

2 **E2SSB 6293** - H AMD 1140 ADOPTED 3-05-98

3 By Representative

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are
8 each reenacted and amended to read as follows:

9 (1) A person who is convicted of a violation of RCW 46.61.502 or
10 46.61.504 and who has no prior offense within five years shall be
11 punished as follows:

12 (a) In the case of a person whose alcohol concentration was less
13 than 0.15, or for whom for reasons other than the person's refusal to
14 take a 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 day nor more than one
17 year. Twenty-four consecutive hours of the imprisonment 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 three hundred fifty dollars nor
25 more than five thousand dollars. Three hundred fifty dollars of the
26 fine may not be suspended or deferred unless the court finds the
27 offender to be indigent; and

28 (iii) By suspension of the offender's license or permit to drive,
29 or suspension of any nonresident privilege to drive, for a period of
30 ninety days. The period of license, permit, or privilege suspension
31 may not be suspended. The court shall notify the department of
32 licensing of the conviction, and upon receiving notification of the
33 conviction the department shall suspend the offender's license, permit,
34 or privilege; 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

1 test offered pursuant to RCW 46.20.308 there is no test result
2 indicating the person's alcohol concentration:

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

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

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

22 (2) A person who is convicted of a violation of RCW 46.61.502 or
23 46.61.504 and who has one prior offense within five years shall be
24 punished as follows:

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

29 (i) By imprisonment for not less than thirty days nor more than one
30 year(~~(- Thirty days of the imprisonment))~~ and sixty days of electronic
31 home monitoring. The offender shall pay for the cost of the electronic
32 monitoring. The county or municipality where the penalty is being
33 imposed shall determine the cost. The court may also require the
34 offender's electronic home monitoring device include an alcohol
35 detection breathalyzer, and may restrict the amount of alcohol the
36 offender may consume during the time the offender is on electronic home
37 monitoring. Thirty days of imprisonment and sixty days of electronic
38 home monitoring may not be suspended or deferred unless the court finds
39 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 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 revocation of the offender's license or permit to drive,
11 or suspension of any nonresident privilege to drive, for a period of
12 two years. The period of license, permit, or privilege revocation may
13 not be suspended. The court shall notify the department of licensing
14 of the conviction, and upon receiving notification of the conviction
15 the department shall revoke the offender's license, permit, or
16 privilege; 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(~~(. Forty-five days of the imprisonment)~~) and ninety days of
23 electronic home monitoring. The offender shall pay for the cost of the
24 electronic monitoring. The county or municipality where the penalty is
25 being imposed shall determine the cost. The court may also require the
26 offender's electronic home monitoring device include an alcohol
27 detection breathalyzer, and may restrict the amount of alcohol the
28 offender may consume during the time the offender is on electronic home
29 monitoring. Forty-five days of imprisonment and ninety days of
30 electronic home monitoring may not be suspended or deferred unless the
31 court finds that the imposition of this mandatory minimum sentence
32 would impose a substantial risk to the offender's physical or mental
33 well-being. Whenever the mandatory minimum sentence is suspended or
34 deferred, the court shall state in writing the reason for granting the
35 suspension or deferral and the facts upon which the suspension or
36 deferral is based; and

37 (ii) By a fine of not less than seven hundred fifty dollars nor
38 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 revocation of the offender's license or permit to drive,
4 or suspension of any nonresident privilege to drive, for a period of
5 nine hundred days. The period of license, permit, or privilege
6 revocation may not be suspended. The court shall notify the department
7 of licensing of the conviction, and upon receiving notification of the
8 conviction the department shall revoke the offender's license, permit,
9 or privilege.

10 (3) A person who is convicted of a violation of RCW 46.61.502 or
11 46.61.504 and who has two or more prior offenses within five years
12 shall be punished as follows:

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

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

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

37 (iii) By revocation of the offender's license or permit to drive,
38 or suspension of any nonresident privilege to drive, for a period of
39 three years. The period of license, permit, or privilege revocation

1 may not be suspended. The court shall notify the department of
2 licensing of the conviction, and upon receiving notification of the
3 conviction the department shall revoke the offender's license, permit,
4 or privilege; 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 one hundred twenty days nor
10 more than one year(~~(. — One hundred twenty days of the imprisonment)~~)
11 and one hundred fifty days of electronic home monitoring. The offender
12 shall pay for the cost of the electronic monitoring. The county or
13 municipality where the penalty is being imposed shall determine the
14 cost. The court may also require the offender's electronic home
15 monitoring device include an alcohol detection breathalyzer, and may
16 restrict the amount of alcohol the offender may consume during the time
17 the offender is on electronic home monitoring. One hundred twenty days
18 of imprisonment and one hundred fifty days of electronic home
19 monitoring may not be suspended or deferred unless the court finds that
20 the imposition of this mandatory minimum sentence would impose a
21 substantial risk to the offender's physical or mental well-being.
22 Whenever the mandatory minimum sentence is suspended or deferred, the
23 court shall state in writing the reason for granting the suspension or
24 deferral and the facts upon which the suspension or deferral is based;
25 and

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

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

37 (4) In exercising its discretion in setting penalties within the
38 limits allowed by this section, the court shall particularly consider

1 whether the person's driving at the time of the offense was responsible
2 for injury or damage to another or another's property.

