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SENATE BILL 6408

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State of Washington

55th Legislature

1998 Regular Session

By Senators McCaslin, Kline, Long, Fairley, Stevens, Hargrove, Zarelli, Johnson, Thibaudeau, Haugen, Schow, Roach and Oke

Read first time 01/19/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to penalties for alcohol violators; reenacting and  
2 amending RCW 46.61.5055; and prescribing penalties.

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

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

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

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

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

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

7 (iii) By suspension of the offender's license or permit to drive,  
8 or suspension of any nonresident privilege to drive, for a period of  
9 ninety days. The period of license, permit, or privilege suspension  
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 suspend 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 two days nor more than one  
19 year. Two consecutive days of the imprisonment may not be suspended or  
20 deferred unless the court finds that the imposition of this mandatory  
21 minimum sentence would impose a substantial risk to the offender's  
22 physical or mental well-being. Whenever the mandatory minimum sentence  
23 is suspended or deferred, the court shall state in writing the reason  
24 for granting the suspension or deferral and the facts upon which the  
25 suspension or deferral is based; and

26 (ii) By a fine of not less than five hundred dollars nor more than  
27 five thousand dollars. Five hundred dollars of the fine may not be  
28 suspended or deferred unless the court finds the offender to be  
29 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 one year. The period of license, permit, or privilege suspension 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 suspend the offender's license, permit, or  
36 privilege.

37 (2) A person who is convicted of a violation of RCW 46.61.502 or  
38 46.61.504 and who has one prior offense within five years shall be  
39 punished as follows:

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

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

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

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

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

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

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

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

8 (3) A person who is convicted of a violation of RCW 46.61.502 or  
9 46.61.504 and who has two or more prior offenses within five 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 ninety days nor more than one  
16 year. Ninety days of the imprisonment may not be suspended or deferred  
17 unless the court finds that the imposition of this mandatory minimum  
18 sentence would impose a substantial risk to the offender's physical or  
19 mental well-being. Whenever the mandatory minimum sentence is  
20 suspended or deferred, the court shall state in writing the reason for  
21 granting the suspension or deferral and the facts upon which the  
22 suspension or deferral is based; and

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

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

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

38 (i) By imprisonment for not less than one hundred twenty days nor  
39 more than one year. One hundred twenty days of the imprisonment may

1 not be suspended or deferred unless the court finds that the imposition  
2 of this mandatory minimum sentence would impose a substantial risk to  
3 the offender's physical or mental well-being. Whenever the mandatory  
4 minimum sentence is suspended or deferred, the court shall state in  
5 writing the reason for granting the suspension or deferral and the  
6 facts upon which the suspension or deferral is based; and

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

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

18 (4) Any minimum nonsuspendable and nondeferrable jail sentence  
19 required by this section shall be doubled for any offender who  
20 committed the offense with a person under the age of seventeen in the  
21 motor vehicle.

22 (5) 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))~~ (6) An offender punishable under this section is subject to  
27 the alcohol assessment and treatment provisions of RCW 46.61.5056.

28 ~~((+6))~~ (7) After expiration of any period of suspension or  
29 revocation of the offender's license, permit, or privilege to drive  
30 required by this section, the department shall place the offender's  
31 driving privilege in probationary status pursuant to RCW 46.20.355.

32 ~~((+7))~~ (8)(a) In addition to any nonsuspendable and nondeferrable  
33 jail sentence required by this section, whenever the court imposes less  
34 than one year in jail, the court shall also suspend but shall not defer  
35 a period of confinement for a period not exceeding two years. The  
36 court shall impose conditions of probation that include: (i) Not  
37 driving a motor vehicle within this state without a valid license to  
38 drive and proof of financial responsibility for the future; (ii) not  
39 driving a motor vehicle within this state while having an alcohol

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

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

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

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

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

36 (v) A conviction for a violation of RCW 46.61.--- (section 4,  
37 chapter 66, Laws of 1997) or an equivalent local ordinance, if the  
38 conviction is the result of a charge that was originally filed as a

1 violation of RCW 46.61.502 or 46.61.504, or an equivalent local  
2 ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

9 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
10 prosecution for a violation of RCW 46.61.--- (section 4, chapter 66,  
11 Laws of 1997), or an equivalent local ordinance, if the charge under  
12 which the deferred prosecution was granted was originally filed as a  
13 violation of RCW 46.61.502 or 46.61.504, or an equivalent local  
14 ordinance, or of RCW 46.61.520 or 46.61.522.

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

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