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**SUBSTITUTE SENATE BILL 6047**

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**State of Washington**

**53rd Legislature**

**1994 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators A. Smith, Quigley and Oke)

Read first time 02/01/94.

1 AN ACT Relating to crimes involving alcohol, drugs, or mental  
2 problems; amending RCW 10.05.010, 10.05.020, 10.05.060, 10.05.090,  
3 10.05.100, 10.05.120, 10.05.140, 10.05.160, 10.05.170, 46.04.480,  
4 46.04.580, 46.20.291, 46.20.308, 46.20.311, 46.20.391, 46.61.502,  
5 46.61.504, 46.61.506, 46.61.515, and 46.61.5151; reenacting and  
6 amending RCW 46.61.515; adding a new section to chapter 46.04 RCW;  
7 adding a new section to chapter 46.20 RCW; prescribing penalties;  
8 providing effective dates; and providing an expiration date.

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

10 **Sec. 1.** RCW 10.05.010 and 1985 c 352 s 4 are each amended to read  
11 as follows:

12 In a court of limited jurisdiction a person charged with a  
13 misdemeanor or gross misdemeanor may petition the court to be  
14 considered for a deferred prosecution program. The petition shall be  
15 filed with the court at least seven days before the date set for trial  
16 but, upon a written motion and affidavit establishing good cause for  
17 the delay and failure to comply with this section, the court may waive  
18 this requirement subject to the defendant's reimbursement to the court

1 of the witness fees and expenses due for subpoenaed witnesses who have  
2 appeared on the date set for trial.

3 A person charged with a traffic infraction, misdemeanor, or gross  
4 misdemeanor under Title 46 RCW shall not be eligible for a deferred  
5 prosecution program unless the court makes specific findings pursuant  
6 to RCW 10.05.020. Such person shall not be eligible for a deferred  
7 prosecution program more than once (~~((in any five year period))~~).  
8 Separate offenses committed more than seven days apart may not be  
9 consolidated in a single program.

10 **Sec. 2.** RCW 10.05.020 and 1985 c 352 s 6 are each amended to read  
11 as follows:

12 (1) The petitioner shall allege under oath in the petition that the  
13 wrongful conduct charged is the result of or caused by alcoholism, drug  
14 addiction, or mental problems for which the person is in need of  
15 treatment and unless treated the probability of future reoccurrence is  
16 great, along with a statement that the person agrees to pay the cost of  
17 a diagnosis and treatment of the alleged problem or problems if  
18 financially able to do so. The petition shall also contain a case  
19 history and written assessment prepared by an approved (~~((alcoholism))~~)  
20 treatment ((facility)) program as designated in chapter 70.96A RCW if  
21 the petition alleges alcoholism(~~(, an approved drug program as~~  
22 ~~designated in chapter 71.24 RCW if the petition alleges))~~ or drug  
23 addiction, or by ((an approved mental health center)) a licensed  
24 service provider as designated in chapter 71.24 RCW if the petition  
25 alleges a mental problem.

26 The secretary of social and health services shall periodically  
27 provide to courts of limited jurisdiction a list of the approved  
28 treatment programs and licensed service providers in the county in  
29 which the court is located. The court shall not approve the treatment  
30 plan unless the approved treatment program or licensed service provider  
31 preparing the case history and written assessment and the approved  
32 treatment program or licensed service provider proposing to administer  
33 the plan both are on the list provided by the secretary of social and  
34 health services.

35 (2) Before entry of an order deferring prosecution, a petitioner  
36 shall be advised of his or her rights as an accused and execute, as a  
37 condition of receiving treatment, a statement that contains: (a) An  
38 acknowledgement of his or her rights; (b) a stipulation to the

1 admissibility of the facts contained in the written police report;  
2 ~~((and))~~ (c) an acknowledgement and waiver of the right to testify, to  
3 call witnesses to testify, and to present evidence in his or her  
4 defense; (d) an acknowledgement and waiver of the right to jury trial;  
5 and (e) an acknowledgement that the statement will be entered and used  
6 to support a finding of guilty if the court finds cause to revoke the  
7 order granting deferred prosecution. The petitioner shall also be  
8 advised that he or she may, if he or she proceeds to trial and is found  
9 guilty, be allowed to seek suspension of some or all of the fines and  
10 incarceration that may be ordered upon the condition that he or she  
11 seek treatment and, further, that he or she may seek treatment from  
12 public and private agencies at any time without regard to whether or  
13 not he or she is found guilty of the offense charged. ((He)) The  
14 petitioner shall also be advised that the court will not accept a  
15 petition for deferred prosecution from a person who sincerely believes  
16 that he or she is innocent of the charges or sincerely believes that he  
17 or she does not, in fact, suffer from alcoholism, drug addiction, or  
18 mental problems.

