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**SUBSTITUTE SENATE BILL 5399**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** Senate Committee on Judiciary (originally sponsored by Senators Rossi, Kline, Costa and McCaslin)

Read first time 03/03/99.

1 AN ACT Relating to traffic offenses; amending RCW 9.94A.360,  
2 46.20.720, and 10.05.140; prescribing penalties; and declaring an  
3 emergency.

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

5 **Sec. 1.** RCW 9.94A.360 and 1998 c 211 s 4 are each amended to read  
6 as follows:

7 The offender score is measured on the horizontal axis of the  
8 sentencing grid. The offender score rules are as follows:

9 The offender score is the sum of points accrued under this section  
10 rounded down to the nearest whole number.

11 (1) A prior conviction is a conviction which exists before the date  
12 of sentencing for the offense for which the offender score is being  
13 computed. Convictions entered or sentenced on the same date as the  
14 conviction for which the offender score is being computed shall be  
15 deemed "other current offenses" within the meaning of RCW 9.94A.400.

16 (2) Class A and sex prior felony convictions shall always be  
17 included in the offender score. Class B prior felony convictions other  
18 than sex offenses shall not be included in the offender score, if since  
19 the last date of release from confinement (including full-time

1 residential treatment) pursuant to a felony conviction, if any, or  
2 entry of judgment and sentence, the offender had spent ten consecutive  
3 years in the community without committing any crime that subsequently  
4 results in a conviction. Class C prior felony convictions other than  
5 sex offenses shall not be included in the offender score if, since the  
6 last date of release from confinement (including full-time residential  
7 treatment) pursuant to a felony conviction, if any, or entry of  
8 judgment and sentence, the offender had spent five consecutive years in  
9 the community without committing any crime that subsequently results in  
10 a conviction. Serious traffic convictions shall not be included in the  
11 offender score if, since the last date of release from confinement  
12 (including full-time residential treatment) pursuant to a felony  
13 conviction, if any, or entry of judgment and sentence, the offender  
14 spent five years in the community without committing any crime that  
15 subsequently results in a conviction. This subsection applies to both  
16 adult and juvenile prior convictions.

17 (3) Out-of-state convictions for offenses shall be classified  
18 according to the comparable offense definitions and sentences provided  
19 by Washington law. Federal convictions for offenses shall be  
20 classified according to the comparable offense definitions and  
21 sentences provided by Washington law. If there is no clearly  
22 comparable offense under Washington law or the offense is one that is  
23 usually considered subject to exclusive federal jurisdiction, the  
24 offense shall be scored as a class C felony equivalent if it was a  
25 felony under the relevant federal statute.

26 (4) Score prior convictions for felony anticipatory offenses  
27 (attempts, criminal solicitations, and criminal conspiracies) the same  
28 as if they were convictions for completed offenses.

29 (5)(a) In the case of multiple prior convictions, for the purpose  
30 of computing the offender score, count all convictions separately,  
31 except:

32 (i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to  
33 encompass the same criminal conduct, shall be counted as one offense,  
34 the offense that yields the highest offender score. The current  
35 sentencing court shall determine with respect to other prior adult  
36 offenses for which sentences were served concurrently or prior juvenile  
37 offenses for which sentences were served consecutively, whether those  
38 offenses shall be counted as one offense or as separate offenses using  
39 the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and

1 if the court finds that they shall be counted as one offense, then the  
2 offense that yields the highest offender score shall be used. The  
3 current sentencing court may presume that such other prior offenses  
4 were not the same criminal conduct from sentences imposed on separate  
5 dates, or in separate counties or jurisdictions, or in separate  
6 complaints, indictments, or informations;

7 (ii) In the case of multiple prior convictions for offenses  
8 committed before July 1, 1986, for the purpose of computing the  
9 offender score, count all adult convictions served concurrently as one  
10 offense, and count all juvenile convictions entered on the same date as  
11 one offense. Use the conviction for the offense that yields the  
12 highest offender score.

