

2 **E2SSB 6293** - H COMM AMD NOT ADOPTED
3 By Committee on Appropriations

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. In lieu of the
24 mandatory minimum term of imprisonment required under this subsection
25 (1)(a)(i), the court may order not less than fifteen days of electronic
26 home monitoring. The offender shall pay the cost of electronic home
27 monitoring. The county or municipality in which the penalty is being
28 imposed shall determine the cost. The court may also require the
29 offender's electronic home monitoring device to include an alcohol
30 detection breathalyzer, and the court may restrict the amount of
31 alcohol the offender may consume during the time the offender is on
32 electronic home monitoring; and

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

1 (iii) By suspension of the offender's license or permit to drive,
2 or suspension of any nonresident privilege to drive, for a period of
3 ninety days. The period of license, permit, or privilege suspension
4 may not be suspended. The court shall notify the department of
5 licensing of the conviction, and upon receiving notification of the
6 conviction the department shall suspend the offender's license, permit,
7 or privilege; or

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

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

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

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

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

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

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

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

28 (iii) By revocation of the offender's license or permit to drive,
29 or suspension of any nonresident privilege to drive, for a period of
30 two years. The period of license, permit, or privilege revocation may
31 not be suspended. The court shall notify the department of licensing
32 of the conviction, and upon receiving notification of the conviction
33 the department shall revoke the offender's license, permit, or
34 privilege; 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(~~(. Forty five days of the imprisonment))~~ and ninety days of
3 electronic home monitoring. The offender shall pay for the cost of the
4 electronic monitoring. The county or municipality where the penalty is
5 being imposed shall determine the cost. The court may also require the
6 offender's electronic home monitoring device include an alcohol
7 detection breathalyzer, and may restrict the amount of alcohol the
8 offender may consume during the time the offender is on electronic home
9 monitoring. Forty-five days of imprisonment and ninety days of
10 electronic home monitoring may not be suspended or deferred unless the
11 court finds that the imposition of this mandatory minimum sentence
12 would impose a substantial risk to the offender's physical or mental
13 well-being. Whenever the mandatory minimum sentence is suspended or
14 deferred, the court shall state in writing the reason for granting the
15 suspension or deferral and the facts upon which the suspension or
16 deferral is based; and

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

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

28 (3) A person who is convicted of a violation of RCW 46.61.502 or
29 46.61.504 and who has two or more prior offenses (~~(within five years))~~,
30 or two or more convictions of any of the offenses listed in RCW
31 46.65.020, shall be 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
37 one year(~~(. Ninety days of the imprisonment))~~ and one hundred twenty
38 days of electronic home monitoring. The offender shall pay for the
39 cost of the electronic monitoring. The county or municipality where

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

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

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

25 ~~(b) In the case of a person whose alcohol concentration was at~~
26 ~~least 0.15, or for whom by reason of the person's refusal to take a~~
27 ~~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 one hundred twenty days nor~~
30 ~~more than one year. One hundred twenty days of the imprisonment may~~
31 ~~not be suspended or deferred unless the court finds that the imposition~~
32 ~~of this mandatory minimum sentence would impose a substantial risk to~~
33 ~~the offender's physical or mental well-being. Whenever the mandatory~~
34 ~~minimum sentence is suspended or deferred, the court shall state in~~
35 ~~writing the reason for granting the suspension or deferral and the~~
36 ~~facts upon which the suspension or deferral is based; and~~

37 ~~(ii) By a fine of not less than one thousand five hundred dollars~~
38 ~~nor more than five thousand dollars. One thousand five hundred dollars~~

1 of the 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 ~~four years. The period of license, permit, or privilege revocation may~~
6 ~~not be suspended. The court shall notify the department of licensing~~
7 ~~of the conviction, and upon receiving notification of the conviction~~
8 ~~the department shall revoke the offender's license, permit, or~~
9 ~~privilege)).~~

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

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

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

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

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

18 (b) "Permanent revocation" means revocation for the lifetime of the
19 offender;

20 (c) 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 46.61.522 committed while
28 under the influence of intoxicating liquor or any drug;

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

33 (vi) An out-of-state conviction for a violation that would have
34 been a violation of ~~((a+))~~ (c)(i), (ii), (iii), (iv), or (v) of this
35 subsection if committed in this state;

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

1 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
2 prosecution for a violation of RCW 46.61.5249, or an equivalent local
3 ordinance, if the charge under which the deferred prosecution was
4 granted was originally filed as a violation of RCW 46.61.502 or
5 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
6 46.61.522(~~(-)~~); and

7 (~~(b)~~) (d) "Within five years" means that the arrest for a prior
8 offense occurred within five years of the arrest for the current
9 offense.