19 (3) The defendant shall state in his or her petition any other  
20 offenses or cases that the petitioner has used or intends to use under  
21 the proposed treatment program for a separate deferred prosecution.  
22 The court shall inquire before entering an order deferring prosecution  
23 whether the petitioner intends to use or has used the petition's  
24 proposed treatment program for a separate deferred prosecution for any  
25 other separate offenses or cases not mentioned in the petition. If  
26 other offenses or cases have been or will be included under the same  
27 proposed treatment program, the court shall not grant the deferred  
28 treatment program for any offenses committed more than seven days  
29 apart, pursuant to RCW 10.05.010. The court shall advise the  
30 petitioner that any attempt to consolidate additional offenses not  
31 disclosed under this section, in violation of RCW 10.05.010, shall be  
32 a breach of the conditions of the deferred prosecution. The court  
33 shall further advise the petitioner that proof of such violation shall  
34 result in the petitioner's removal from deferred prosecution and the  
35 court shall enter judgment pursuant to this section. Such  
36 representations by the petitioner, and findings and advisements by the  
37 court shall be included in the order granting the deferred prosecution.

38 (4) Before entering an order deferring prosecution, the court shall  
39 make specific findings that: (a) The petitioner has stipulated to the

1 admissibility of the facts as contained in the written police report;  
2 (b) the petitioner has acknowledged the admissibility of the stipulated  
3 facts in any criminal hearing or trial on the underlying offense or  
4 offenses held subsequent to revocation of the order granting deferred  
5 prosecution; ~~((and))~~ (c) the petitioner has acknowledged and waived the  
6 right to testify, to call witnesses to testify, and to present evidence  
7 in his or her defense; (d) the petitioner has acknowledged and waived  
8 the right to a jury trial; (e) the petitioner's statements,  
9 stipulations, acknowledgements, and waivers were made knowingly and  
10 voluntarily; (f) the petitioner qualifies for deferred prosecution; and  
11 (g) the proposed treatment program includes, at a minimum: (i)  
12 Frequency and type of contact between offenders and therapist; (ii)  
13 specific issues to be addressed in the treatment and description of  
14 planned treatment modalities; (iii) monitoring plans, including any  
15 requirements regarding living conditions, lifestyle requirements, and  
16 monitoring by family members and others; (iv) anticipated length of  
17 treatment; and (v) recommended prohibitions relating to use of alcohol  
18 or drugs. Such findings shall be included in the order granting  
19 deferred prosecution.

20 **Sec. 3.** RCW 10.05.060 and 1990 c 250 s 13 are each amended to read  
21 as follows:

22 If the report recommends treatment, the court shall examine the  
23 treatment plan. If it approves the plan and the petitioner agrees to  
24 comply with its terms and conditions and agrees to pay the cost  
25 thereof, if able to do so, or arrange for the treatment, an entry shall  
26 be made upon the person's court docket showing that the person has been  
27 accepted for deferred prosecution. A copy of the treatment plan shall  
28 be attached to the docket, which shall then be removed from the regular  
29 court dockets and filed in a special court deferred prosecution file.  
30 If the charge be one that an abstract of the docket showing the charge  
31 and the date of petitioner's acceptance is required to be sent to the  
32 department of licensing, an abstract shall be sent, and the department  
33 of licensing shall make an entry of the charge and of the petitioner's  
34 acceptance for deferred prosecution on the department's driving record  
35 of the petitioner. The entry is not a conviction for purposes of Title  
36 46 RCW. The department shall maintain the record for ~~((five years from~~  
37 ~~date of entry of the order granting deferred prosecution))~~ as long as  
38 necessary to administer the provisions of this chapter.

