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SENATE BILL 6270

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State of Washington

56th Legislature

2000 Regular Session

By Senator Eide

Read first time . Referred to Committee on .

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

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

4 **Sec. 1.** RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and  
5 1999 c 5 s 1 are 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 seven 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  
19 writing the reason for granting the suspension or deferral and the

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

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

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

19 (i) By imprisonment for not less than two days nor more than one  
20 year. Two consecutive days of the imprisonment may not be suspended or  
21 deferred unless the court finds that the imposition of this mandatory  
22 minimum sentence would impose a substantial risk to the offender's  
23 physical or mental well-being. Whenever the mandatory minimum sentence  
24 is suspended or deferred, the court shall state in writing the reason  
25 for granting the suspension or deferral and the facts upon which the  
26 suspension or deferral is based. In lieu of the mandatory minimum term  
27 of imprisonment required under this subsection (1)(b)(i), the court may  
28 order not less than thirty days of electronic home monitoring. The  
29 offender shall pay the cost of electronic home monitoring. The county  
30 or municipality in which the penalty is being imposed shall determine  
31 the cost. The court may also require the offender's electronic home  
32 monitoring device to include an alcohol detection breathalyzer, and the  
33 court may restrict the amount of alcohol the offender may consume  
34 during the time the offender is on electronic home monitoring; and

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

39 (iii) By a court-ordered restriction under RCW 46.20.720.

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

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

8 (i) By imprisonment for not less than thirty days nor more than one  
9 year and sixty days of electronic home monitoring. The offender shall  
10 pay for the cost of the electronic monitoring. The county or  
11 municipality where the penalty is being imposed shall determine the  
12 cost. The court may also require the offender's electronic home  
13 monitoring device include an alcohol detection breathalyzer, and may  
14 restrict the amount of alcohol the offender may consume during the time  
15 the offender is on electronic home monitoring. Thirty days of  
16 imprisonment and sixty days of electronic home monitoring 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  
20 minimum sentence is suspended or deferred, the court shall state in  
21 writing the reason for granting the suspension or deferral and the  
22 facts upon which the suspension or deferral is based; and

23 (ii) By a fine of not less than five hundred dollars nor more than  
24 five thousand dollars. Five hundred 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 a court-ordered restriction under RCW 46.20.720; or

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

32 (i) By imprisonment for not less than forty-five days nor more than  
33 one year and ninety days of electronic home monitoring. The offender  
34 shall pay for the cost of the electronic monitoring. The county or  
35 municipality where the penalty is being imposed shall determine the  
36 cost. The court may also require the offender's electronic home  
37 monitoring device include an alcohol detection breathalyzer, and may  
38 restrict the amount of alcohol the offender may consume during the time  
39 the offender is on electronic home monitoring. Forty-five days of

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

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

12 (iii) By a court-ordered restriction under RCW 46.20.720.

13 (3) A person who is convicted of a violation of RCW 46.61.502 or  
14 46.61.504 and who has two or more prior offenses within seven years  
15 shall be punished as follows:

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

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

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

1 (iii) By a court-ordered restriction under RCW 46.20.720; or

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

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

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

26 (iii) By a court-ordered restriction under RCW 46.20.720.

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

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

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

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

36 (6) The license, permit, or nonresident privilege of a person  
37 convicted of driving or being in physical control of a motor vehicle  
38 while under the influence of intoxicating liquor or drugs must:

1 (a) If the person's alcohol concentration was less than 0.15, or if  
2 for reasons other than the person's refusal to take a test offered  
3 under RCW 46.20.308 there is no test result indicating the person's  
4 alcohol concentration:

5 (i) Where there has been no prior offense within seven years, be  
6 suspended or denied by the department for ninety days;

7 (ii) Where there has been one prior offense within seven years, be  
8 revoked or denied by the department for two years; or

9 (iii) Where there have been two or more prior offenses within seven  
10 years, be revoked or denied by the department for three years;

11 (b) If the person's alcohol concentration was at least 0.15, or if  
12 by reason of the person's refusal to take a test offered under RCW  
13 46.20.308 there is no test result indicating the person's alcohol  
14 concentration:

15 (i) Where there has been no prior offense within seven years, be  
16 revoked or denied by the department for one year;

17 (ii) Where there has been one prior offense within seven years, be  
18 revoked or denied by the department for nine hundred days; or

19 (iii) Where there have been two or more prior offenses within seven  
20 years, be revoked or denied by the department for four years.

