
SENATE BILL 6413

State of Washington

63rd Legislature

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By Senators Fain, Eide, Padden, Pearson, Hobbs, Angel, King, Becker, Tom, Sheldon, Dammeier, Honeyford, Hill, O'Ban, Litzow, Brown, Schoesler, and Rolfes

Read first time 01/24/14. Referred to Committee on Law & Justice.

1 AN ACT Relating to prior offenses for driving under the influence
2 or physical control of a vehicle under the influence; and amending RCW
3 46.61.5055.

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

5 **Sec. 1.** RCW 46.61.5055 and 2013 2nd sp.s. c 35 s 13 are each
6 amended to read as follows:

7 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a
8 person who is convicted of a violation of RCW 46.61.502 or 46.61.504
9 and who has no prior offense within seven years shall be punished as
10 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 one day nor more than three
16 hundred sixty-four days. Twenty-four consecutive hours of the
17 imprisonment may not be suspended unless the court finds that the
18 imposition of this mandatory minimum sentence would impose a
19 substantial risk to the offender's physical or mental well-being.

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

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

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

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

1 (ii) By a fine of not less than five hundred dollars nor more than
2 five thousand dollars. Five hundred dollars of the fine may not be
3 suspended unless the court finds the offender to be 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. In lieu of the mandatory minimum term of sixty days
15 electronic home monitoring, the court may order at least an additional
16 four days in jail or, if available in that county or city, a six-month
17 period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300
18 through 36.28A.390, and the court shall order an expanded alcohol
19 assessment and treatment, if deemed appropriate by the assessment. The
20 offender shall pay for the cost of the electronic monitoring. The
21 county or municipality where the penalty is being imposed shall
22 determine the cost. The court may also require the offender's
23 electronic home monitoring device include an alcohol detection
24 breathalyzer or other separate alcohol monitoring device, and may
25 restrict the amount of alcohol the offender may consume during the time
26 the offender is on electronic home monitoring. Thirty days of
27 imprisonment and sixty days of electronic home monitoring may not be
28 suspended unless the court finds that the imposition of this mandatory
29 minimum sentence would impose a substantial risk to the offender's
30 physical or mental well-being. Whenever the mandatory minimum sentence
31 is suspended, the court shall state in writing the reason for granting
32 the suspension and the facts upon which the suspension is based; and

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

36 (b) In the case of a person whose alcohol concentration was at
37 least 0.15, or for whom by reason of the person's refusal to take a

1 test offered pursuant to RCW 46.20.308 there is no test result
2 indicating the person's alcohol concentration:

3 (i) By imprisonment for not less than forty-five days nor more than
4 three hundred sixty-four days and ninety days of electronic home
5 monitoring. In lieu of the mandatory minimum term of ninety days
6 electronic home monitoring, the court may order at least an additional
7 six days in jail or, if available in that county or city, a six-month
8 period of 24/7 sobriety program monitoring pursuant to RCW 36.28A.300
9 through 36.28A.390, and the court shall order an expanded alcohol
10 assessment and treatment, if deemed appropriate by the assessment. The
11 offender shall pay for the cost of the electronic monitoring. The
12 county or municipality where the penalty is being imposed shall
13 determine the cost. The court may also require the offender's
14 electronic home monitoring device include an alcohol detection
15 breathalyzer or other separate alcohol monitoring device, and may
16 restrict the amount of alcohol the offender may consume during the time
17 the offender is on electronic home monitoring. Forty-five days of
18 imprisonment and ninety days of electronic home monitoring may not be
19 suspended unless the court finds that the imposition of this mandatory
20 minimum sentence would impose a substantial risk to the offender's
21 physical or mental well-being. Whenever the mandatory minimum sentence
22 is suspended, the court shall state in writing the reason for granting
23 the suspension and the facts upon which the suspension is based; and

24 (ii) By a fine of not less than seven hundred fifty dollars nor
25 more than five thousand dollars. Seven hundred fifty dollars of the
26 fine may not be suspended unless the court finds the offender to be
27 indigent.

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

32 (a) In the case of a person whose alcohol concentration was less
33 than 0.15, or for whom for reasons other than the person's refusal to
34 take a 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 ninety days nor more than
37 three hundred sixty-four days, if available in that county or city, a
38 six-month period of 24/7 sobriety program monitoring pursuant to RCW

1 36.28A.300 through 36.28A.390, and one hundred twenty days of
2 electronic home monitoring. In lieu of the mandatory minimum term of
3 one hundred twenty days of electronic home monitoring, the court may
4 order at least an additional eight days in jail. The court shall order
5 an expanded alcohol assessment and treatment, if deemed appropriate by
6 the assessment. The offender shall pay for the cost of the electronic
7 monitoring. The county or municipality where the penalty is being
8 imposed shall determine the cost. The court may also require the
9 offender's electronic home monitoring device include an alcohol
10 detection breathalyzer or other separate alcohol monitoring device, and
11 may restrict the amount of alcohol the offender may consume during the
12 time the offender is on electronic home monitoring. Ninety days of
13 imprisonment and one hundred twenty days of electronic home monitoring
14 may not be suspended unless the court finds that the imposition of this
15 mandatory minimum sentence would impose a substantial risk to the
16 offender's physical or mental well-being. Whenever the mandatory
17 minimum sentence is suspended, the court shall state in writing the
18 reason for granting the suspension and the facts upon which the
19 suspension is based; and