1       **Sec. 4.** RCW 10.05.090 and 1985 c 352 s 12 are each amended to read  
2 as follows:

3       If a petitioner(~~(7)~~) who has been accepted for a deferred  
4 prosecution(~~(7)~~) fails or neglects to carry out and fulfill any term or  
5 condition of the petitioner's treatment plan, the (~~facility, center,~~  
6 ~~institution, or agency~~) approved treatment program or licensed service  
7 provider administering the treatment plan shall immediately report such  
8 breach to the court, the probation department, the prosecutor, and the  
9 petitioner or petitioner's attorney of record, together with its  
10 recommendation. If the approved treatment program or licensed service  
11 provider fails to report the petitioner's breach as required by this  
12 section, the court, the probation department, or the prosecutor may  
13 notify the secretary of the department of social and health services of  
14 such failure to report. The court upon receiving such a report shall  
15 hold a hearing to determine whether the petitioner should be removed  
16 from the deferred prosecution program. At the hearing, evidence shall  
17 be taken of the petitioner's alleged failure to comply with the  
18 treatment plan and the petitioner shall have the right to present  
19 evidence on his or her own behalf. The court shall either order that  
20 the petitioner continue on the treatment plan or be removed from  
21 deferred prosecution. If removed from deferred prosecution, the court  
22 shall enter judgment pursuant to RCW 10.05.020 and, if the charge for  
23 which the deferred prosecution was granted was a traffic infraction,  
24 misdemeanor, or gross misdemeanor under Title 46 RCW, shall notify the  
25 department of licensing of the removal and entry of judgment.

26       **Sec. 5.** RCW 10.05.100 and 1985 c 352 s 13 are each amended to read  
27 as follows:

28       (1) If a petitioner (~~is~~) subsequently commits or is convicted of  
29 a similar offense while in a deferred prosecution program, (~~upon~~  
30 notice) the court shall hold a hearing to confirm the commission or  
31 conviction. If the court finds: (a) By a preponderance of the  
32 evidence and regardless of the prosecution status of the similar  
33 offense, that the petitioner has committed a similar offense while in  
34 the deferred prosecution program, or (b) that the petitioner has been  
35 convicted of a similar offense that was committed while in a deferred  
36 prosecution program, the court shall remove the petitioner's docket  
37 from the deferred prosecution file and the court shall enter judgment  
38 pursuant to RCW 10.05.020.

1       (2) If the charge for which the deferred prosecution was granted  
2 was a traffic infraction, misdemeanor, or gross misdemeanor under Title  
3 46 RCW, the court shall notify the department of licensing of the  
4 removal and entry of judgment.

5       (3) For the purposes of this section, "convicted" means any  
6 adjudication of guilt and includes a verdict of guilty, a finding of  
7 guilty, and acceptance of a plea of guilty. For the purposes of this  
8 section, a "similar offense" to a violation of RCW 46.61.502 or  
9 46.61.504 includes any criminal traffic offense and any alcohol or drug  
10 offense.

11       **Sec. 6.** RCW 10.05.120 and 1985 c 352 s 15 are each amended to read  
12 as follows:

13       Upon proof of successful completion of the two-year treatment  
14 program and verification that the petitioner has not been convicted of  
15 or found by the court to have committed a similar offense within five  
16 years after the date of entry of the order granting deferred  
17 prosecution, the court shall dismiss the charges pending against the  
18 petitioner.

19       ~~((Five years from the date of the court's approval of a deferred~~  
20 ~~prosecution program for an individual petitioner, those entries that~~  
21 ~~remain in the department of licensing records relating to such~~  
22 ~~petitioner shall be removed.))~~ A deferred prosecution ((may)) shall be  
23 considered for enhancement purposes when imposing mandatory penalties  
24 and suspensions under RCW 46.61.515 for subsequent offenses within a  
25 five-year period.

26       For the purposes of this section, "convicted" means any  
27 adjudication of guilt and includes a verdict of guilty, a finding of  
28 guilty, and acceptance of a plea of guilty. For the purposes of this  
29 section, a "similar offense" to a violation of RCW 46.61.502 or  
30 46.61.504 includes any criminal traffic offense and any alcohol or drug  
31 offense.

32       If the charge for which the deferred prosecution was granted was a  
33 traffic infraction, misdemeanor, or gross misdemeanor under Title 46  
34 RCW, the court shall notify the department of licensing of the removal  
35 and entry of judgment.