21 For purposes of this subsection, the department shall refer to the  
22 driver's record maintained under RCW 46.52.120 when determining the  
23 existence of prior offenses.

24 (7) After expiration of any period of suspension, revocation, or  
25 denial of the offender's license, permit, or privilege to drive  
26 required by this section, the department shall place the offender's  
27 driving privilege in probationary status pursuant to RCW 46.20.355.

28 (8)(a) In addition to any nonsuspendable and nondeferrable jail  
29 sentence required by this section, whenever the court imposes less than  
30 one year in jail, the court shall also suspend but shall not defer a  
31 period of confinement for a period not exceeding five years. The court  
32 shall impose conditions of probation that include: (i) Not driving a  
33 motor vehicle within this state without a valid license to drive and  
34 proof of financial responsibility for the future; (ii) not driving a  
35 motor vehicle within this state while having an alcohol concentration  
36 of 0.08 or more within two hours after driving; and (iii) not refusing  
37 to submit to a test of his or her breath or blood to determine alcohol  
38 concentration upon request of a law enforcement officer who has  
39 reasonable grounds to believe the person was driving or was in actual

1 physical control of a motor vehicle within this state while under the  
2 influence of intoxicating liquor. The court may impose conditions of  
3 probation that include nonrepetition, installation of an ignition  
4 interlock or other biological or technical device on the probationer's  
5 motor vehicle, alcohol or drug treatment, supervised probation, or  
6 other conditions that may be appropriate. The sentence may be imposed  
7 in whole or in part upon violation of a condition of probation during  
8 the suspension period.

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

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

23 (9) A court may waive the electronic home monitoring requirements  
24 of this chapter when:

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

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

28 (c) The court determines that there is reason to believe that the  
29 offender would violate the conditions of the electronic home monitoring  
30 penalty.

31 Whenever the mandatory minimum term of electronic home monitoring  
32 is waived, the court shall state in writing the reason for granting the  
33 waiver and the facts upon which the waiver is based, and shall impose  
34 an alternative sentence with similar punitive consequences. The  
35 alternative sentence may include, but is not limited to, additional  
36 jail time, work crew, or work camp.

37 Whenever the combination of jail time and electronic home  
38 monitoring or alternative sentence would exceed three hundred sixty-  
39 five days, the offender shall serve the jail portion of the sentence

1 first, and the electronic home monitoring or alternative portion of the  
2 sentence shall be reduced so that the combination does not exceed three  
3 hundred sixty-five days.

4 (10) An offender serving a sentence under this section, whether or  
5 not a mandatory minimum term has expired, may be granted an  
6 extraordinary medical placement by the jail administrator subject to  
7 the standards and limitations set forth in RCW 9.94A.150(4).

8 (11) For purposes of this section:

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

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

12 (ii) A conviction for a violation of RCW 46.61.503 or an equivalent  
13 local ordinance;

14 (iii) A conviction for a violation of RCW 46.61.504 or an  
15 equivalent local ordinance;

16 (~~(iii)~~) (iv) A conviction for a violation of RCW 46.61.520  
17 committed while under the influence of intoxicating liquor or any drug;

18 (~~(iv)~~) (v) A conviction for a violation of RCW 46.61.522  
19 committed while under the influence of intoxicating liquor or any drug;

20 (~~(v)~~) (vi) A conviction for a violation of RCW 46.61.5249,  
21 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the  
22 conviction is the result of a charge that was originally filed as a  
23 violation of RCW 46.61.502 or 46.61.504, or an equivalent local  
24 ordinance, or of RCW 46.61.520 or 46.61.522;

25 (~~(vi)~~) (vii) An out-of-state conviction for a violation that  
26 would have been a violation of (a)(i), (ii), (iii), (iv), or (v) of  
27 this subsection if committed in this state;

28 (~~(vii)~~) (viii) A deferred prosecution under chapter 10.05 RCW  
29 granted in a prosecution for a violation of RCW 46.61.502, 46.61.504,  
30 or an equivalent local ordinance; or

31 (~~(viii)~~) (ix) A deferred prosecution under chapter 10.05 RCW  
32 granted in a prosecution for a violation of RCW 46.61.5249, or an  
33 equivalent local ordinance, if the charge under which the deferred  
34 prosecution was granted was originally filed as a violation of RCW  
35 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
36 46.61.520 or 46.61.522; and



1           (b) "Within seven years" means that the arrest for a prior offense  
2 occurred within seven years of the arrest for the current offense.

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