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HOUSE BILL 2629

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State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Campbell, Williams, Nixon, Lantz, Rodne and Simpson

Read first time 01/11/2006. Referred to Committee on Judiciary.

1            AN ACT Relating to creating sentencing enhancements for the crimes  
2 of driving under the influence and physical control of a vehicle while  
3 under the influence; amending RCW 46.61.5055 and 46.61.5151; adding new  
4 sections to chapter 46.61 RCW; and prescribing penalties.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 46.61 RCW  
7 to read as follows:

8            (1) In addition to the penalties listed in RCW 46.61.5055, the  
9 court shall impose the additional sentencing enhancements in subsection  
10 (2) of this section when the offender, at the time he or she was  
11 arrested for a violation of RCW 46.61.502 or 46.61.504, also committed  
12 any of the following:

- 13            (a) Driving without a license, RCW 46.20.005 or 46.20.015;
- 14            (b) Failure to provide proof of motor vehicle insurance, RCW  
15 46.30.020;
- 16            (c) Driving without a required ignition interlock device, RCW  
17 46.20.740;
- 18            (d) Circumventing an ignition interlock device, RCW 46.20.750;
- 19            (e) Reckless driving, RCW 46.61.500;

- 1 (f) Exceeding the speed limit, RCW 46.61.400;  
2 (g) Speeding in a school zone, RCW 46.61.440;  
3 (h) Reckless endangerment of roadway workers, RCW 46.61.527;  
4 (i) Racing of vehicles on highways, RCW 46.61.530;  
5 (j) Failure to obey traffic control devices, RCW 46.61.050;  
6 (k) Open container violation, RCW 46.61.519;  
7 (l) Failure to stop, RCW 46.61.055, 46.61.065, 46.61.200,  
8 46.61.340, 46.61.345, or 46.61.365;  
9 (m) Failure to yield, RCW 46.61.180, 46.61.185, 46.61.190,  
10 46.61.202, 46.61.205, 46.61.210, 46.61.215, 46.61.220, 46.61.235,  
11 46.61.245, or 46.61.261;  
12 (n) Improper lane change or travel, RCW 46.61.140;  
13 (o) Passing stopped school bus, RCW 46.61.370;  
14 (p) Impeding traffic, RCW 46.61.100, or 46.61.425;  
15 (q) Failure to signal or improper signal, RCW 46.61.305;  
16 (r) Operating with obstructed vision, RCW 46.61.615;  
17 (s) Operating with obscured windows, RCW 46.37.430;  
18 (t) Driving without lights, RCW 46.37.020;  
19 (u) Failure to wear safety belts, RCW 46.61.688; or  
20 (v) Following too close, RCW 46.61.145.

21 (2) For each infraction or offense, the court shall impose the  
22 following sentencing enhancements:

23 (a) Five days imprisonment. The additional imprisonment shall be  
24 served in total confinement, shall run consecutively to any other  
25 period of confinement, and may not be suspended or deferred. However,  
26 an offender may be granted extraordinary medical placement when  
27 authorized under RCW 46.61.5055(11). If the additional period of  
28 confinement required under this section increases the total time of  
29 confinement so that it exceeds the statutory maximum for the offense,  
30 the portion of the sentence representing the enhancement may not be  
31 reduced.

32 (b) Two hundred fifty dollar fine. The court may not suspend or  
33 defer this additional fine. If the additional fine required under this  
34 section increases the total fine so that it exceeds the statutory  
35 maximum for the offense, the portion of the fine representing the  
36 enhancement may not be reduced.

37 (c) An order directing the department of licensing to suspend,  
38 revoke, or deny the offender's driver's license, permit, or privilege

1 to drive for an additional thirty days. The suspension, revocation, or  
2 denial under this section may not be stayed or deferred, shall run  
3 consecutively to any other suspension, revocation, or denial imposed,  
4 and is not subject to the day-for-day credit under RCW 46.20.3101(4)  
5 and 46.61.5055(7).

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.61 RCW  
7 to read as follows:

8 In a criminal case where the defendant has been convicted of a  
9 violation of RCW 46.61.502 or 46.61.504 and there has been a special  
10 allegation pleaded and proven beyond a reasonable doubt that the  
11 defendant also committed any of the offenses or infractions listed in  
12 section 1 of this act, the court shall make a finding of fact of the  
13 special allegation, or if a jury trial is had, the jury shall, if it  
14 finds the defendant guilty, also find a special verdict as to the  
15 special allegation.

