
HOUSE BILL 1619

State of Washington

58th Legislature

2003 Regular Session

By Representatives Lovick, Delvin, Kirby, Dickerson, Ahern, Nixon, Wallace, Romero, Haigh, Sullivan, Pettigrew, Chase, O'Brien, Lantz, Quall, Miloscia, Berkey, Dunshee, Blake, Hudgins, Cooper, Moeller, Morrell, Schual-Berke, Edwards, Simpson, Bush, Eickmeyer, Murray, Kessler, Conway, Darneille, Kenney, Upthegrove and Rockefeller

Read first time 02/03/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to driving while under the influence with children
2 in the vehicle; reenacting and amending RCW 46.61.5055; and prescribing
3 penalties.

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

5 **Sec. 1.** RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and
6 1999 c 5 s 1 are each reenacted and amended to read as follows:

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

10 (a) In the case of a person whose alcohol concentration was less
11 than 0.15, or for whom for reasons other than the person's refusal to
12 take a 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 one day nor more than one
15 year. Twenty-four consecutive hours of the imprisonment may not be
16 suspended or deferred unless the court finds that the imposition of
17 this mandatory minimum sentence would impose a substantial risk to the
18 offender's physical or mental well-being. Whenever the mandatory
19 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. In lieu of the
3 mandatory minimum term of imprisonment required under this subsection
4 (1)(a)(i), the court may order not less than fifteen days of electronic
5 home monitoring. The offender shall pay the cost of electronic home
6 monitoring. The county or municipality in which the penalty is being
7 imposed shall determine the cost. The court may also require the
8 offender's electronic home monitoring device to include an alcohol
9 detection breathalyzer, and the court may restrict the amount of
10 alcohol the offender may consume during the time the offender is on
11 electronic home monitoring; and

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

16 (b) In the case of a person whose alcohol concentration was at
17 least 0.15, or for whom by reason of the person's refusal to take a
18 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 two days nor more than one
21 year. Two consecutive days of the imprisonment may not be suspended or
22 deferred unless the court finds that the imposition of this mandatory
23 minimum sentence would impose a substantial risk to the offender's
24 physical or mental well-being. Whenever the mandatory minimum sentence
25 is suspended or deferred, the court shall state in writing the reason
26 for granting the suspension or deferral and the facts upon which the
27 suspension or deferral is based. In lieu of the mandatory minimum term
28 of imprisonment required under this subsection (1)(b)(i), the court may
29 order not less than thirty days of electronic home monitoring. The
30 offender shall pay the cost of electronic home monitoring. The county
31 or municipality in which the penalty is being imposed shall determine
32 the cost. The court may also require the offender's electronic home
33 monitoring device to include an alcohol detection breathalyzer, and the
34 court may restrict the amount of alcohol the offender may consume
35 during the time the offender is on electronic home monitoring; and

36 (ii) By a fine of not less than five hundred dollars nor more than
37 five thousand dollars. Five hundred dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be
2 indigent; and

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

4 (2) A person who is convicted of a violation of RCW 46.61.502 or
5 46.61.504 and who has one prior offense within seven years shall be
6 punished as follows:

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

11 (i) By imprisonment for not less than thirty days nor more than one
12 year and sixty days of electronic home monitoring. The offender shall
13 pay for the cost of the electronic monitoring. The county or
14 municipality where the penalty is being imposed shall determine the
15 cost. The court may also require the offender's electronic home
16 monitoring device include an alcohol detection breathalyzer, and may
17 restrict the amount of alcohol the offender may consume during the time
18 the offender is on electronic home monitoring. Thirty days of
19 imprisonment and sixty days of electronic home monitoring may not be
20 suspended or deferred unless the court finds that the imposition of
21 this 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) 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 a court-ordered restriction under RCW 46.20.720; or

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

35 (i) By imprisonment for not less than forty-five days nor more than
36 one year and ninety days of electronic home monitoring. The offender
37 shall pay for the cost of the electronic monitoring. The county or
38 municipality where the penalty is being imposed shall determine the

