
SUBSTITUTE HOUSE BILL 1556

State of Washington

62nd Legislature

2011 Regular Session

By House Judiciary (originally sponsored by Representatives Kirby, Orwall, Miloscia, Stanford, Kelley, Blake, and Smith)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to increasing the penalties for first-time
2 offenders of driving or being in physical control of a vehicle while
3 under the influence of intoxicating liquor or any drug; amending RCW
4 46.61.5055; and prescribing penalties.

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

6 **Sec. 1.** RCW 46.61.5055 and 2010 c 269 s 4 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~~) three days nor more
17 than one year. (~~Twenty-four consecutive hours~~) The three days of
18 (~~the~~) imprisonment may not be suspended or deferred unless the court
19 finds that the imposition of this mandatory minimum sentence would

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

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

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

1 include an alcohol detection breathalyzer, and the court may restrict
2 the amount of alcohol the offender may consume during the time the
3 offender is on electronic home monitoring; and

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

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

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

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

20 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
21 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
22 and who has two or three prior offenses within seven years shall be
23 punished as follows:

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

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

1 substantial risk to the offender's physical or mental well-being.
2 Whenever the mandatory minimum sentence is suspended or deferred, the
3 court shall state in writing the reason for granting the suspension or
4 deferral and the facts upon which the suspension or deferral is based;
5 and

6 (ii) By a fine of not less than one thousand dollars nor more than
7 five thousand dollars. One thousand dollars of the fine may not be
8 suspended or deferred unless the court finds the offender to be
9 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 one hundred twenty days nor
15 more than one year and one hundred fifty days of electronic home
16 monitoring. The offender shall pay for the cost of the electronic
17 monitoring. The county or municipality where the penalty is being
18 imposed shall determine the cost. The court may also require the
19 offender's electronic home monitoring device include an alcohol
20 detection breathalyzer, and may restrict the amount of alcohol the
21 offender may consume during the time the offender is on electronic home
22 monitoring. One hundred twenty days of imprisonment and one hundred
23 fifty days of electronic home monitoring 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; and

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

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

1 (ii) a violation of RCW 46.61.522 committed while under the influence
2 of intoxicating liquor or any drug; or (iii) an out-of-state offense
3 comparable to the offense specified in (b)(i) or (ii) of this
4 subsection.

5 (5)(a) The court shall require any person convicted of a violation
6 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply
7 for an ignition interlock driver's license from the department and to
8 have a functioning ignition interlock device installed on all motor
9 vehicles operated by the person.

10 (b) The installation of an ignition interlock device is not
11 necessary on vehicles owned, leased, or rented by a person's employer
12 and on those vehicles whose care and/or maintenance is the temporary
13 responsibility of the employer, and driven at the direction of a
14 person's employer as a requirement of employment during working hours.
15 The person must provide the department with a declaration pursuant to
16 RCW 9A.72.085 from his or her employer stating that the person's
17 employment requires the person to operate a vehicle owned by the
18 employer or other persons during working hours.

19 (c) An ignition interlock device imposed under this section shall
20 be calibrated to prevent a motor vehicle from being started when the
21 breath sample provided has an alcohol concentration of 0.025 or more.

22 (d) The court may waive the requirement that a person apply for an
23 ignition interlock driver's license if the court makes a specific
24 finding in writing that:

25 (i) The person lives out-of-state and the devices are not
26 reasonably available in the person's local area;

27 (ii) The person does not operate a vehicle; or

28 (iii) The person is not eligible to receive an ignition interlock
29 driver's license under RCW 46.20.385 because the person is not a
30 resident of Washington, is a habitual traffic offender, has already
31 applied for or is already in possession of an ignition interlock
32 driver's license, has never had a driver's license, has been certified
33 under chapter 74.20A RCW as noncompliant with a child support order, or
34 is subject to any other condition or circumstance that makes the person
35 ineligible to obtain an ignition interlock driver's license.

36 (e) If a court finds that a person is not eligible to receive an
37 ignition interlock driver's license under this section, the court is

1 not required to make any further subsequent inquiry or determination as
2 to the person's eligibility.

3 (f) If the court orders that a person refrain from consuming any
4 alcohol and requires the person to apply for an ignition interlock
5 driver's license, and the person states that he or she does not operate
6 a motor vehicle or the person is ineligible to obtain an ignition
7 interlock driver's license, the court shall order the person to submit
8 to alcohol monitoring through an alcohol detection breathalyzer device,
9 transdermal sensor device, or other technology designed to detect
10 alcohol in a person's system. The person shall pay for the cost of the
11 monitoring. The county or municipality where the penalty is being
12 imposed shall determine the cost.

13 (g) The period of time for which ignition interlock use or alcohol
14 monitoring is required will be as follows:

15 (i) For a person who has not previously been restricted under this
16 section, a period of one year;

17 (ii) For a person who has previously been restricted under (g)(i)
18 of this subsection, a period of five years;

19 (iii) For a person who has previously been restricted under (g)(ii)
20 of this subsection, a period of ten years.

21 (6) 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 (7) 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 (8) An offender punishable under this section is subject to the
2 alcohol assessment and treatment provisions of RCW 46.61.5056.

3 (9) 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 (9), 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 (10) 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, the department shall place the offender's
4 driving privilege in probationary status pursuant to RCW 46.20.355.

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

24 (b) For each violation of mandatory conditions of probation under
25 (a)(i), (ii), or (iii) of this subsection, the court shall order the
26 convicted person to be confined for thirty days, which shall not be
27 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 (12) A court may waive the electronic home monitoring requirements
2 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 (13) An offender serving a sentence under this section, whether or
22 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(3).

25 (14) For purposes of this section and RCW 46.61.502 and 46.61.504:

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;

15 If a deferred prosecution is revoked based on a subsequent
16 conviction for an offense listed in this subsection (14)(a), the
17 subsequent conviction shall not be treated as a prior offense of the
18 revoked deferred prosecution for the purposes of sentencing;

19 (b) "Within seven years" means that the arrest for a prior offense
20 occurred within seven years before or after the arrest for the current
21 offense; and

22 (c) "Within ten years" means that the arrest for a prior offense
23 occurred within ten years before or after the arrest for the current
24 offense.

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