36       **Sec. 7.** RCW 10.05.140 and 1991 c 247 s 1 are each amended to read  
37 as follows:

1       As a condition of granting a deferred prosecution petition for a  
2 violation of RCW 46.61.502 or 46.61.504, the court shall order that the  
3 petitioner (~~shall~~): (i) Not operate a motor vehicle (~~upon the~~  
4 ~~public highways~~) within this state without a valid operator's license  
5 and proof of (~~liability insurance~~) financial responsibility for the  
6 future, as defined in RCW 46.29.260; (ii) not drive a motor vehicle  
7 within this state while having any measurable alcohol in his or her  
8 breath or blood within two hours after driving; and (iii) not refuse to  
9 submit to a test of his or her breath or blood to determine alcohol  
10 concentration upon request of a law enforcement officer who has  
11 reasonable grounds to believe the person was driving or was in actual  
12 physical control of a motor vehicle within this state while under the  
13 influence of intoxicating liquor. The amount of liability insurance  
14 shall be established by the court at not less than that established by  
15 RCW 46.29.490. The court shall not grant a deferred prosecution unless  
16 the defendant has executed all acknowledgements, stipulations, and  
17 waivers as specified in RCW 10.05.020 (2), (3), and (4). As a  
18 condition of granting a deferred prosecution petition, the court may  
19 order the petitioner to make restitution and to pay costs as defined in  
20 RCW 10.01.160. The court (~~may~~) shall terminate the deferred  
21 prosecution program upon violation of any of the conditions authorized  
22 or required by this section. If the charge for which the deferred  
23 prosecution was granted was a traffic infraction, misdemeanor, or gross  
24 misdemeanor under Title 46 RCW, the court shall notify the department  
25 of licensing of the removal and entry of judgment.

26       **Sec. 8.** RCW 10.05.160 and 1985 c 352 s 18 are each amended to read  
27 as follows:

28       The prosecutor may appeal an order granting deferred prosecution on  
29 any or all of the following grounds:

30       (1) Prior deferred prosecution has been granted to the defendant  
31 (~~within five years~~);

32       (2) Failure of the court to obtain proof of insurance or a  
33 treatment plan conforming to the requirements of this chapter;

34       (3) Failure of the court to comply with the requirements of RCW  
35 10.05.020, 10.05.100, or 10.05.140;

36       (4) Failure of the evaluation facility to provide the information  
37 required in RCW 10.05.040 and 10.05.050, if the defendant has been  
38 referred to the facility for treatment. If an appeal on such basis is

1 successful, the trial court may consider the use of another treatment  
2 ((facility)) program.

3 **Sec. 9.** RCW 10.05.170 and 1991 c 247 s 2 are each amended to read  
4 as follows:

5 As a condition of granting deferred prosecution, the court ((may))  
6 shall order supervision of the petitioner during the period of deferral  
7 and may levy a monthly assessment upon the petitioner as provided in  
8 RCW 10.64.120. In a jurisdiction with a probation department, the  
9 court ((may)) shall appoint the probation department to supervise the  
10 petitioner. In a jurisdiction without a probation department, the  
11 court ((may)) shall appoint an appropriate person or agency to  
12 supervise the petitioner. A supervisor appointed under this section  
13 shall be required to do at least the following:

14 (1) If the charge for which deferral is granted relates to  
15 operation of a motor vehicle, at least once every six months request  
16 from the department of licensing an abstract of the petitioner's  
17 driving record and notify the court if the petitioner has been  
18 convicted of any criminal traffic offense; and

19 (2) At least once every month make contact with the petitioner or  
20 with any agency to which the petitioner has been directed for treatment  
21 as a part of the deferral to determine the petitioner's compliance with  
22 the treatment plan and notify the court if the petitioner has failed or  
23 neglected to carry out and fulfill any term or condition of the  
24 treatment plan.

25 NEW SECTION. **Sec. 10.** A new section is added to chapter 46.04 RCW  
26 to read as follows:

27 "Alcohol concentration" means grams of alcohol per two hundred ten  
28 liters of a person's breath or the percent by weight of alcohol in a  
29 person's blood.

30 **Sec. 11.** RCW 46.04.480 and 1988 c 148 s 8 are each amended to read  
31 as follows:

32 "Revoke," in all its forms, means the invalidation for a period of  
33 one calendar year and thereafter until reissue: PROVIDED, That under  
34 the provisions of RCW 46.20.285, 46.20.308, 46.20.311, 46.20.265, or  
35 46.61.515 and chapter 46.65 RCW the invalidation may last for a period  
36 other than one calendar year.