20 (ii) By a fine of not less than one thousand dollars nor more than
21 five thousand dollars. One thousand dollars of the fine may not be
22 suspended unless the court finds the offender to be 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 one hundred twenty days nor
28 more than three hundred sixty-four days, if available in that county or
29 city, a six-month period of 24/7 sobriety program monitoring pursuant
30 to RCW 36.28A.300 through 36.28A.390, and one hundred fifty days of
31 electronic home monitoring. In lieu of the mandatory minimum term of
32 one hundred fifty days of electronic home monitoring, the court may
33 order at least an additional ten days in jail. The offender shall pay
34 for the cost of the electronic monitoring. The court shall order an
35 expanded alcohol assessment and treatment, if deemed appropriate by the
36 assessment. The county or municipality where the penalty is being
37 imposed shall determine the cost. The court may also require the
38 offender's electronic home monitoring device include an alcohol

1 detection breathalyzer or other separate alcohol monitoring device, and
2 may restrict the amount of alcohol the offender may consume during the
3 time the offender is on electronic home monitoring. One hundred twenty
4 days of imprisonment and one hundred fifty days of electronic home
5 monitoring may not be suspended unless the court finds that the
6 imposition of this mandatory minimum sentence would impose a
7 substantial risk to the offender's physical or mental well-being.
8 Whenever the mandatory minimum sentence is suspended, the court shall
9 state in writing the reason for granting the suspension and the facts
10 upon which the suspension is based; and

11 (ii) By a fine of not less than one thousand five hundred dollars
12 nor more than five thousand dollars. One thousand five hundred dollars
13 of the fine may not be suspended unless the court finds the offender to
14 be indigent.

15 (4) A person who is convicted of a violation of RCW 46.61.502 or
16 46.61.504 shall be punished under chapter 9.94A RCW if:

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

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

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

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

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

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

26 (5)(a) The court shall require any person convicted of a violation
27 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to
28 comply with the rules and requirements of the department regarding the
29 installation and use of a functioning ignition interlock device
30 installed on all motor vehicles operated by the person.

31 (b) If the court orders that a person refrain from consuming any
32 alcohol, the court may order the person to submit to alcohol monitoring
33 through an alcohol detection breathalyzer device, transdermal sensor
34 device, or other technology designed to detect alcohol in a person's
35 system. The person shall pay for the cost of the monitoring, unless
36 the court specifies that the cost of monitoring will be paid with funds
37 that are available from an alternative source identified by the court.

1 The county or municipality where the penalty is being imposed shall
2 determine the cost.

3 (6) 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) Order the use of an ignition interlock or other device for an
7 additional six months;

8 (b) In any case in which the person has no prior offenses within
9 seven years, and except as provided in RCW 46.61.502(6) or
10 46.61.504(6), order an additional twenty-four hours of imprisonment and
11 a fine of not less than one thousand dollars and not more than five
12 thousand dollars. One thousand dollars of the fine may not be
13 suspended unless the court finds the offender to be indigent;

14 (c) In any case in which the person has one prior offense within
15 seven years, and except as provided in RCW 46.61.502(6) or
16 46.61.504(6), order an additional five days of imprisonment and a fine
17 of not less than two thousand dollars and not more than five thousand
18 dollars. One thousand dollars of the fine may not be suspended unless
19 the court finds the offender to be indigent;

20 (d) In any case in which the person has two or three prior offenses
21 within seven years, and except as provided in RCW 46.61.502(6) or
22 46.61.504(6), order an additional ten days of imprisonment and a fine
23 of not less than three thousand dollars and not more than ten thousand
24 dollars. One thousand dollars of the fine may not be suspended unless
25 the court finds the offender to be indigent.

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

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

31 (b) Whether at the time of the offense the person was driving or in
32 physical control of a vehicle with one or more passengers;

33 (c) Whether the driver was driving in the opposite direction of the
34 normal flow of traffic on a multiple lane highway, as defined by RCW
35 46.04.350, with a posted speed limit of forty-five miles per hour or
36 greater; and

37 (d) Whether a child passenger under the age of sixteen was an
38 occupant in the driver's vehicle.

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 Upon its own motion or upon motion by a person, a court may find,
37 on the record, that notice to the department under RCW 46.20.270 has
38 been delayed for three years or more as a result of a clerical or court

1 error. If so, the court may order that the person's license, permit,
2 or nonresident privilege shall not be revoked, suspended, or denied for
3 that offense. The court shall send notice of the finding and order to
4 the department and to the person. Upon receipt of the notice from the
5 court, the department shall not revoke, suspend, or deny the license,
6 permit, or nonresident privilege of the person for that offense.