16 **Sec. 3.** RCW 46.61.5055 and 2004 c 95 s 13 are each amended to read  
17 as follows:

18 (1) A person who is convicted of a violation of RCW 46.61.502 or  
19 46.61.504 and who has no prior offense within seven years shall be  
20 punished as follows:

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

25 (i) By imprisonment for not less than one day nor more than one  
26 year. Twenty-four consecutive hours of the imprisonment may not be  
27 suspended or deferred unless the court finds that the imposition of  
28 this mandatory minimum sentence would impose a substantial risk to the  
29 offender's physical or mental well-being. Whenever the mandatory  
30 minimum sentence is suspended or deferred, the court shall state in  
31 writing the reason for granting the suspension or deferral and the  
32 facts upon which the suspension or deferral is based. In lieu of the  
33 mandatory minimum term of imprisonment required under this subsection  
34 (1)(a)(i), the court may order not less than fifteen days of electronic  
35 home monitoring. The offender shall pay the cost of electronic home  
36 monitoring. The county or municipality in which the penalty is being

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

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

10 (b) In the case of a person whose alcohol concentration was at  
11 least 0.15, or for whom by reason of the person's refusal to take a  
12 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 two days nor more than one  
15 year. Two consecutive days of the imprisonment 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. In lieu of the mandatory minimum term  
22 of imprisonment required under this subsection (1)(b)(i), the court may  
23 order not less than thirty days of electronic home monitoring. The  
24 offender shall pay the cost of electronic home monitoring. The county  
25 or municipality in which the penalty is being imposed shall determine  
26 the cost. The court may also require the offender's electronic home  
27 monitoring device to include an alcohol detection breathalyzer, and the  
28 court may restrict the amount of alcohol the offender may consume  
29 during the time the offender is on electronic home monitoring; and

30 (ii) By a fine of not less than five hundred dollars nor more than  
31 five thousand dollars. Five hundred dollars of the fine may not be  
32 suspended or deferred unless the court finds the offender to be  
33 indigent.

34 (2) A person who is convicted of a violation of RCW 46.61.502 or  
35 46.61.504 and who has one prior offense within seven years shall be  
36 punished as follows:

37 (a) In the case of a person whose alcohol concentration was less

1 than 0.15, or for whom for reasons other than the person's refusal to  
2 take a test offered pursuant to RCW 46.20.308 there is no test result  
3 indicating the person's alcohol concentration:

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

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

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

27 (i) By imprisonment for not less than forty-five days nor more than  
28 one year and ninety days of electronic home monitoring. The offender  
29 shall pay for the cost of the electronic monitoring. The county or  
30 municipality where the penalty is being imposed shall determine the  
31 cost. The court may also require the offender's electronic home  
32 monitoring device include an alcohol detection breathalyzer, and may  
33 restrict the amount of alcohol the offender may consume during the time  
34 the offender is on electronic home monitoring. Forty-five days of  
35 imprisonment and ninety days of electronic home monitoring may not be  
36 suspended or deferred unless the court finds that the imposition of  
37 this mandatory minimum sentence would impose a substantial risk to the  
38 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; and

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

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 seven 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 and one hundred twenty days of electronic home monitoring. The  
17 offender shall pay for the cost of the electronic monitoring. The  
18 county or municipality where the penalty is being imposed shall  
19 determine the cost. The court may also require the offender's  
20 electronic home monitoring device include an alcohol detection  
21 breathalyzer, and may restrict the amount of alcohol the offender may  
22 consume during the time the offender is on electronic home monitoring.  
23 Ninety days of imprisonment and one hundred twenty days of electronic  
24 home monitoring may not be suspended or deferred unless the court finds  
25 that the imposition of this mandatory minimum sentence would impose a  
26 substantial risk to the offender's physical or mental well-being.  
27 Whenever the mandatory minimum sentence is suspended or deferred, the  
28 court shall state in writing the reason for granting the suspension or  
29 deferral and the facts upon which the suspension or deferral is based;  
30 and

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

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

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

17 (ii) By a fine of not less than one thousand five hundred dollars  
18 nor more than five thousand dollars. One thousand five hundred dollars  
19 of the fine may not be suspended or deferred unless the court finds the  
20 offender to be indigent.