1       **Sec. 12.** RCW 46.04.580 and 1990 c 250 s 22 are each amended to  
2 read as follows:

3       "Suspend," in all its forms, means invalidation for any period less  
4 than one calendar year and thereafter until reinstatement. However,  
5 under RCW 46.20.308 or 46.61.515 the invalidation may last for more  
6 than one calendar year.

7       NEW SECTION. **Sec. 13.** A new section is added to chapter 46.20 RCW  
8 to read as follows:

9       (1) Whenever any person is arrested for any offense where:

10       (a) At the time of the arrest, the arresting officer had reasonable  
11 grounds to believe the person had been driving or was in actual  
12 physical control of a motor vehicle within this state while under the  
13 influence of intoxicating liquor;

14       (b) The arrested person received the warnings as provided in RCW  
15 46.20.308(2) or has been deemed to have received the warnings as  
16 provided in RCW 46.20.308(4); and

17       (c) The arrested person either (i) refused to submit to a test of  
18 his or her breath or blood to determine its alcohol concentration, or  
19 (ii) the result of each test showed an alcohol concentration of the  
20 person's breath or blood of 0.08 or more within two hours after the  
21 driving or being in actual physical control of a motor vehicle within  
22 this state;

23 the arresting officer or other law enforcement officer at whose  
24 direction any test has been given shall:

25       (A) Serve notice in writing on the person on behalf of the  
26 department of licensing that (I) the department intends to suspend,  
27 revoke, or deny the person's license, permit, or privilege to drive as  
28 provided by RCW 46.20.308 (6) or (7), (II) the person has a right to a  
29 hearing to contest the suspension, revocation, or denial of his or her  
30 license, permit, or privilege to drive as provided by RCW 46.20.308(8),  
31 (III) to obtain a hearing, the person must pay a fee of one hundred  
32 dollars, and (IV) the person must request such a hearing in writing  
33 within seven days of the date of arrest or the right to such a hearing  
34 will be lost. If the request is made by mail, the request must be  
35 postmarked within seven days of the date of arrest;

36       (B) Confiscate the person's Washington state license or permit to  
37 drive, if any;

1 (C) Issue a temporary license or permit to drive as provided by  
2 subsection (2) of this section to any driver who surrenders a current  
3 and valid Washington state license or permit to drive; and

4 (D) Immediately notify the department of the arrest and transmit to  
5 the department any confiscated license or permit to drive and the  
6 report required by RCW 46.20.308 (6) or (7).

7 (2) Any temporary license or permit to drive issued under  
8 subsection (1) of this section shall state that it is valid beginning  
9 twelve hours after the time of the person's arrest and remains valid  
10 only until the sooner of:

11 (a) The expiration date of the confiscated license or permit to  
12 drive; or

13 (b) The date the suspension, revocation, or denial of the person's  
14 license, permit, or privilege to drive is sustained after a hearing  
15 provided under RCW 46.20.308(8); or

16 (c) Thirty days from the date of the person's arrest.

17 (3) The department shall provide law enforcement agencies with  
18 temporary license or permit forms to use under subsection (1) of this  
19 section.

20 (4) If the officer cannot comply with the requirements of  
21 subsection (1)(c) (A) through (D) of this section because the result of  
22 a blood test is unavailable at the time the person is released, the  
23 officer shall, upon receipt of the test result, immediately transmit to  
24 the department such test result and the report required by RCW  
25 46.20.308(7). Upon receipt of such test result and report, the  
26 department shall send the notice required by subsection (1)(c)(A) of  
27 this section by certified mail to the person's last known address,  
28 request return by the person of his or her license or permit to drive,  
29 and issue a temporary license. In such case, the person has ten days  
30 from the date of the notice to request a hearing.

