

---

**SUBSTITUTE HOUSE BILL 2885**

---

**State of Washington**

**55th Legislature**

**1998 Regular Session**

**By** House Committee on Law & Justice (originally sponsored by Representatives Mulliken, Sheahan, Costa, McDonald, Backlund, Mielke, Smith, Boldt and Thompson)

Read first time 02/05/98. Referred to Committee on .

1 AN ACT Relating to drunk driving; amending RCW 43.43.680;  
2 reenacting and amending RCW 46.61.5055; creating a new section; and  
3 prescribing penalties.

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

5 **Sec. 1.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are  
6 each reenacted and amended to read as follows:

7 (1) A person who is convicted of a violation of RCW 46.61.502 or  
8 46.61.504 and who has no prior offense within five years shall be  
9 punished as follows:

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

14 (i) By imprisonment for not less than one day nor more than one  
15 year. Twenty-four consecutive hours of the imprisonment may not be  
16 suspended or deferred unless the court finds that the imposition of  
17 this mandatory minimum sentence would impose a substantial risk to the  
18 offender's physical or mental well-being. Whenever the mandatory  
19 minimum sentence is suspended or deferred, the court shall state in

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

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

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

1 monitoring device to include an alcohol detection breathalyzer, and the  
2 court may restrict the amount of alcohol the offender may consume  
3 during the time the offender is on electronic home monitoring; and

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

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

15 (2) A person who is convicted of a violation of RCW 46.61.502 or  
16 46.61.504 and who has one prior offense within five years shall be  
17 punished as follows:

18 (a) In the case of a person whose alcohol concentration was less  
19 than 0.15, or for whom for reasons other than the person's refusal to  
20 take a 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 thirty days nor more than one  
23 year. Thirty days of the imprisonment may not be suspended or deferred  
24 unless the court finds that the imposition of this mandatory minimum  
25 sentence would impose a substantial risk to the offender's physical or  
26 mental well-being. Whenever the mandatory minimum sentence is  
27 suspended or deferred, the court shall state in writing the reason for  
28 granting the suspension or deferral and the facts upon which the  
29 suspension or deferral is based; and

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

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

1 the department shall revoke the offender's license, permit, or  
2 privilege; or

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

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

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

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

26 (3) A person who is convicted of a violation of RCW 46.61.502 or  
27 46.61.504 and who has two or more prior offenses within five years  
28 shall be punished as follows:

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

33 (i) By imprisonment for not less than ninety days nor more than one  
34 year. Ninety days of the imprisonment may not be suspended or deferred  
35 unless the court finds that the imposition of this mandatory minimum  
36 sentence would impose a substantial risk to the offender's physical or  
37 mental well-being. Whenever the mandatory minimum sentence is  
38 suspended or deferred, the court shall state in writing the reason for

1 granting the suspension or deferral and the facts upon which the  
2 suspension or deferral is based; and

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

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

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

18 (i) By imprisonment for not less than one hundred twenty days nor  
19 more than one year. One hundred twenty days of the imprisonment may  
20 not be suspended or deferred unless the court finds that the imposition  
21 of this mandatory minimum sentence would impose a substantial risk to  
22 the offender's physical or mental well-being. Whenever the mandatory  
23 minimum sentence is suspended or deferred, the court shall state in  
24 writing the reason for granting the suspension or deferral and the  
25 facts upon which the suspension or deferral is based; 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~~) five years.  
13 The court shall impose conditions of probation that include: (i) Not  
14 driving a motor vehicle within this state without a valid license to  
15 drive and proof of financial responsibility for the future; (ii) not  
16 driving a motor vehicle within this state while having an alcohol  
17 concentration of 0.08 or more within two hours after driving; and (iii)  
18 not refusing to submit to a test of his or her breath or blood to  
19 determine alcohol concentration upon request of a law enforcement  
20 officer who has reasonable grounds to believe the person was driving or  
21 was in actual physical control of a motor vehicle within this state  
22 while under the influence of intoxicating liquor. The court may impose  
23 conditions of probation that include nonrepetition, installation of an  
24 ignition interlock or other biological or technical device on the  
25 probationer's motor vehicle, alcohol or drug treatment, supervised  
26 probation, or other conditions that may be appropriate. The sentence  
27 may be imposed in whole or in part upon violation of a condition of  
28 probation during 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)(a) A "prior offense" means any of the following:

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

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

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

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

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

17 (vi) An out-of-state conviction for a violation that would have  
18 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this  
19 subsection if committed in this state;

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

23 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
24 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
25 ordinance, if the charge under which the deferred prosecution was  
26 granted was originally filed as a violation of RCW 46.61.502 or  
27 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
28 46.61.522.

29 (b) "Within five years" means that the arrest for a prior offense  
30 occurred within five years of the arrest for the current offense.

31 NEW SECTION. **Sec. 2.** The legislature finds that in many instances  
32 public resources are not being efficiently used in the prosecution of  
33 drunk driving cases. In particular, the legislature is concerned that  
34 potential witnesses may be routinely and unnecessarily required to  
35 attend hearings and trials. These witnesses may spend scarce public  
36 resources traveling to and appearing at hearings and trials. The  
37 legislature finds that technology now exists that may allow more  
38 efficient use of these potential witnesses' time without jeopardizing

1 the rights of defendants. The legislature intends to encourage the use  
2 of live, interactive video conferencing or other similar techniques to  
3 take the testimony of forensic scientists, toxicologists, and other  
4 witnesses in drunk driving cases.

5 **Sec. 3.** RCW 43.43.680 and 1994 c 271 s 501 are each amended to  
6 read as follows:

7 (1) In all prosecutions involving the analysis of a controlled  
8 substance or a sample of a controlled substance by the crime laboratory  
9 system of the state patrol, a certified copy of the analytical report  
10 signed by the supervisor of the state patrol's crime laboratory or the  
11 forensic scientist conducting the analysis is prima facie evidence of  
12 the results of the analytical findings.

13 (2) The defendant or a prosecutor may subpoena the forensic  
14 scientist who conducted the analysis of the substance to testify at the  
15 preliminary hearing and trial of the issue at no cost to the defendant,  
16 if the subpoena is issued at least ten days prior to the trial date.

17 (3) In all prosecutions involving the analysis of a certified  
18 simulator solution by the Washington state toxicology laboratory of the  
19 University of Washington, a certified copy of the analytical report  
20 signed by the state toxicologist or the toxicologist conducting the  
21 analysis is prima facie evidence of the results of the analytical  
22 findings, and of certification of the simulator solution used in the  
23 BAC verifier datamaster or any other alcohol/breath-testing equipment  
24 subsequently adopted by rule.

25 (4) The defendant of a prosecution may subpoena the toxicologist  
26 who conducted the analysis of the simulator solution to testify at the  
27 preliminary hearing and trial of the issue at no cost to the defendant,  
28 if thirty days prior to issuing the subpoena the defendant gives the  
29 state toxicologist notice of the defendant's intention to require the  
30 toxicologist's appearance.

31 (5) Testimony given pursuant to a subpoena under this section may,  
32 at the discretion of the court, be given by live interactive video  
33 conferencing or by the use of other similar technology that allows a  
34 witness to testify from a location other than the place of the hearing  
35 or trial. The court may allow such testimony only if the court is  
36 satisfied that the technology to be used will allow high quality  
37 interactive video and audio presentation of testimony and examination



1 of the witness and will not violate the defendant's right to  
2 confrontation.

--- END ---