13 (b) As used in this subsection (5), "served concurrently" means  
14 that: (i) The latter sentence was imposed with specific reference to  
15 the former; (ii) the concurrent relationship of the sentences was  
16 judicially imposed; and (iii) the concurrent timing of the sentences  
17 was not the result of a probation or parole revocation on the former  
18 offense.

19 (6) If the present conviction is one of the anticipatory offenses  
20 of criminal attempt, solicitation, or conspiracy, count each prior  
21 conviction as if the present conviction were for a completed offense.

22 (7) If the present conviction is for a nonviolent offense and not  
23 covered by subsection (11) or (12) of this section, count one point for  
24 each adult prior felony conviction and one point for each juvenile  
25 prior violent felony conviction and 1/2 point for each juvenile prior  
26 nonviolent felony conviction.

27 (8) If the present conviction is for a violent offense and not  
28 covered in subsection (9), (10), (11), or (12) of this section, count  
29 two points for each prior adult and juvenile violent felony conviction,  
30 one point for each prior adult nonviolent felony conviction, and 1/2  
31 point for each prior juvenile nonviolent felony conviction.

32 (9) If the present conviction is for Murder 1 or 2, Assault 1,  
33 Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or Rape 1, count  
34 three points for prior adult and juvenile convictions for crimes in  
35 these categories, two points for each prior adult and juvenile violent  
36 conviction (not already counted), one point for each prior adult  
37 nonviolent felony conviction, and 1/2 point for each prior juvenile  
38 nonviolent felony conviction.

1 (10) If the present conviction is for Burglary 1, count prior  
2 convictions as in subsection (8) of this section; however count two  
3 points for each prior adult Burglary 2 or residential burglary  
4 conviction, and one point for each prior juvenile Burglary 2 or  
5 residential burglary conviction.

6 (11) If the present conviction is for a felony traffic offense  
7 count two points for each adult or juvenile prior conviction for  
8 Vehicular Homicide or Vehicular Assault; for each felony offense (~~or~~  
9 ~~serious traffic offense,~~) count one point for each adult and 1/2 point  
10 for each juvenile prior conviction; for each serious traffic offense,  
11 other than those used for an enhancement pursuant to RCW 46.61.520(2),  
12 count one point for each adult and 1/2 point for each juvenile prior  
13 conviction. (~~This subsection shall not apply when additional time is~~  
14 ~~added to a sentence pursuant to RCW 46.61.520(2).)~~)

15 (12) If the present conviction is for a drug offense count three  
16 points for each adult prior felony drug offense conviction and two  
17 points for each juvenile drug offense. All other adult and juvenile  
18 felonies are scored as in subsection (8) of this section if the current  
19 drug offense is violent, or as in subsection (7) of this section if the  
20 current drug offense is nonviolent.

21 (13) If the present conviction is for Willful Failure to Return  
22 from Furlough, RCW 72.66.060, Willful Failure to Return from Work  
23 Release, RCW 72.65.070, or Escape from Community Custody, RCW  
24 72.09.310, count only prior escape convictions in the offender score.  
25 Count adult prior escape convictions as one point and juvenile prior  
26 escape convictions as 1/2 point.

27 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or  
28 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and  
29 juvenile prior convictions as 1/2 point.

30 (15) If the present conviction is for Burglary 2 or residential  
31 burglary, count priors as in subsection (7) of this section; however,  
32 count two points for each adult and juvenile prior Burglary 1  
33 conviction, two points for each adult prior Burglary 2 or residential  
34 burglary conviction, and one point for each juvenile prior Burglary 2  
35 or residential burglary conviction.

36 (16) If the present conviction is for a sex offense, count priors  
37 as in subsections (7) through (15) of this section; however count three  
38 points for each adult and juvenile prior sex offense conviction.

1 (17) If the present conviction is for an offense committed while  
2 the offender was under community placement, add one point.

