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ENGROSSED SECOND SUBSTITUTE SENATE BILL 6293

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State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators Benton, Roach, T. Sheldon, Rossi, McDonald and Oke)

Read first time 02/10/98.

1 AN ACT Relating to drunk driving; reenacting and amending RCW  
2 46.61.5055; adding a new section to chapter 46.61 RCW; adding a new  
3 section to chapter 46.20 RCW; creating new sections; prescribing  
4 penalties; providing an effective date; and declaring an emergency.

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

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

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

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

15 (i) By imprisonment for not less than one day nor more than one  
16 year(~~(. Twenty-four consecutive hours of the imprisonment))~~ and thirty  
17 days of electronic home monitoring. The offender shall pay for the  
18 cost of the electronic monitoring. The county or municipality where  
19 the penalty is being imposed shall determine the cost. The court may

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

12 (ii) By a fine of not less than (~~three~~) five hundred (~~fifty~~)  
13 dollars nor more than five thousand dollars. (~~Three~~) Five hundred  
14 (~~fifty~~) dollars of the fine may not be suspended or deferred unless  
15 the court finds the 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))~~ and sixty days of  
29 electronic home monitoring. The offender shall pay for the cost of the  
30 electronic monitoring. The county or municipality where the penalty is  
31 being imposed shall determine the cost. The court may also require the  
32 offender's electronic home monitoring device include an alcohol  
33 detection breathalyzer, and may restrict the amount of alcohol the  
34 offender may consume during the time the offender is on electronic home  
35 monitoring. Two days of imprisonment and sixty days of electronic home  
36 monitoring may not be suspended or deferred unless the court finds that  
37 the imposition of this mandatory minimum sentence would impose a  
38 substantial risk to the offender's physical or mental well-being.  
39 Whenever the mandatory minimum sentence is suspended or deferred, the

1 court shall state in writing the reason for granting the suspension or  
2 deferral and the facts upon which the suspension or deferral is based;  
3 and

4 (ii) By a fine of not less than (~~five~~) seven hundred fifty  
5 dollars nor more than five thousand dollars. (~~Five~~) Seven hundred  
6 fifty dollars of the fine may not be suspended or deferred unless the  
7 court finds the offender to be 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~~) seven years  
17 shall be 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)~~) and sixty days of electronic  
24 home 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. Thirty days of imprisonment and sixty days of electronic  
31 home monitoring may not be suspended or deferred unless the court finds  
32 that the imposition of this mandatory minimum sentence would impose a  
33 substantial risk to the offender's physical or mental well-being.  
34 Whenever the mandatory minimum sentence is suspended or deferred, the  
35 court shall state in writing the reason for granting the suspension or  
36 deferral and the facts upon which the suspension or deferral is based;  
37 and

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

1 thousand dollars of the fine may not be suspended or deferred unless  
2 the court finds the 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 two 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; or

10 (b) In the case of a person whose alcohol concentration was at  
11 least 0.15, or for whom by reason of the person's refusal to take a  
12 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 forty-five days nor more than  
15 one year(~~(. Forty five days of the imprisonment)~~) and ninety days of  
16 electronic home monitoring. The offender shall pay for the cost of the  
17 electronic monitoring. The county or municipality where the penalty is  
18 being imposed shall determine the cost. The court may also require the  
19 offender's electronic home monitoring device include an alcohol  
20 detection breathalyzer, and may restrict the amount of alcohol the  
21 offender may consume during the time the offender is on electronic home  
22 monitoring. Forty-five days of imprisonment and ninety days of  
23 electronic home monitoring may not be suspended or deferred unless the  
24 court finds that the imposition of this mandatory minimum sentence  
25 would impose a substantial risk to the offender's physical or mental  
26 well-being. Whenever the mandatory minimum sentence is suspended or  
27 deferred, the court shall state in writing the reason for granting the  
28 suspension or deferral and the facts upon which the suspension or  
29 deferral is based; and

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

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

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

3 (3) A person who is convicted of a violation of RCW 46.61.502 or  
4 46.61.504 and who has two or more prior offenses (~~within five years~~)  
5 shall be punished as follows:

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

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

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

38 (~~b~~) In the case of a person whose alcohol concentration was at  
39 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 one hundred twenty days nor~~  
4 ~~more than one year. One hundred twenty days of the imprisonment may~~  
5 ~~not be suspended or deferred unless the court finds that the imposition~~  
6 ~~of this mandatory minimum sentence would impose a substantial risk to~~  
7 ~~the offender's physical or mental well being. Whenever the mandatory~~  
8 ~~minimum sentence is suspended or deferred, the court shall state in~~  
9 ~~writing the reason for granting the suspension or deferral and the~~  
10 ~~facts upon which the suspension or deferral is based; and~~

11 ~~(ii) By a fine of not less than one thousand five hundred dollars~~  
12 ~~nor more than five thousand dollars. One thousand five hundred dollars~~  
13 ~~of the fine may not be suspended or deferred unless the court finds the~~  
14 ~~offender to be 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 ~~four years. The period of license, permit, or privilege revocation 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 revoke the offender's license, permit, or~~  
21 ~~privilege)).~~

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

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

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

32 (7)(a) In addition to any nonsuspendable and nondeferrable jail  
33 sentence required by this section, whenever the court imposes less than  
34 one year in jail, the court shall also suspend but shall not defer a  
35 period of confinement for a period not exceeding two years. The court  
36 shall impose conditions of probation that include: (i) Not driving a  
37 motor vehicle within this state without a valid license to drive and  
38 proof of financial responsibility for the future; (ii) not driving a  
39 motor vehicle within this state while having an alcohol concentration

1 of 0.08 or more within two hours after driving; and (iii) not refusing  
2 to submit to a test of his or her breath or blood to determine alcohol  
3 concentration upon request of a law enforcement officer who has  
4 reasonable grounds to believe the person was driving or was in actual  
5 physical control of a motor vehicle within this state while under the  
6 influence of intoxicating liquor. The court may impose conditions of  
7 probation that include nonrepetition, installation of an ignition  
8 interlock or other biological or technical device on the probationer's  
9 motor vehicle, alcohol or drug treatment, supervised probation, or  
10 other conditions that may be appropriate. The sentence may be imposed  
11 in whole or in part upon violation of a condition of probation during  
12 the suspension period.

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

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

27 (8) For purposes of this section:

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

30 (b) "Permanent revocation" means revocation for the lifetime of the  
31 offender;

32 (c) A "prior offense" means any of the following:

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

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

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

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

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

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

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

13 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
14 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
15 ordinance, if the charge under which the deferred prosecution was  
16 granted was originally filed as a violation of RCW 46.61.502 or  
17 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
18 46.61.522~~((-))~~; and

19 ~~((b))~~ (d) "Within ~~((five))~~ seven years" means that the arrest for  
20 a prior offense occurred within ~~((five))~~ seven years of the arrest for  
21 the current offense.

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

24 A person who drives a vehicle within this state after his or her  
25 license has been permanently revoked pursuant to RCW 46.61.5055 is  
26 guilty of a gross misdemeanor and shall be punished by a fine of not  
27 more than five thousand dollars and by imprisonment for one year. A  
28 second or subsequent violation of this section is a class C felony and  
29 shall be punished by a fine of not more than ten thousand dollars and  
30 by imprisonment for seven years. Periods of imprisonment to be imposed  
31 under this section for either gross misdemeanor or felony violations  
32 are mandatory and may not be suspended or deferred. Sentences imposed  
33 for felony violations are not subject to the earned early release  
34 provisions of the sentencing reform act.

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



1       At the expiration of seven years from the date of any conviction in  
2 which a person was punished by a permanent license revocation under RCW  
3 46.61.5055 (2) or (3), the person may petition the department for  
4 restoration of his or her privilege to operate a motor vehicle in this  
5 state. 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       "Good cause shown" means that the individual submitting the  
12 petition presents sufficient evidence of permanent rehabilitation  
13 through affidavits from treatment providers, doctors, and others. The  
14 petitioner has the burden of demonstrating by clear and convincing  
15 evidence that he or she has spent the previous seven years in a state  
16 of sobriety.

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

23       NEW SECTION.   **Sec. 5.** If this act mandates an increased level of  
24 service by local governments, the local government may, under RCW  
25 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the  
26 legislature. The claims shall be subject to verification by the office  
27 of financial management.

28       NEW SECTION.   **Sec. 6.** Section 4 of this act is necessary for the  
29 immediate preservation of the public peace, health, or safety, or  
30 support of the state government and its existing public institutions,  
31 and takes effect immediately. Sections 1 through 3 of this act take  
32 effect November 1, 1998.

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