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

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

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

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

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

1 notify the department of any suspension, revocation, or denial or any
2 extension of a suspension, revocation, or denial imposed under this
3 subsection.

4 (8) For purposes of this section:

5 (a) "Electronic home monitoring" shall not be considered
6 confinement as defined in RCW 9.94A.030;

7 (b) A "prior offense" means any of the following:

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

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

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

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

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

20 (vi) An out-of-state conviction for a violation that would have
21 been a violation of ~~((a))~~ (b)(i), (ii), (iii), (iv), or (v) of this
22 subsection if committed in this state;

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

26 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
27 prosecution for a violation of RCW 46.61.5249, or an equivalent local
28 ordinance, if the charge under which the deferred prosecution was
29 granted was originally filed as a violation of RCW 46.61.502 or
30 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
31 46.61.522~~((-))~~; and

32 ~~((b))~~ (c) "Within five years" means that the arrest for a prior
33 offense occurred within five years of the arrest for the current
34 offense.

35 **Sec. 2.** RCW 46.65.070 and 1990 c 250 s 62 are each amended to read
36 as follows:

37 No license to operate motor vehicles in Washington shall be issued
38 to an habitual offender (1) for a period of ~~((five))~~ seven years from

1 the date of the license revocation except as provided in RCW 46.65.080,
2 and (2) until the privilege of such person to operate a motor vehicle
3 in this state has been restored by the department of licensing as
4 provided in this chapter.

5 **Sec. 3.** RCW 46.65.080 and 1979 c 158 s 181 are each amended to
6 read as follows:

7 At the end of (~~two~~) four years, the habitual offender may
8 petition the department of licensing for the return of his operator's
9 license and upon good and sufficient showing, the department of
10 licensing may, wholly or conditionally, reinstate the privilege of such
11 person to operate a motor vehicle in this state.

12 **Sec. 4.** RCW 46.65.100 and 1979 c 158 s 182 are each amended to
13 read as follows:

14 At the expiration of (~~five~~) seven years from the date of any
15 final order finding a person to be an habitual offender and directing
16 him not to operate a motor vehicle in this state, such person may
17 petition the department of licensing for restoration of his privilege
18 to operate a motor vehicle in this state. Upon receipt of such
19 petition, and for good cause shown, the department of licensing shall
20 restore to such person the privilege to operate a motor vehicle in this
21 state upon such terms and conditions as the department of licensing may
22 prescribe, subject to the provisions of chapter 46.29 RCW and such
23 other provisions of law relating to the issuance or revocation of
24 operators' licenses.

25 NEW SECTION. **Sec. 5.** A new section is added to chapter 46.61 RCW
26 to read as follows:

27 (1) A defendant who is arrested for an offense involving driving
28 while under the influence as defined in RCW 46.61.502, driving under
29 age twenty-one after consuming alcohol as defined in RCW 46.61.503, or
30 being in physical control of a vehicle while under the influence as
31 defined in RCW 46.61.504, shall be required to appear in person before
32 a magistrate within one judicial day after the arrest if the defendant
33 is served with a citation or complaint at the time of the arrest.

34 (2) A defendant who is charged by citation, complaint, or
35 information with an offense involving driving while under the influence
36 as defined in RCW 46.61.502, driving under age twenty-one after

1 consuming alcohol as defined in RCW 46.61.503, or being in physical
2 control of a vehicle while under the influence as defined in RCW
3 46.61.504, and who is not arrested, shall appear in court for
4 arraignment in person as soon as practicable, but in no event later
5 than fourteen days after the next day on which court is in session
6 following the issuance of the citation or the filing of the complaint
7 or information.

8 (3) At the time of an appearance required by this section, the
9 court shall determine the necessity of imposing conditions of pretrial
10 release according to the procedures established by court rule for a
11 preliminary appearance or an arraignment.

12 (4) Appearances required by this section are mandatory and may not
13 be waived.

14 NEW SECTION. **Sec. 6.** This act takes effect January 1, 1999."

15 Correct the title.

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