
SENATE BILL 5162

State of Washington

56th Legislature

1999 Regular Session

By Senators Goings, McCaslin, Long, Kline, Rasmussen, Heavey and Winsley

Read first time 01/14/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to correcting electronic monitoring provisions in
2 the penalty schedule for alcohol violators; and reenacting and amending
3 RCW 46.61.5055.

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

5 **Sec. 1.** RCW 46.61.5055 and 1998 c 215 s 1, 1998 c 214 s 1, 1998 c
6 211 s 1, 1998 c 210 s 4, 1998 c 207 s 1, and 1998 c 206 s 1 are each
7 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 seven years shall be
10 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 may not be
17 suspended or deferred unless the court finds that the imposition of
18 this mandatory minimum sentence would impose a substantial risk to the
19 offender's physical or mental well-being. Whenever the mandatory

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

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

17 (iii) By suspension of the offender's license or permit to drive,
18 or suspension of any nonresident privilege to drive, for a period of
19 ninety days. The period of license, permit, or privilege suspension
20 may not be suspended. The court shall notify the department of
21 licensing of the conviction, and upon receiving notification of the
22 conviction the department shall suspend the offender's license, permit,
23 or 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 two days nor more than one
29 year. Two consecutive 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. In lieu of the mandatory minimum term
36 of imprisonment required under this subsection (1)(b)(i), the court may
37 order not less than thirty days of electronic home monitoring. The
38 offender shall pay the cost of electronic home monitoring. The county
39 or municipality in which the penalty is being imposed shall determine

1 the cost. The court may also require the offender's electronic home
2 monitoring device to include an alcohol detection breathalyzer, and the
3 court may restrict the amount of alcohol the offender may consume
4 during the time the offender is on electronic home monitoring; and

5 (ii) By a fine of not less than five hundred dollars nor more than
6 five thousand dollars. Five hundred dollars of the fine may not be
7 suspended or deferred unless the court finds the offender to be
8 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 one year. The period of license, permit, or privilege suspension 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 suspend the offender's license, permit, or
15 privilege; and

16 (iv) By a court-ordered restriction under RCW 46.20.720.

17 (2) A person who is convicted of a violation of RCW 46.61.502 or
18 46.61.504 and who has one prior offense within seven years shall be
19 punished as follows:

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

24 (i) By imprisonment for not less than thirty days nor more than one
25 year and sixty days of electronic home monitoring. The offender shall
26 pay for the cost of the electronic monitoring. The county or
27 municipality where the penalty is being imposed shall determine the
28 cost. The court may also require the offender's electronic home
29 monitoring device include an alcohol detection breathalyzer, and may
30 restrict the amount of alcohol the offender may consume during the time
31 the offender is on electronic home monitoring. Thirty days of
32 imprisonment and sixty days of electronic home monitoring may not be
33 suspended or deferred unless the court finds that the imposition of
34 this mandatory minimum sentence would impose a substantial risk to the
35 offender's physical or mental well-being. Whenever the mandatory
36 minimum sentence is suspended or deferred, the court shall state in
37 writing the reason for granting the suspension or deferral and the
38 facts upon which the suspension or deferral is based; and

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

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

12 (iv) By a court-ordered restriction under RCW 46.20.720; or

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

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

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

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

1 of licensing of the conviction, and upon receiving notification of the
2 conviction the department shall revoke the offender's license, permit,
3 or privilege; and

4 (iv) By a court-ordered restriction under RCW 46.20.720.

5 (3) A person who is convicted of a violation of RCW 46.61.502 or
6 46.61.504 and who has two or more prior offenses within seven years
7 shall be punished as follows:

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

28 (ii) By a fine of not less than one thousand dollars nor more than
29 five thousand dollars. One thousand 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 three years. The period of license, permit, or privilege revocation
35 may not be suspended. The court shall notify the department of
36 licensing of the conviction, and upon receiving notification of the
37 conviction the department shall revoke the offender's license, permit,
38 or privilege; and

39 (iv) By a court-ordered restriction under RCW 46.20.720; or

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

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

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

32 (iv) By a court-ordered restriction under RCW 46.20.720.

33 (4) In exercising its discretion in setting penalties within the
34 limits allowed by this section, the court shall particularly consider
35 the following:

36 (a) Whether the person's driving at the time of the offense was
37 responsible for injury or damage to another or another's property; and

38 (b) Whether the person was driving or in physical control of a
39 vehicle with one or more passengers at the time of the offense.

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

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

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

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

31 (c) For each incident involving a violation of a mandatory
32 condition of probation imposed under this subsection, the license,
33 permit, or privilege to drive of the person shall be suspended by the
34 court for thirty days or, if such license, permit, or privilege to
35 drive already is suspended, revoked, or denied at the time the finding
36 of probation violation is made, the suspension, revocation, or denial
37 then in effect shall be extended by thirty days. The court shall
38 notify the department of any suspension, revocation, or denial or any

1 extension of a suspension, revocation, or denial imposed under this
2 subsection.

3 (8) A court may waive the electronic home monitoring requirements
4 of this chapter when:

5 (a) The offender does not have a dwelling, telephone service, or
6 any other necessity to operate an electronic home monitoring system;

7 (b) The offender does not reside in the state of Washington; or

8 (c) The court determines that there is reason to believe that the
9 offender would violate the conditions of the electronic home monitoring
10 penalty.

11 Whenever the mandatory minimum term of electronic home monitoring
12 is waived, the court shall state in writing the reason for granting the
13 waiver and the facts upon which the waiver is based, and shall impose
14 an alternative sentence with similar punitive consequences.

15 (9) 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))~~) A "prior offense" means any of the following:

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

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

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

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

27 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
28 9A.36.050 or an equivalent local ordinance, if the conviction is the
29 result of a charge that was originally filed as a violation of RCW
30 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
31 46.61.520 or 46.61.522;

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

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

38 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
39 prosecution for a violation of RCW 46.61.5249, or an equivalent local

1 ordinance, if the charge under which the deferred prosecution was
2 granted was originally filed as a violation of RCW 46.61.502 or
3 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
4 46.61.522; and

5 ((+e)) (b) "Within seven years" means that the arrest for a prior
6 offense occurred within seven years of the arrest for the current
7 offense.

8 NEW SECTION. **Sec. 2.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

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