21 (4) If a person who is convicted of a violation of RCW 46.61.502 or  
22 46.61.504 committed the offense while a passenger under the age of  
23 sixteen was in the vehicle, the court shall:

24 (a) In any case in which the installation and use of an interlock  
25 or other device is not mandatory under RCW 46.20.720 or other law,  
26 order the use of such a device for not less than sixty days following  
27 the restoration of the person's license, permit, or nonresident driving  
28 privileges; and

29 (b) In any case in which the installation and use of such a device  
30 is otherwise mandatory, order the use of such a device for an  
31 additional sixty days.

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

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

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

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

3 (7) The license, permit, or nonresident privilege of a person  
4 convicted of driving or being in physical control of a motor vehicle  
5 while under the influence of intoxicating liquor or drugs must:

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

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

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

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

16 (b) If the person's alcohol concentration was at least 0.15:

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

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

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

23 (c) If by reason of the person's refusal to take a test offered  
24 under RCW 46.20.308, there is no test result indicating the person's  
25 alcohol concentration:

26 (i) Where there have been no prior offenses within seven years, be  
27 revoked or denied by the department for two years;

28 (ii) Where there has been one prior offense within seven years, be  
29 revoked or denied by the department for three years; or

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

32 The department shall grant credit on a day-for-day basis for any  
33 portion of a suspension, revocation, or denial already served under  
34 this subsection for a suspension, revocation, or denial imposed under  
35 RCW 46.20.3101 arising out of the same incident.

36 For purposes of this subsection (7), the department shall refer to  
37 the driver's record maintained under RCW 46.52.120 when determining the  
38 existence of prior offenses.

1 (8) After expiration of any period of suspension, revocation, or  
2 denial of the offender's license, permit, or privilege to drive  
3 required by this section and section 1 of this act, the department  
4 shall place the offender's driving privilege in probationary status  
5 pursuant to RCW 46.20.355.

6 (9)(a) In addition to any nonsuspendable and nondeferrable jail  
7 sentence required by this section and section 1 of this act, whenever  
8 the court imposes less than one year in jail, the court shall also  
9 suspend but shall not defer a period of confinement for a period not  
10 exceeding five years. The court shall impose conditions of probation  
11 that include: (i) Not driving a motor vehicle within this state  
12 without a valid license to drive and proof of financial responsibility  
13 for the future; (ii) not driving a motor vehicle within this state  
14 while having an alcohol concentration of 0.08 or more within two hours  
15 after driving; and (iii) not refusing to submit to a test of his or her  
16 breath or blood to determine alcohol concentration upon request of a  
17 law enforcement officer who has reasonable grounds to believe the  
18 person was driving or was in actual physical control of a motor vehicle  
19 within this state while under the influence of intoxicating liquor.  
20 The court may impose conditions of probation that include  
21 nonrepetition, installation of an ignition interlock device on the  
22 probationer's motor vehicle, alcohol or drug treatment, supervised  
23 probation, or other conditions that may be appropriate. The sentence  
24 may be imposed in whole or in part upon violation of a condition of  
25 probation during the suspension period.

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

30 (c) For each incident involving a violation of a mandatory  
31 condition of probation imposed under this subsection, the license,  
32 permit, or privilege to drive of the person shall be suspended by the  
33 court for thirty days or, if such license, permit, or privilege to  
34 drive already is suspended, revoked, or denied at the time the finding  
35 of probation violation is made, the suspension, revocation, or denial  
36 then in effect shall be extended by thirty days. The court shall  
37 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 (10) 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. The  
15 alternative sentence may include, but is not limited to, additional  
16 jail time, work crew, or work camp.

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

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

27 (12) For purposes of this section:

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

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

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

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

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

37 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
38 9A.36.050 or an equivalent local ordinance, if the conviction is the

1 result of a charge that was originally filed as a violation of RCW  
2 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
3 46.61.520 or 46.61.522;

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

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

10 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
11 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
12 ordinance, if the charge under which the deferred prosecution was  
13 granted was originally filed as a violation of RCW 46.61.502 or  
14 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
15 46.61.522; and

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

18 **Sec. 4.** RCW 46.61.5151 and 1995 c 332 s 15 are each amended to  
19 read as follows:

20 A sentencing court may allow persons convicted of violating RCW  
21 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in  
22 RCW 46.61.5055 in nonconsecutive or intermittent time periods.  
23 However, any mandatory minimum sentence under RCW 46.61.5055 and  
24 sentencing enhancement under section 1 of this act shall be served  
25 consecutively unless suspended or deferred as otherwise provided by  
26 law.

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