
SENATE BILL 6030

State of Washington 62nd Legislature 2012 Regular Session

By Senators Shin, Kline, Delvin, and Regala

Read first time 01/09/12. Referred to Committee on Judiciary.

1 AN ACT Relating to license suspension clerical errors; and
2 reenacting and amending RCW 46.61.5055.

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

4 **Sec. 1.** RCW 46.61.5055 and 2011 c 293 s 7 and 2011 c 96 s 35 are
5 each reenacted and amended to read as follows:

6 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
7 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
8 and who has no prior offense within seven years shall be punished as
9 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 three
15 hundred sixty-four days. Twenty-four consecutive hours of the
16 imprisonment may not be suspended or deferred unless the court finds
17 that the imposition of this mandatory minimum sentence would impose a
18 substantial risk to the offender's physical or mental well-being.
19 Whenever the mandatory minimum sentence is suspended or deferred, the

1 court shall state in writing the reason for granting the suspension or
2 deferral and the facts upon which the suspension or deferral is based.
3 In lieu of the mandatory minimum term of imprisonment required under
4 this subsection (1)(a)(i), the court may order not less than fifteen
5 days of electronic home monitoring. The offender shall pay the cost of
6 electronic home monitoring. The county or municipality in which the
7 penalty is being imposed shall determine the cost. The court may also
8 require the offender's electronic home monitoring device to include an
9 alcohol detection breathalyzer, and the court may restrict the amount
10 of 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 three
21 hundred sixty-four days. Two consecutive days of the imprisonment may
22 not be suspended or deferred unless the court finds that the imposition
23 of this mandatory minimum sentence would impose a substantial risk to
24 the offender's physical or mental well-being. Whenever the mandatory
25 minimum sentence is suspended or deferred, the court shall state in
26 writing the reason for granting the suspension or deferral and the
27 facts upon which the suspension or deferral is based. In lieu of the
28 mandatory minimum term of imprisonment required under this subsection
29 (1)(b)(i), the court may order not less than thirty days of electronic
30 home monitoring. The offender shall pay the cost of electronic home
31 monitoring. The county or municipality in which the penalty is being
32 imposed shall determine the cost. The court may also require the
33 offender's electronic home monitoring device to include an alcohol
34 detection breathalyzer, and the court may restrict the amount of
35 alcohol the offender may consume during the time the offender is on
36 electronic home monitoring; and

37 (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
13 three hundred sixty-four days and sixty 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. Thirty days of imprisonment and sixty days of electronic
21 home monitoring may not be suspended or deferred unless the court finds
22 that the imposition of this mandatory minimum sentence would impose a
23 substantial risk to the offender's physical or mental well-being.
24 Whenever the mandatory minimum sentence is suspended or deferred, the
25 court shall state in writing the reason for granting the suspension or
26 deferral and the facts upon which the suspension or deferral is based;
27 and

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

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

36 (i) By imprisonment for not less than forty-five days nor more than
37 three hundred sixty-four days and ninety days of electronic home
38 monitoring. The offender shall pay for the cost of the electronic

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

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

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

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

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

1 deferred, the court shall state in writing the reason for granting the
2 suspension or deferral and the facts upon which the suspension or
3 deferral is based; and

4 (ii) By a fine of not less than one thousand dollars nor more than
5 five thousand dollars. One thousand dollars of the fine may not be
6 suspended or deferred unless the court finds the offender to be
7 indigent; 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 three hundred sixty-four days and one hundred fifty days of
14 electronic home monitoring. The offender shall pay for the cost of the
15 electronic monitoring. The county or municipality where the penalty is
16 being 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.

32 (4) A person who is convicted of a violation of RCW 46.61.502 or
33 46.61.504 shall be punished under chapter 9.94A RCW if:

34 (a) The person has four or more prior offenses within ten years; or

35 (b) The person has ever previously been convicted of:

36 (i) A violation of RCW 46.61.520 committed while under the
37 influence of intoxicating liquor or any drug;

1 (ii) A violation of RCW 46.61.522 committed while under the
2 influence of intoxicating liquor or any drug;

3 (iii) An out-of-state offense comparable to the offense specified
4 in (b)(i) or (ii) of this subsection; or

5 (iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

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

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

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

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

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

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

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

37 (e) If a court finds that a person is not eligible to receive an

1 ignition interlock driver's license under this section, the court is
2 not required to make any further subsequent inquiry or determination as
3 to the person's eligibility.