31 **Sec. 14.** RCW 46.20.291 and 1993 c 501 s 4 are each amended to read  
32 as follows:

33 The department is authorized to suspend the license of a driver  
34 upon a showing by its records or other sufficient evidence that the  
35 licensee:

36 (1) Has committed an offense for which mandatory revocation or  
37 suspension of license is provided by law or has violated a mandatory  
38 condition of probation imposed under RCW 46.61.515;

1 (2) Has, by reckless or unlawful operation of a motor vehicle,  
2 caused or contributed to an accident resulting in death or injury to  
3 any person or serious property damage;

4 (3) Has been convicted of offenses against traffic regulations  
5 governing the movement of vehicles, or found to have committed traffic  
6 infractions, with such frequency as to indicate a disrespect for  
7 traffic laws or a disregard for the safety of other persons on the  
8 highways;

9 (4) Is incompetent to drive a motor vehicle under RCW 46.20.031(3);  
10 ((or))

11 (5) Has failed to respond to a notice of traffic infraction, failed  
12 to appear at a requested hearing, violated a written promise to appear  
13 in court, or has failed to comply with the terms of a notice of traffic  
14 infraction or citation, as provided in RCW 46.20.289; ((or))

15 (6) Has committed one of the prohibited practices relating to  
16 drivers' licenses defined in RCW 46.20.336; or

17 (7) On and after January 1, 1995, submitted to a test of his or her  
18 breath or blood for alcohol concentration pursuant to RCW 46.20.308 and  
19 a result of that test showed an alcohol concentration of the person's  
20 breath or blood of 0.08 or more within two hours after driving or being  
21 in actual physical control of a motor vehicle in this state.

22 **Sec. 15.** RCW 46.20.308 and 1989 c 337 s 8 are each amended to read  
23 as follows:

24 (1) Any person who operates a motor vehicle within this state is  
25 deemed to have given consent, subject to the provisions of RCW  
26 46.61.506, to a test or tests of his or her breath or blood for the  
27 purpose of determining the alcoholic content of his or her breath or  
28 blood if arrested for any offense where, at the time of the arrest, the  
29 arresting officer has reasonable grounds to believe the person had been  
30 driving or was in actual physical control of a motor vehicle while  
31 under the influence of intoxicating liquor.

32 (2) The test or tests of breath shall be administered at the  
33 direction of a law enforcement officer having reasonable grounds to  
34 believe the person to have been driving or in actual physical control  
35 of a motor vehicle within this state while under the influence of  
36 intoxicating liquor. However, in those instances where: (a) The  
37 person is incapable due to physical injury, physical incapacity, or  
38 other physical limitation, of providing a breath sample; or (b) as a

1 result of a traffic accident the person is being treated for a medical  
2 condition in a hospital, clinic, doctor's office, or other similar  
3 facility in which a breath testing instrument is not present, a blood  
4 test shall be administered by a qualified person as provided in RCW  
5 46.61.506(4). The officer shall inform the person of his or her right  
6 to refuse the breath or blood test, and of his or her right to have  
7 additional tests administered by any qualified person of his or her  
8 choosing as provided in RCW 46.61.506. The officer shall warn the  
9 ~~((driver))~~ person that ~~((+a+))~~ (i) his or her license, permit, or  
10 privilege to drive will be revoked or denied if he or she refuses to  
11 submit to the test, ~~((and (b) that))~~ (ii) his or her license, permit,  
12 or privilege to drive will be suspended, revoked, or denied if result  
13 of each test shows an alcohol concentration of his or her breath or  
14 blood of 0.08 or more within two hours after driving or being in actual  
15 physical control of a motor vehicle within this state, and (iii) his or  
16 her refusal to take the test may be used in a criminal trial.

17 (3) Except as provided in this section, the test administered shall  
18 be of the breath only. If an individual is unconscious or is under  
19 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
20 or vehicular assault as provided in RCW 46.61.522, or if an individual  
21 is under arrest for the crime of driving while under the influence of  
22 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
23 results from an accident in which another person has been injured and  
24 there is a reasonable likelihood that such other person may die as a  
25 result of injuries sustained in the accident, a breath or blood test  
26 may be administered without the consent of the individual so arrested.

27 (4) Any person who is dead, unconscious, or who is otherwise in a  
28 condition rendering him or her incapable of refusal, shall be deemed  
29 not to have withdrawn the consent provided by subsection (1) of this  
30 section and the test or tests may be administered, subject to the  
31 provisions of RCW 46.61.506, and the person shall be deemed to have  
32 received the warnings required under subsection (2) of this section.

33 (5) If, following his or her arrest and receipt of warnings under  
34 subsection (2) of this section, the person arrested refuses upon the  
35 request of a law enforcement officer to submit to a test or tests of  
36 his or her breath or blood, no test shall be given except as authorized  
37 under subsection (3) or (4) of this section.