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

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

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

17 (3) A person who is convicted of a violation of RCW 46.61.502 or
18 46.61.504 and who has two or more prior offenses within seven years
19 shall be 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 ninety days nor more than one
25 year and one hundred twenty days of electronic home monitoring. The
26 offender shall pay for the cost of the electronic monitoring. The
27 county or municipality where the penalty is being imposed shall
28 determine the cost. The court may also require the offender's
29 electronic home monitoring device include an alcohol detection
30 breathalyzer, and may restrict the amount of alcohol the offender may
31 consume during the time the offender is on electronic home monitoring.
32 Ninety days of imprisonment and one hundred twenty days of electronic
33 home monitoring may not be suspended or deferred unless the court finds
34 that the imposition of this mandatory minimum sentence would impose a
35 substantial risk to the offender's physical or mental well-being.
36 Whenever the mandatory minimum sentence is suspended or deferred, the
37 court shall state in writing the reason for granting the suspension or

1 deferral and the facts upon which the suspension or deferral is based;
2 and

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

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

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

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

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

33 (4) If a person who is convicted of a violation of RCW 46.61.502 or
34 46.61.504 committed the offense while a passenger under the age of
35 sixteen was in the vehicle, the court shall add sixty days to any
36 mandatory minimum period of confinement required under this section and
37 sixty days to any mandatory minimum period of electronic home
38 monitoring required under this section.

1 (5) In exercising its discretion in setting penalties within the
2 limits allowed by this section, the court shall particularly consider
3 the following:

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

6 (b) Whether at the time of the offense the person was driving or in
7 physical control of a vehicle with one or more passengers (~~at the time~~
8 ~~of the offense~~) not covered by subsection (4) of this section.

9 ~~((+5+))~~ (6) An offender punishable under this section is subject to
10 the alcohol assessment and treatment provisions of RCW 46.61.5056.

11 ~~((+6+))~~ (7) The license, permit, or nonresident privilege of a
12 person convicted of driving or being in physical control of a motor
13 vehicle while under the influence of intoxicating liquor or drugs must:

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

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

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

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

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

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

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

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

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

37 ~~((+7+))~~ (8) After expiration of any period of suspension,
38 revocation, or denial of the offender's license, permit, or privilege

1 to drive required by this section, the department shall place the
2 offender's driving privilege in probationary status pursuant to RCW
3 46.20.355.

4 ~~((+8))~~ (9)(a) In addition to any nonsuspendable and nondeferrable
5 jail sentence required by this section, whenever the court imposes less
6 than one year in jail, the court shall also suspend but shall not defer
7 a period of confinement for a period not exceeding five years. The
8 court shall impose conditions of probation that include: (i) Not
9 driving a motor vehicle within this state without a valid license to
10 drive and proof of financial responsibility for the future; (ii) not
11 driving a motor vehicle within this state while having an alcohol
12 concentration of 0.08 or more within two hours after driving; and (iii)
13 not refusing to submit to a test of his or her breath or blood to
14 determine alcohol concentration upon request of a law enforcement
15 officer who has reasonable grounds to believe the person was driving or
16 was in actual physical control of a motor vehicle within this state
17 while under the influence of intoxicating liquor. The court may impose
18 conditions of probation that include nonrepetition, installation of an
19 ignition interlock or other biological or technical device on the
20 probationer's motor vehicle, alcohol or drug treatment, supervised
21 probation, or other conditions that may be appropriate. The sentence
22 may be imposed in whole or in part upon violation of a condition of
23 probation during the suspension period.

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

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

1 (~~(9)~~) (10) A court may waive the electronic home monitoring
2 requirements of this chapter when:

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

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

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

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

15 Whenever the combination of jail time and electronic home
16 monitoring or alternative sentence would exceed three hundred sixty-
17 five days, the offender shall serve the jail portion of the sentence
18 first, and the electronic home monitoring or alternative portion of the
19 sentence shall be reduced so that the combination does not exceed three
20 hundred sixty-five days.

21 (~~(10)~~) (11) An offender serving a sentence under this section,
22 whether or not a mandatory minimum term has expired, may be granted an
23 extraordinary medical placement by the jail administrator subject to
24 the standards and limitations set forth in RCW 9.94A.728(4).

25 (~~(11)~~) (12) For purposes of this section:

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

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

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

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

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

35 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
36 9A.36.050 or an equivalent local ordinance, if the conviction is the
37 result of a charge that was originally filed as a violation of RCW

1 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
2 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 46.61.5249, or an equivalent local
11 ordinance, if the charge under which the deferred prosecution was
12 granted was originally filed as a violation of RCW 46.61.502 or
13 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
14 46.61.522; and

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

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