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

16 (g) The period of time for which ignition interlock use is required
17 will be as follows:

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

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

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

24 (h) Beginning with incidents occurring on or after September 1,
25 2011, when calculating the period of time for the restriction under RCW
26 46.20.720(3), the department must also give the person a day-for-day
27 credit for the time period, beginning from the date of the incident,
28 during which the person kept an ignition interlock device installed on
29 all vehicles the person operates. For the purposes of this subsection
30 (5)(h), the term "all vehicles" does not include vehicles that would be
31 subject to the employer exception under RCW 46.20.720(3).

32 (6) If a person who is convicted of a violation of RCW 46.61.502 or
33 46.61.504 committed the offense while a passenger under the age of
34 sixteen was in the vehicle, the court shall:

35 (a) In any case in which the installation and use of an interlock
36 or other device is not mandatory under RCW 46.20.720 or other law,
37 order the use of such a device for not less than sixty days following

1 the restoration of the person's license, permit, or nonresident driving
2 privileges; and

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

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

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

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

13 (8) An offender punishable under this section is subject to the
14 alcohol assessment and treatment provisions of RCW 46.61.5056.

15 (9) The license, permit, or nonresident privilege of a person
16 convicted of driving or being in physical control of a motor vehicle
17 while under the influence of intoxicating liquor or drugs must:

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

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

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

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

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

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

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

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

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

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

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

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

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

11 Upon its own motion or upon motion by a person, a court may find,
12 on the record, that notice to the department under RCW 46.20.270 has
13 been delayed for three years or more as a result of a clerical or court
14 error. If so, the court may order that the person's license, permit,
15 or nonresident privilege shall not be revoked, suspended, or denied for
16 that offense. The court shall send notice of the finding and order to
17 the department and to the person. Upon receipt of the notice from the
18 court, the department shall not revoke, suspend, or deny the license,
19 permit, or nonresident privilege of the person for that offense.

20 For purposes of this subsection (9), the department shall refer to
21 the driver's record maintained under RCW 46.52.120 when determining the
22 existence of prior offenses.

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

27 (11)(a) In addition to any nonsuspendable and nondeferrable jail
28 sentence required by this section, whenever the court imposes up to
29 three hundred sixty-four days in jail, the court shall also suspend but
30 shall not defer a period of confinement for a period not exceeding five
31 years. The court shall impose conditions of probation that include:

32 (i) Not driving a motor vehicle within this state without a valid
33 license to drive and proof of financial responsibility for the future;

34 (ii) not driving a motor vehicle within this state while having an
35 alcohol concentration of 0.08 or more within two hours after driving;

36 and (iii) not refusing to submit to a test of his or her breath or
37 blood to determine alcohol concentration upon request of a law
38 enforcement officer who has reasonable grounds to believe the person

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

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

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

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

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

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

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

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

37 Whenever the combination of jail time and electronic home
38 monitoring or alternative sentence would exceed three hundred sixty-

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

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

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

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

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

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

15 (iii) A conviction for a violation of RCW 46.61.520 committed while
16 under the influence of intoxicating liquor or any drug, or a conviction
17 for a violation of RCW 46.61.520 committed in a reckless manner or with
18 the disregard for the safety of others if the conviction is the result
19 of a charge that was originally filed as a violation of RCW 46.61.520
20 committed while under the influence of intoxicating liquor or any drug;

21 (iv) A conviction for a violation of RCW 46.61.522 committed while
22 under the influence of intoxicating liquor or any drug, or a conviction
23 for a violation of RCW 46.61.522 committed in a reckless manner or with
24 the disregard for the safety of others if the conviction is the result
25 of a charge that was originally filed as a violation of RCW 46.61.522
26 committed while under the influence of intoxicating liquor or any drug;

27 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
28 9A.36.050 or an equivalent local ordinance, if the conviction is the
29 result of a charge that was originally filed as a violation of RCW
30 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
31 46.61.520 or 46.61.522;

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

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

1 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
2 prosecution for a violation of RCW 46.61.5249, or an equivalent local
3 ordinance, if the charge under which the deferred prosecution was
4 granted was originally filed as a violation of RCW 46.61.502 or
5 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
6 46.61.522;

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

11 (b) "Within seven years" means that the arrest for a prior offense
12 occurred within seven years before or after the arrest for the current
13 offense; and

14 (c) "Within ten years" means that the arrest for a prior offense
15 occurred within ten years before or after the arrest for the current
16 offense.

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