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HOUSE BILL 3198

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State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Boldt, McMahan and Ahern

Read first time 02/14/2004. Referred to Committee on Judiciary.

1            AN ACT Relating to enhancements of driving while under the  
2 influence convictions; 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 2003 c 103 s 1 are each amended to read  
5 as follows:

6            (1) A person who is convicted of a violation of RCW 46.61.502 or  
7 46.61.504 and who has no prior offense within seven years shall be  
8 punished as follows:

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

13            (i) By imprisonment for not less than one day nor more than one  
14 year. Twenty-four consecutive hours of the imprisonment may not be  
15 suspended or deferred unless the court finds that the imposition of  
16 this mandatory minimum sentence would impose a substantial risk to the  
17 offender's physical or mental well-being. Whenever the mandatory  
18 minimum sentence is suspended or deferred, the court shall state in  
19 writing the reason for granting the suspension or deferral and the

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

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

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

19 (i) By imprisonment for not less than two days nor more than one  
20 year. Two consecutive days of the imprisonment 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. In lieu of the mandatory minimum term  
27 of imprisonment required under this subsection (1)(b)(i), the court may  
28 order not less than thirty days of electronic home monitoring. The  
29 offender shall pay the cost of electronic home monitoring. The county  
30 or municipality in which the penalty is being imposed shall determine  
31 the cost. The court may also require the offender's electronic home  
32 monitoring device to include an alcohol detection breathalyzer, and the  
33 court may restrict the amount of alcohol the offender may consume  
34 during the time the offender is on electronic home monitoring; and

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

1 (iii) By a court-ordered restriction under RCW 46.20.720.

2 (2) A person who is convicted of a violation of RCW 46.61.502 or  
3 46.61.504 and who has one prior offense within seven years shall be  
4 punished as follows:

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

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

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

28 (iii) By a court-ordered restriction under RCW 46.20.720; or

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

33 (i) By imprisonment for not less than forty-five days nor more than  
34 one year and ninety days of electronic home monitoring. The offender  
35 shall pay for the cost of the electronic monitoring. The county or  
36 municipality where the penalty is being imposed shall determine the  
37 cost. The court may also require the offender's electronic home  
38 monitoring device include an alcohol detection breathalyzer, and may

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

10 (ii) By a fine of not less than seven hundred fifty dollars nor  
11 more than five thousand dollars. Seven hundred fifty dollars of the  
12 fine may not be suspended or deferred unless the court finds the  
13 offender to be indigent; and

14 (iii) By a court-ordered restriction under RCW 46.20.720.

15 (3) A person who is convicted of a violation of RCW 46.61.502 or  
16 46.61.504 and who has two or more prior offenses within seven years  
17 shall be punished as follows:

18 (a) In the case of a person whose alcohol concentration was less  
19 than 0.15, or for whom for reasons other than the person's refusal to  
20 take a 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 ninety days nor more than one  
23 year and one hundred twenty days of electronic home monitoring. The  
24 offender shall pay for the cost of the electronic monitoring. The  
25 county or municipality where the penalty is being imposed shall  
26 determine the cost. The court may also require the offender's  
27 electronic home monitoring device include an alcohol detection  
28 breathalyzer, and may restrict the amount of alcohol the offender may  
29 consume during the time the offender is on electronic home monitoring.  
30 Ninety days of imprisonment and one hundred twenty days of electronic  
31 home monitoring may not be suspended or deferred unless the court finds  
32 that the imposition of this mandatory minimum sentence would impose a  
33 substantial risk to the offender's physical or mental well-being.  
34 Whenever the mandatory minimum sentence is suspended or deferred, the  
35 court shall state in writing the reason for granting the suspension or  
36 deferral and the facts upon which the suspension or deferral is based;  
37 and

1 (ii) By a fine of not less than one thousand dollars nor more than  
2 five thousand dollars. One thousand dollars of the fine may not be  
3 suspended or deferred unless the court finds the offender to be  
4 indigent; and

5 (iii) By a court-ordered restriction under RCW 46.20.720; or

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

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

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

30 (iii) By a court-ordered restriction under RCW 46.20.720.

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) If the person's alcohol concentration was at least 0.15, or if  
27 by reason of the person's refusal to take a test offered under RCW  
28 46.20.308 there is no test result indicating the person's alcohol  
29 concentration:

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

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

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

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

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

5 (9)(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 or other biological or technical device on the probationer's  
21 motor vehicle, alcohol or drug treatment, supervised probation, or  
22 other conditions that may be appropriate. The sentence may be imposed  
23 in whole or in part upon violation of a condition of probation during  
24 the suspension period.

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

29 (c) For each incident involving a violation of a mandatory  
30 condition of probation imposed under this subsection, the license,  
31 permit, or privilege to drive of the person shall be suspended by the  
32 court for thirty days or, if such license, permit, or privilege to  
33 drive already is suspended, revoked, or denied at the time the finding  
34 of probation violation is made, the suspension, revocation, or denial  
35 then in effect shall be extended by thirty days. The court shall  
36 notify the department of any suspension, revocation, or denial or any  
37 extension of a suspension, revocation, or denial imposed under this  
38 subsection.

1 (10) 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 (11) 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(4).

25 (12) For purposes of this section:

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)); and~~

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

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