38 (6) The department of licensing, upon the receipt of a sworn report  
39 of the law enforcement officer or a report of the law enforcement

1 officer under a declaration authorized by RCW 9A.72.085 that the  
2 officer had reasonable grounds to believe the arrested person had been  
3 driving or was in actual physical control of a motor vehicle within  
4 this state while under the influence of intoxicating liquor and that  
5 the person had refused to submit to the test or tests upon the request  
6 of the law enforcement officer after ((being informed that refusal  
7 would result in the revocation of the person's privilege to drive))  
8 receiving the warnings as provided in subsection (2) of this section,  
9 shall revoke or deny the person's license ((or)), permit, or privilege  
10 to drive ((or any nonresident operating privilege)). The revocation or  
11 denial shall be effective the date the revocation or denial is  
12 sustained after a hearing provided under subsection (8) of this section  
13 or thirty days after the date of the person's arrest, whichever is  
14 sooner.

15 (7) ~~((Upon revoking the license or permit to drive or the~~  
16 ~~nonresident operating privilege of any person, the department shall~~  
17 ~~immediately notify the person involved in writing by personal service~~  
18 ~~or by certified mail of its decision and the grounds therefor, and of~~  
19 ~~the person's right to a hearing, specifying the steps he or she must~~  
20 ~~take to obtain a hearing. Within fifteen days after the notice has~~  
21 ~~been given, the person may, in writing, request a formal hearing.))~~  
22 The department of licensing, upon the receipt of a sworn report of the  
23 law enforcement officer or a report of the law enforcement officer  
24 under a declaration authorized by RCW 9A.72.085 that the officer had  
25 reasonable grounds to believe the arrested person had been driving or  
26 was in actual physical control of a motor vehicle within this state  
27 while under the influence of intoxicating liquor, the person submitted  
28 to a test upon the request of the law enforcement officer after  
29 receiving the warnings as provided in subsection (2) of this section or  
30 was administered the test without the person's consent as provided in  
31 subsection (3) of this section and the result of each test showed an  
32 alcohol concentration of the person's breath or blood of 0.08 or more  
33 within two hours after driving or being in actual physical control of  
34 a motor vehicle within this state, shall suspend, revoke, or deny the  
35 person's license, permit, or privilege to drive. The period of  
36 suspension or denial shall be until the person reaches age nineteen or  
37 ninety days, whichever is longer. If, within five years prior to the  
38 date of arrest, the person's license, permit, or privilege to drive has  
39 been suspended, revoked, or denied once pursuant to this subsection or

1 RCW 46.61.515 or the person has been accepted for deferred prosecution  
2 as provided in chapter 10.05 RCW, then the period of revocation or  
3 denial shall be one year. If, within five years prior to the date of  
4 arrest, the person's license, permit, or privilege to drive has been  
5 suspended, revoked, or denied twice or more pursuant to this subsection  
6 or RCW 46.61.515 or the person has been accepted for deferred  
7 prosecution as provided in chapter 10.05 RCW, then the period of  
8 revocation or denial shall be two years. For any arrest for which the  
9 result of the test showed an alcohol concentration of the person's  
10 breath or blood of 0.15 or more within two hours after driving or being  
11 in actual physical control of a motor vehicle within this state, the  
12 period of suspension, revocation, or denial in this subsection shall be  
13 increased by ninety days.

14 The suspension, revocation, or denial shall be effective the date  
15 the suspension, revocation, or denial is sustained after a hearing  
16 provided in subsection (8) of this section or thirty days after the  
17 date of the person's arrest, whichever is sooner. The suspension,  
18 revocation, or denial shall be stayed if the person is accepted for  
19 deferred prosecution as provided in chapter 10.05 RCW for the incident  
20 upon which the suspension, revocation, or denial is based. If the  
21 deferred prosecution is terminated, the stay shall be lifted and the  
22 suspension, revocation, or denial reinstated. If the deferred  
23 prosecution is completed, the stay shall be lifted and the suspension,  
24 revocation, or denial canceled.

