felony offense is an element of the offense.

27 (c) The increased penalty specified in (a) of this subsection is
28 unavailable in the event that the prosecution gives notice that it will
29 seek an exceptional sentence based on an aggravating factor under RCW
30 9.94A.535.

31 (11) An additional twelve months and one day shall be added to the
32 standard sentence range for a conviction of attempting to elude a
33 police vehicle as defined by RCW 46.61.024, if the conviction included
34 a finding by special allegation of endangering one or more persons
35 under RCW 9.94A.834.

36 **Sec. 2.** RCW 46.61.5055 and 2008 c 282 s 14 are each amended to
37 read as follows:

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

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

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

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

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

34 (i) By imprisonment for not less than two days nor more than one
35 year. Two consecutive days of the imprisonment may not be suspended or
36 deferred unless the court finds that the imposition of this mandatory
37 minimum sentence would impose a substantial risk to the offender's
38 physical or mental well-being. Whenever the mandatory minimum sentence

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

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

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

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

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

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

9 (i) By imprisonment for not less than forty-five days nor more than
10 one year and ninety days of electronic home monitoring. The offender
11 shall pay for the cost of the electronic monitoring. The county or
12 municipality where the penalty is being imposed shall determine the
13 cost. The court may also require the offender's electronic home
14 monitoring device include an alcohol detection breathalyzer, and may
15 restrict the amount of alcohol the offender may consume during the time
16 the offender is on electronic home monitoring. Forty-five days of
17 imprisonment and ninety days of electronic home monitoring may not be
18 suspended or deferred unless the court finds that the imposition of
19 this mandatory minimum sentence would impose a substantial risk to the
20 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 seven hundred fifty dollars nor
25 more than five thousand dollars. Seven hundred fifty dollars of the
26 fine may not be suspended or deferred unless the court finds the
27 offender to be indigent.

28 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
29 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
30 and who has two or three prior offenses 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 ninety days nor more than one
37 year and one hundred twenty days of electronic home monitoring. The
38 offender shall pay for the cost of the electronic monitoring. The

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

14 (ii) By a fine of not less than one thousand dollars nor more than
15 five 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; or

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

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

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

5 (4) A person who is convicted of a violation of RCW 46.61.502 or
6 46.61.504 shall be punished under chapter 9.94A RCW if: (a) The person
7 has four or more prior offenses within ten years; or (b) the person has
8 ever previously been convicted of: (i) A violation of RCW 46.61.520
9 committed while under the influence of intoxicating liquor or any drug;
10 (ii) a violation of RCW 46.61.522 committed while under the influence
11 of intoxicating liquor or any drug; or (iii) an out-of-state offense
12 comparable to the offense specified in (b)(i) or (ii) of this
13 subsection.

14 (5)(a) The court shall require any person convicted of an
15 alcohol-related violation of RCW 46.61.502 or 46.61.504 to apply for an
16 ignition interlock driver's license from the department under RCW
17 (~~46.20.385~~) 46.20.720 and to have a functioning ignition interlock
18 device installed on all motor vehicles operated by the person.

19 (b) The installation of an ignition interlock device is not
20 necessary on vehicles owned by a person's employer and driven as a
21 requirement of employment during working hours. The person must
22 provide the department with a declaration pursuant to RCW 9A.72.085
23 from his or her employer stating that the person's employment requires
24 the person to operate a vehicle owned by the employer during working
25 hours.

26 (c) An ignition interlock device imposed under this section shall
27 be calibrated to prevent a motor vehicle from being started when the
28 breath sample provided has an alcohol concentration of 0.025 or more.

29 (d) The court may waive the requirement that a person obtain an
30 ignition interlock driver's license and operate only vehicles equipped
31 with a functioning ignition interlock device if the court makes a
32 specific finding in writing that the devices are not reasonably
33 available in the local area, that the person does not operate a
34 vehicle, or the person is not eligible to receive an ignition interlock
35 driver's license under RCW 46.20.385.

36 (e) When the requirement that a person obtain an ignition interlock
37 driver's license and operate only vehicles equipped with a functioning
38 ignition interlock device is waived by the court, the court shall order

1 the person to submit to alcohol monitoring through an alcohol detection
2 breathalyzer device, transdermal sensor device, or other technology
3 designed to detect alcohol in a person's system. The person shall pay
4 for the cost of the monitoring. The county or municipality where the
5 penalty is being imposed shall determine the cost.

6 (f) The period of time for which ignition interlock use or alcohol
7 monitoring is required will be as follows:

8 (i) For a person who has not previously been restricted under this
9 section, a period of one year;

10 (ii) For a person who has previously been restricted under (f)(i)
11 of this subsection, a period of five years;

12 (iii) For a person who has previously been restricted under (f)(ii)
13 of this subsection, a period of ten years.

14 (6) If a person who is convicted of a violation of RCW 46.61.502 or
15 46.61.504 committed the offense while a passenger under the age of
16 sixteen was in the vehicle, the court shall:

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

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

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

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

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

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

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

37 (a) If the person's alcohol concentration was less than 0.15, or if

1 for reasons other than the person's refusal to take a test offered
2 under RCW 46.20.308 there is no test result indicating the person's
3 alcohol concentration:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (11)(a) In addition to any nonsuspendable and nondeferrable jail
38 sentence required by this section, whenever the court imposes less than

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

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

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

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

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

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

37 (c) The court determines that there is reason to believe that the

1 offender would violate the conditions of the electronic home monitoring
2 penalty.

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

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

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

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

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

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

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

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

27 (iv) A conviction for a violation of RCW 46.61.520(1) (a) or (c),
28 if the conviction is the result of a charge that was originally filed
29 as a violation of RCW 46.61.520(1)(b);

30 (v) A conviction for a violation of RCW 46.61.522 committed while
31 under the influence of intoxicating liquor or any drug;

32 ~~((+v))~~ (vi) A conviction for a violation of RCW 46.61.522(1) (b)
33 or (c), if the conviction is the result of a charge that was originally
34 filed as a violation of RCW 46.61.520(1)(a);

35 (vii) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
36 9A.36.050 or an equivalent local ordinance, if the conviction is the
37 result of a charge that was originally filed as a violation of RCW

1 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
2 46.61.520 or 46.61.522;

3 ~~((vi))~~ (viii) An out-of-state conviction for a violation that
4 would have been a violation of (a)(i), (ii), (iii), ~~((iv), or)~~ (v),
5 or (vii) of this subsection if committed in this state;

6 ~~((vii))~~ (ix) A deferred prosecution under chapter 10.05 RCW
7 granted in a prosecution for a violation of RCW 46.61.502, 46.61.504,
8 or an equivalent local ordinance; or

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

15 (b) "Within seven years" means that the arrest for a prior offense
16 occurred within seven years of the arrest for the current offense; and

17 (c) "Within ten years" means that the arrest for a prior offense
18 occurred within ten years of the arrest for the current offense.

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