10 NEW SECTION. Sec. 2. A new section is added to chapter 46.61 RCW
11 to read as follows:

12 A person who drives a vehicle within this state after his or her
13 license has been permanently revoked pursuant to RCW 46.61.5055 is
14 guilty of a gross misdemeanor and shall be punished by a fine of not
15 more than five thousand dollars and by imprisonment for one year. A
16 second or subsequent violation of this section is a class C felony and
17 shall be punished by a fine of not more than ten thousand dollars and
18 by imprisonment for seven years. Periods of imprisonment to be imposed
19 under this section for either gross misdemeanor or felony violations
20 are mandatory and may not be suspended or deferred. Sentences imposed
21 for felony violations are not subject to the earned early release
22 provisions of the sentencing reform act.

23 NEW SECTION. Sec. 3. A new section is added to chapter 46.20 RCW
24 to read as follows:

25 At the expiration of ten years from the date of any conviction in
26 which a person was punished by a permanent license revocation under RCW
27 46.61.5055 (2) or (3), the person may petition the department for
28 restoration of his or her privilege to operate a motor vehicle in this
29 state. Upon receipt of the petition, and for good cause shown, the
30 department of licensing shall restore to the person the privilege to
31 operate a motor vehicle in this state upon such terms and conditions as
32 the department of licensing prescribes, subject to the provisions of
33 chapter 46.29 RCW and such other provisions of law relating to the
34 issuance or revocation of drivers' licenses.

35 For the purposes of this section, "good cause shown" means that the
36 individual submitting the petition presents sufficient evidence of
37 permanent rehabilitation through affidavits from treatment providers,

1 doctors, and others. The petitioner has the burden of demonstrating by
2 clear and convincing evidence that he or she has spent the previous
3 seven years in a state of sobriety.

4 NEW SECTION. **Sec. 4.** The Washington traffic safety commission
5 shall conduct an electronic media campaign advertising the contents of
6 this act. However, if specific funding for the purposes of this
7 section referencing this section by bill or chapter number and section
8 number, is not provided by June 30, 1998, in an appropriation by the
9 legislature, this section is null and void.

10 NEW SECTION. **Sec. 5.** A new section is added to chapter 46.65 RCW
11 to read as follows:

12 (1) If a person:

13 (a)(i) Accumulates three or more convictions, singularly or in
14 combination, of any of the offenses described in RCW 46.65.020(1); and

15 (ii) Any one of the three offenses were committed while the person
16 was driving under the influence of liquor or any drug as defined in RCW
17 41.61.502 or in physical control of a vehicle while under the influence
18 of liquor or any drug as defined in RCW 41.61.504; then

19 (b) The person's driver's license, driver's permit or nonresident
20 privilege to drive shall be permanently revoked as defined in RCW
21 41.61.5055.

22 (2) The permanent revocation of a license, permit, or privilege may
23 not be suspended. The court shall notify the department of licensing
24 of the conviction, and upon receiving notification of the conviction of
25 the department shall permanently revoke the offender's license, permit,
26 or privilege.

27 (3) A person who drives a vehicle within this state after his or
28 her license has been permanently revoked under this section is guilty
29 of a gross misdemeanor and shall be punished by a fine of not more than
30 five thousand dollars and by imprisonment for one year. A second or
31 subsequent violation of this section is a class C felony and shall be
32 punished by a fine of not more than ten thousand dollars and by
33 imprisonment for seven years. Periods of imprisonment to be imposed
34 under this section for either gross misdemeanor or felony violations
35 are mandatory and may not be suspended or deferred. Sentences imposed
36 for felony violations are not subject to earned early release.

1 (4) At the expiration of ten years from the date of any conviction
2 in which a person was punished by a permanent license revocation under
3 this section, the person may petition the department for restoration of
4 his or her privilege to operate a motor vehicle in this state.

5 (a) Upon receipt of the petition, and for good cause shown, the
6 department of licensing shall restore to the person the privilege to
7 operate a motor vehicle in this state upon such terms and conditions as
8 the department of licensing prescribes, subject to the provisions of
9 chapter 46.29 RCW and such other provisions of law relating to the
10 issuance or revocation of drivers' licenses.

11 (b) For the purposes of this subsection, "good cause shown" means
12 that the individual submitting the petition presents sufficient
13 evidence of permanent rehabilitation through affidavits from treatment
14 providers, doctors, and others. The petitioner has the burden of
15 demonstrating by clear and convincing evidence that he or she has spent
16 the previous ten years in a state of sobriety.

17 NEW SECTION. **Sec. 6.** If this act mandates an increased level of
18 service by local governments, the local government may, under RCW
19 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the
20 legislature. The claims shall be subject to verification by the office
21 of financial management.

22 NEW SECTION. **Sec. 7.** If specific funding for the purposes of this
23 act, referencing this act by bill or chapter number, is not provided by
24 June 30, 1998, in the omnibus appropriations act, this act is null and
25 void.

26 NEW SECTION. **Sec. 8.** Section 4 of this act is necessary for the
27 immediate preservation of the public peace, health, or safety, or
28 support of the state government and its existing public institutions,
29 and takes effect immediately. Sections 1 through 3 of this act take
30 effect November 1, 1998."

31 Correct the title.

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