
HOUSE BILL 2704

State of Washington

60th Legislature

2008 Regular Session

By Representatives Lantz, Goodman, Hurst, Warnick, O'Brien, Kirby, Williams, Darneille, Takko, Blake, Rodne, Quall, Moeller, Sells, Morrell, Miloscia, McDonald, Loomis, Simpson, VanDeWege, Ericks, Kelley, and Rolfes

Read first time 01/16/08. Referred to Committee on Judiciary.

1 AN ACT Relating to considering vehicular assault and vehicular
2 homicide convictions from other jurisdictions under the felony drunk
3 driving law; amending RCW 46.61.5055, 46.61.502, and 46.61.504; and
4 prescribing penalties.

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

6 **Sec. 1.** RCW 46.61.5055 and 2007 c 474 s 1 are each amended to read
7 as follows:

8 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
9 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
10 and who has no prior offense within seven years shall be punished as
11 follows:

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

16 (i) By imprisonment for not less than one day nor more than one
17 year. Twenty-four consecutive hours of the imprisonment may not be
18 suspended or deferred unless the court finds that the imposition of
19 this mandatory minimum sentence would impose a substantial risk to the

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

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

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

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

38 (ii) By a fine of not less than five hundred dollars nor more than

1 five thousand dollars. Five hundred dollars of the fine may not be
2 suspended or deferred unless the court finds the offender to be
3 indigent.

4 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
5 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
6 and who has one prior offense within seven years shall be punished as
7 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 thirty days nor more than one
13 year and sixty days of electronic home monitoring. The offender shall
14 pay for the cost of the electronic monitoring. The county or
15 municipality where the penalty is being imposed shall determine the
16 cost. The court may also require the offender's electronic home
17 monitoring device include an alcohol detection breathalyzer, and may
18 restrict the amount of alcohol the offender may consume during the time
19 the offender is on electronic home monitoring. Thirty days of
20 imprisonment and sixty days of electronic home monitoring may not be
21 suspended or deferred unless the court finds that the imposition of
22 this mandatory minimum sentence would impose a substantial risk to the
23 offender's physical or mental well-being. Whenever the mandatory
24 minimum sentence is suspended or deferred, the court shall state in
25 writing the reason for granting the suspension or deferral and the
26 facts upon which the suspension or deferral is based; and

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

16 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
17 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
18 and who has two or three prior offenses 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 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; or

7 (b) In the case of a person whose alcohol concentration was at
8 least 0.15, or for whom by reason of the person's refusal to take a
9 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 one hundred twenty days nor
12 more than one year and one hundred fifty days of electronic home
13 monitoring. The offender shall pay for the cost of the electronic
14 monitoring. The county or municipality where the penalty is being
15 imposed shall determine the cost. The court may also require the
16 offender's electronic home monitoring device include an alcohol
17 detection breathalyzer, and may restrict the amount of alcohol the
18 offender may consume during the time the offender is on electronic home
19 monitoring. One hundred twenty days of imprisonment and one hundred
20 fifty days of electronic home monitoring 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; and

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

31 (4) A person who is convicted of a violation of RCW 46.61.502 or
32 46.61.504 (~~and who~~) shall be punished under chapter 9.94A RCW if:
33 (a) The person has four or more prior offenses within ten years(~~(7)~~);
34 or (~~who~~) (b) the person has ever previously been convicted of: (i)
35 A violation of RCW 46.61.520 committed while under the influence of
36 intoxicating liquor or any drug (~~or~~); (ii) a violation of RCW
37 46.61.522 committed while under the influence of intoxicating liquor or

1 any drug(~~(, shall be punished in accordance with chapter 9.94A RCW))~~;
2 or (iii) a comparable out-of-state conviction.

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

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

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

14 (6) In exercising its discretion in setting penalties within the
15 limits allowed by this section, the court shall particularly consider
16 the following:

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

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

21 (7) An offender punishable under this section is subject to the
22 alcohol assessment and treatment provisions of RCW 46.61.5056.

23 (8) The license, permit, or nonresident privilege of a person
24 convicted of driving or being in physical control of a motor vehicle
25 while under the influence of intoxicating liquor or drugs must:

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

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

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

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

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

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

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

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

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

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

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

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

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

18 For purposes of this subsection (8), the department shall refer to
19 the driver's record maintained under RCW 46.52.120 when determining the
20 existence of prior offenses.

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

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

1 probation that include nonrepetition, installation of an ignition
2 interlock device on the probationer's motor vehicle, alcohol or drug
3 treatment, supervised probation, or other conditions that may be
4 appropriate. The sentence may be imposed in whole or in part upon
5 violation of a condition of probation during the suspension period.

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

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

20 (11) A court may waive the electronic home monitoring requirements
21 of this chapter when:

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

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

25 (c) The court determines that there is reason to believe that the
26 offender would violate the conditions of the electronic home monitoring
27 penalty.

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

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

1 sentence shall be reduced so that the combination does not exceed three
2 hundred sixty-five days.

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

7 (13) For purposes of this section and RCW 46.61.502 and 46.61.504:

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

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

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

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

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

17 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
18 9A.36.050 or an equivalent local ordinance, if the conviction is the
19 result of a charge that was originally filed as a violation of RCW
20 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
21 46.61.520 or 46.61.522;

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

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

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

34 (b) "Within seven years" means that the arrest for a prior offense
35 occurred within seven years of the arrest for the current offense; and

36 (c) "Within ten years" means that the arrest for a prior offense
37 occurred within ten years of the arrest for the current offense.