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

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

14 (11)(a) In addition to any nonsuspendable and nondeferrable jail
15 sentence required by this section, whenever the court imposes up to
16 three hundred sixty-four days in jail, the court shall also suspend but
17 shall not defer a period of confinement for a period not exceeding five
18 years. The court shall impose conditions of probation that include:
19 (i) Not driving a motor vehicle within this state without a valid
20 license to drive and proof of liability insurance or other financial
21 responsibility for the future pursuant to RCW 46.30.020; (ii) not
22 driving or being in physical control of a motor vehicle within this
23 state while having an alcohol concentration of 0.08 or more or a THC
24 concentration of 5.00 nanograms per milliliter of whole blood or
25 higher, within two hours after driving; and (iii) not refusing to
26 submit to a test of his or her breath or blood to determine alcohol or
27 drug concentration upon request of a law enforcement officer who has
28 reasonable grounds to believe the person was driving or was in actual
29 physical control of a motor vehicle within this state while under the
30 influence of intoxicating liquor or drug. The court may impose
31 conditions of probation that include nonrepetition, installation of an
32 ignition interlock device on the probationer's motor vehicle, alcohol
33 or drug treatment, supervised probation, or other conditions that may
34 be appropriate. The sentence may be imposed in whole or in part upon
35 violation of a condition of probation during the suspension period.

36 (b) For each violation of mandatory conditions of probation under
37 (a)(i), (ii), or (iii) of this subsection, the court shall order the

1 convicted person to be confined for thirty days, which shall not be
2 suspended or deferred.

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

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

15 (a) The offender does not have a dwelling, telephone service, or
16 any other necessity to operate an electronic home monitoring system.
17 However, if a court determines that an alcohol monitoring device
18 utilizing wireless reporting technology is reasonably available, the
19 court may require the person to obtain such a device during the period
20 of required electronic home monitoring;

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

22 (c) The court determines that there is reason to believe that the
23 offender would violate the conditions of the electronic home monitoring
24 penalty.

25 Whenever the mandatory minimum term of electronic home monitoring
26 is waived, the court shall state in writing the reason for granting the
27 waiver and the facts upon which the waiver is based, and shall impose
28 an alternative sentence with similar punitive consequences. The
29 alternative sentence may include, but is not limited to, use of an
30 ignition interlock device, the 24/7 sobriety program monitoring,
31 additional jail time, work crew, or work camp.

32 Whenever the combination of jail time and electronic home
33 monitoring or alternative sentence would exceed three hundred sixty-
34 four days, the offender shall serve the jail portion of the sentence
35 first, and the electronic home monitoring or alternative portion of the
36 sentence shall be reduced so that the combination does not exceed three
37 hundred sixty-four days.

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

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

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

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

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

11 (iii) A conviction for a violation of RCW 46.25.110 or an
12 equivalent local ordinance;

13 (iv) A conviction for a violation of RCW 79A.60.040 or an
14 equivalent local ordinance;

15 (v) A conviction for a violation of RCW 47.68.220 or an equivalent
16 local ordinance;

17 (vi) A conviction for a violation of RCW 46.09.470(2) or an
18 equivalent local ordinance;

19 (vii) A conviction for a violation of RCW 46.10.490(2) or an
20 equivalent local ordinance;

21 (viii) A conviction for a violation of RCW 46.61.520 committed
22 while under the influence of intoxicating liquor or any drug, or a
23 conviction for a violation of RCW 46.61.520 committed in a reckless
24 manner or with the disregard for the safety of others if the conviction
25 is the result of a charge that was originally filed as a violation of
26 RCW 46.61.520 committed while under the influence of intoxicating
27 liquor or any drug;

28 ~~((iv))~~ (ix) A conviction for a violation of RCW 46.61.522
29 committed while under the influence of intoxicating liquor or any drug,
30 or a conviction for a violation of RCW 46.61.522 committed in a
31 reckless manner or with the disregard for the safety of others if the
32 conviction is the result of a charge that was originally filed as a
33 violation of RCW 46.61.522 committed while under the influence of
34 intoxicating liquor or any drug;

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

1 violation of RCW 46.61.502 or 46.61.504, or an equivalent local
2 ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

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

15 ~~((ix))~~ (xiv) A deferred prosecution granted in another state for
16 a violation of driving or having physical control of a vehicle while
17 under the influence of intoxicating liquor or any drug if the out-of-
18 state deferred prosecution is equivalent to the deferred prosecution
19 under chapter 10.05 RCW, including a requirement that the defendant
20 participate in a chemical dependency treatment program; or

21 ~~((x))~~ (xv) A deferred sentence imposed in a prosecution for a
22 violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an equivalent
23 local ordinance, if the charge under which the deferred sentence was
24 imposed was originally filed as a violation of RCW 46.61.502 or
25 46.61.504, or an equivalent local ordinance, or a violation of RCW
26 46.61.520 or 46.61.522;

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

31 (b) "Treatment" means alcohol or drug treatment approved by the
32 department of social and health services;

33 (c) "Within seven years" means that the arrest for a prior offense
34 occurred within seven years before or after the arrest for the current
35 offense; and

36 (d) "Within ten years" means that the arrest for a prior offense

1 occurred within ten years before or after the arrest for the current
2 offense.

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