

2 **E2SSB 6293** - H COMM AMD **NOT ADOPTED**
3 By Committee on Law & Justice

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 shall be punished as follows:

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

35 (i) By imprisonment for not less than ninety days nor more than one
36 year(~~(. Ninety days of the imprisonment))~~ and one hundred twenty days
37 of electronic home monitoring. The offender shall pay for the cost of
38 the electronic monitoring. The county or municipality where the
39 penalty is being imposed shall determine the cost. The court may also

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

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

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

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

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

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

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

9 (iii) By revocation of the offender's license or permit to drive,
10 or suspension of any nonresident privilege to drive, for a period of
11 four years. The period of license, permit, or privilege revocation may
12 not be suspended. The court shall notify the department of licensing
13 of the conviction, and upon receiving notification of the conviction
14 the department shall revoke the offender's license, permit, or
15 privilege.

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

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

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

26 (7)(a) In addition to any nonsuspendable and nondeferrable jail
27 sentence required by this section, whenever the court imposes less than
28 one year in jail, the court shall also suspend but shall not defer a
29 period of confinement for a period not exceeding two years. The court
30 shall impose conditions of probation that include: (i) Not driving a
31 motor vehicle within this state without a valid license to drive and
32 proof of financial responsibility for the future; (ii) not driving a
33 motor vehicle within this state while having an alcohol concentration
34 of 0.08 or more within two hours after driving; and (iii) not refusing
35 to submit to a test of his or her breath or blood to determine alcohol
36 concentration upon request of a law enforcement officer who has
37 reasonable grounds to believe the person was driving or was in actual
38 physical control of a motor vehicle within this state while under the
39 influence of intoxicating liquor. The court may impose conditions of

1 probation that include nonrepetition, installation of an ignition
2 interlock or other biological or technical device on the probationer's
3 motor vehicle, alcohol or drug treatment, supervised probation, or
4 other conditions that may be appropriate. The sentence may be imposed
5 in whole or in part upon violation of a condition of probation during
6 the suspension period.

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

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

21 (8) For purposes of this section:

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

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

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

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

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

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

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

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

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

4 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
5 prosecution for a violation of RCW 46.61.5249, or an equivalent local
6 ordinance, if the charge under which the deferred prosecution was
7 granted was originally filed as a violation of RCW 46.61.502 or
8 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
9 46.61.522(~~(-)~~); and

10 (~~(b)~~) (c) "Within five years" means that the arrest for a prior
11 offense occurred within five years of the arrest for the current
12 offense.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.61 RCW
14 to read as follows:

15 (1) A defendant who is arrested for an offense involving driving
16 while under the influence as defined in RCW 46.61.502, driving under
17 age twenty-one after consuming alcohol as defined in RCW 46.61.503, or
18 being in physical control of a vehicle while under the influence as
19 defined in RCW 46.61.504, shall be required to appear in person before
20 a magistrate within one judicial day after the arrest.

21 (2) A defendant who is charged by citation, complaint, or
22 information with an offense involving driving while under the influence
23 as defined in RCW 46.61.502, driving under age twenty-one after
24 consuming alcohol as defined in RCW 46.61.503, or being in physical
25 control of a vehicle while under the influence as defined in RCW
26 46.61.504, and who is not arrested, shall appear in court for
27 arraignment in person as soon as practicable, but in no event later
28 than fourteen days after the next day on which court is in session
29 following the issuance of the citation or the filing of the complaint
30 or information.

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

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

37 NEW SECTION. **Sec. 3.** This act takes effect November 1, 1998."

1 Correct the title.

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