1 **Sec. 2.** RCW 46.61.502 and 2006 c 73 s 1 are each amended to read
2 as follows:

3 (1) A person is guilty of driving while under the influence of
4 intoxicating liquor or any drug if the person drives a vehicle within
5 this state:

6 (a) And the person has, within two hours after driving, an alcohol
7 concentration of 0.08 or higher as shown by analysis of the person's
8 breath or blood made under RCW 46.61.506; or

9 (b) While the person is under the influence of or affected by
10 intoxicating liquor or any drug; or

11 (c) While the person is under the combined influence of or affected
12 by intoxicating liquor and any drug.

13 (2) The fact that a person charged with a violation of this section
14 is or has been entitled to use a drug under the laws of this state
15 shall not constitute a defense against a charge of violating this
16 section.

17 (3) It is an affirmative defense to a violation of subsection
18 (1)(a) of this section which the defendant must prove by a
19 preponderance of the evidence that the defendant consumed a sufficient
20 quantity of alcohol after the time of driving and before the
21 administration of an analysis of the person's breath or blood to cause
22 the defendant's alcohol concentration to be 0.08 or more within two
23 hours after driving. The court shall not admit evidence of this
24 defense unless the defendant notifies the prosecution prior to the
25 omnibus or pretrial hearing in the case of the defendant's intent to
26 assert the affirmative defense.

27 (4) Analyses of blood or breath samples obtained more than two
28 hours after the alleged driving may be used as evidence that within two
29 hours of the alleged driving, a person had an alcohol concentration of
30 0.08 or more in violation of subsection (1)(a) of this section, and in
31 any case in which the analysis shows an alcohol concentration above
32 0.00 may be used as evidence that a person was under the influence of
33 or affected by intoxicating liquor or any drug in violation of
34 subsection (1)(b) or (c) of this section.

35 (5) Except as provided in subsection (6) of this section, a
36 violation of this section is a gross misdemeanor.

37 (6) It is a class C felony punishable under chapter 9.94A RCW, or
38 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has

1 four or more prior offenses within ten years as defined in RCW
2 46.61.5055; or (b) the person has ever previously been convicted of (i)
3 vehicular homicide while under the influence of intoxicating liquor or
4 any drug, RCW 46.61.520(1)(a), ~~((or))~~ (ii) vehicular assault while
5 under the influence of intoxicating liquor or any drug, RCW
6 46.61.522(1)(b), or (iii) a comparable out-of-state conviction.

7 **Sec. 3.** RCW 46.61.504 and 2006 c 73 s 2 are each amended to read
8 as follows:

9 (1) A person is guilty of being in actual physical control of a
10 motor vehicle while under the influence of intoxicating liquor or any
11 drug if the person has actual physical control of a vehicle within this
12 state:

13 (a) And the person has, within two hours after being in actual
14 physical control of the vehicle, an alcohol concentration of 0.08 or
15 higher as shown by analysis of the person's breath or blood made under
16 RCW 46.61.506; or

17 (b) While the person is under the influence of or affected by
18 intoxicating liquor or any drug; or

19 (c) While the person is under the combined influence of or affected
20 by intoxicating liquor and any drug.

21 (2) The fact that a person charged with a violation of this section
22 is or has been entitled to use a drug under the laws of this state does
23 not constitute a defense against any charge of violating this section.
24 No person may be convicted under this section if, prior to being
25 pursued by a law enforcement officer, the person has moved the vehicle
26 safely off the roadway.

27 (3) It is an affirmative defense to a violation of subsection
28 (1)(a) of this section which the defendant must prove by a
29 preponderance of the evidence that the defendant consumed a sufficient
30 quantity of alcohol after the time of being in actual physical control
31 of the vehicle and before the administration of an analysis of the
32 person's breath or blood to cause the defendant's alcohol concentration
33 to be 0.08 or more within two hours after being in such control. The
34 court shall not admit evidence of this defense unless the defendant
35 notifies the prosecution prior to the omnibus or pretrial hearing in
36 the case of the defendant's intent to assert the affirmative defense.

1 (4) Analyses of blood or breath samples obtained more than two
2 hours after the alleged being in actual physical control of a vehicle
3 may be used as evidence that within two hours of the alleged being in
4 such control, a person had an alcohol concentration of 0.08 or more in
5 violation of subsection (1)(a) of this section, and in any case in
6 which the analysis shows an alcohol concentration above 0.00 may be
7 used as evidence that a person was under the influence of or affected
8 by intoxicating liquor or any drug in violation of subsection (1)(b) or
9 (c) of this section.

10 (5) Except as provided in subsection (6) of this section, a
11 violation of this section is a gross misdemeanor.

12 (6) It is a class C felony punishable under chapter 9.94A RCW, or
13 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has
14 four or more prior offenses within ten years as defined in RCW
15 46.61.5055; or (b) the person has ever previously been convicted of (i)
16 vehicular homicide while under the influence of intoxicating liquor or
17 any drug, RCW 46.61.520(1)(a), ~~((ex))~~ (ii) vehicular assault while
18 under the influence of intoxicating liquor or any drug, RCW
19 46.61.522(1)(b), or (iii) a comparable out-of-state conviction.

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