3 **Sec. 2.** RCW 46.20.720 and 1998 c 210 s 2 are each amended to read  
4 as follows:

5 (1) The court may order that after a period of suspension,  
6 revocation, or denial of driving privileges, and for up to as long as  
7 the court has jurisdiction, any person convicted of any offense  
8 involving the use, consumption, or possession of alcohol while  
9 operating a motor vehicle may drive only a motor vehicle equipped with  
10 a functioning ignition interlock or other biological or technical  
11 device.

12 (2) If a person is convicted of a violation of RCW 46.61.502 or  
13 46.61.504 or an equivalent local ordinance and it is: (a) The person's  
14 first conviction or a deferred prosecution under chapter 10.05 RCW and  
15 his or her alcohol concentration was at least 0.15, or by reason of the  
16 person's refusal to take a test offered pursuant to RCW 46.20.308 there  
17 is no test result indicating the person's alcohol concentration; or (b)  
18 the person's second or subsequent conviction; or (c) the person's first  
19 conviction and the person has a previous deferred prosecution under  
20 chapter 10.05 RCW or it is a deferred prosecution under chapter 10.05  
21 RCW and the person has a previous conviction, the court shall order  
22 that after ((a)) any applicable period of suspension, revocation, or  
23 denial of driving privileges, the person may drive only a motor vehicle  
24 equipped with a functioning ignition interlock or other biological or  
25 technical device. The court may waive the requirement for the use of  
26 such a device if the court makes a specific finding in writing that  
27 such devices are not reasonably available in the local area. Nothing  
28 in this section may be interpreted as entitling a person to more than  
29 one deferred prosecution.

30 (3) The court shall establish a specific calibration setting at  
31 which the ignition interlock or other biological or technical device  
32 will prevent the motor vehicle from being started and the period of  
33 time that the person shall be subject to the restriction. In the case  
34 of a person under subsection (2) of this section, the period of time of  
35 the restriction will be as follows:

36 (a) For a person (i) who is subject to RCW 46.61.5055 (1)(b), (2),  
37 or (3), or who is subject to a deferred prosecution program under

1 chapter 10.05 RCW, and (ii) who has not previously been restricted  
2 under this section, a period of not less than one year;

3 (b) For a person who has previously been restricted under (a) of  
4 this subsection, a period of not less than five years;

5 (c) For a person who has previously been restricted under (b) of  
6 this subsection, a period of not less than ten years.

7 For purposes of this section, "convicted" means being found guilty  
8 of an offense or being placed on a deferred prosecution program under  
9 chapter 10.05 RCW.

10 **Sec. 3.** RCW 10.05.140 and 1997 c 229 s 2 are each amended to read  
11 as follows:

12 As a condition of granting a deferred prosecution petition, the  
13 court shall order that the petitioner shall not operate a motor vehicle  
14 upon the public highways without a valid operator's license and proof  
15 of liability insurance. The amount of liability insurance shall be  
16 established by the court at not less than that established by RCW  
17 46.29.490. As a condition of granting a deferred prosecution petition,  
18 the court (~~may~~) shall also order the installation of an interlock or  
19 other device under RCW 46.20.720 for a petitioner who has previously  
20 been convicted of a violation of RCW 46.61.502 or 46.61.504 or an  
21 equivalent local ordinance or a petitioner who has been charged with  
22 such an offense and had an alcohol concentration of at least .15, or by  
23 reason of the person's refusal to take a test offered pursuant to RCW  
24 46.20.308 there is no test result indicating the person's alcohol  
25 concentration. For any other petitioner, the court may order the  
26 installation of an interlock device under RCW 46.20.720(1) as a  
27 condition of granting a deferred prosecution petition. As a condition  
28 of granting a deferred prosecution petition, the court may order the  
29 petitioner to make restitution and to pay costs as defined in RCW  
30 10.01.160. The court may terminate the deferred prosecution program  
31 upon violation of this section.

32 NEW SECTION. **Sec. 4.** This act is necessary for the immediate  
33 preservation of the public peace, health, or safety, or support of the  
34 state government and its existing public institutions, and takes effect  
35 immediately.

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