25 (8)(a) Upon timely receipt of ((such)) a request for a hearing  
26 contesting the suspension, revocation, or denial of the person's  
27 license, permit, or privilege to drive, along with the required fee,  
28 the department shall afford the person an opportunity for a hearing  
29 ((as provided in RCW 46.20.329 and 46.20.332)). The director shall  
30 appoint a designee or designees to conduct the hearing. A hearing  
31 officer shall conduct the hearing, may issue subpoenas for the  
32 attendance of witnesses and the production of documents, and shall  
33 administer oaths to witnesses. The hearing officer shall not issue a  
34 subpoena for the attendance of a witness at the request of the person  
35 unless the request is accompanied by the fee required by RCW 5.56.010  
36 for a witness in district court. The sworn report or report under a  
37 declaration authorized by RCW 9A.72.085 of the law enforcement officer  
38 and any other evidence accompanying the report shall be admissible  
39 without further evidentiary foundation and the certifications

1 authorized by Criminal Rules for Courts of Limited Jurisdiction shall  
2 be admissible without further evidentiary foundation. The person may  
3 be represented by counsel, may question witnesses, may present  
4 evidence, and may testify. The hearing shall be recorded and shall be  
5 conducted in the county of the arrest, except that all or part of the  
6 hearing may, at the discretion of the department, be conducted by  
7 telephone or other electronic means. ((For the purposes of this  
8 section, the scope of such hearing shall cover the issues of whether))

9 (b) The hearing officer shall sustain a revocation or denial based  
10 on a refusal to submit to a test if the hearing officer determines, by  
11 a preponderance of the evidence, that (i) a law enforcement officer had  
12 reasonable grounds to believe the person had been driving or was in  
13 actual physical control of a motor vehicle within this state while  
14 under the influence of intoxicating liquor, ((whether)) (ii) the person  
15 was placed under arrest, and ((whether)) (iii) the person refused to  
16 submit to the test ((or tests)) upon request of the officer after  
17 ((having been informed that such refusal would result in the revocation  
18 of the person's privilege to drive. The department shall order that  
19 the revocation either be rescinded or sustained. Any decision by the  
20 department revoking a person's driving privilege shall be stayed and  
21 shall not take effect while a formal hearing is pending as provided in  
22 this section or during the pendency of a subsequent appeal to superior  
23 court so long as there is no conviction for a moving violation or no  
24 finding that the person has committed a traffic infraction that is a  
25 moving violation during pendency of the hearing and appeal.

26 (8)) receiving the warnings as provided in subsection (2) of this  
27 section.

28 (c) The hearing officer shall sustain a suspension, revocation, or  
29 denial based on a result of the test if the hearing officer determines,  
30 by a preponderance of the evidence, that (i) a law enforcement officer  
31 had reasonable grounds to believe the person had been driving or was in  
32 actual physical control of a motor vehicle within this state while  
33 under the influence of intoxicating liquor, (ii) the person was placed  
34 under arrest, (iii) the person submitted to the test upon request of  
35 the officer after receiving the warnings as provided in subsection (2)  
36 of this section or was administered the test without the person's  
37 consent as provided in subsection (3) of this section, and (iv) the  
38 result of each test showed an alcohol concentration of the person's

1 breath or blood of 0.08 or more within two hours after driving or being  
2 in actual physical control of a motor vehicle within this state.

3 (9) No determination of facts by the hearing officer under  
4 subsection (8) of this section has any collateral estoppel effect on a  
5 subsequent criminal prosecution and does not preclude litigation of  
6 those same facts in the criminal proceeding.

7 (10) If the person fails to timely request a hearing or fails to  
8 appear at a requested hearing, the right to a hearing is waived and the  
9 suspension, revocation, or denial shall be sustained.

10 (11) If the suspension, revocation, or denial is sustained, the  
11 department of licensing shall recover costs in excess of one hundred  
12 dollars as provided in RCW 12.20.060. The person's license, permit, or  
13 privilege to drive shall not be reissued until these costs are paid.  
14 If the suspension, revocation, or denial is rescinded, the person shall  
15 be awarded the amount of the hearing fee and the department shall  
16 reissue the person's license, permit, or privilege to drive without  
17 cost. If the suspension, revocation, or denial is sustained ((after  
18 such a hearing)), the person whose license, privilege, or permit is  
19 suspended, revoked, or denied has the right to ((file a petition in))  
20 appeal to the superior court of the county of arrest ((to review the  
21 final order of revocation by the department in the manner provided in  
22 RCW 46.20.334.

23 (9)) in the same manner as an appeal from a decision of a court of  
24 limited jurisdiction. The appellant must pay the costs associated with  
25 obtaining the record of the hearing before the hearing officer. The  
26 filing of a notice of appeal does not stay the suspension, revocation,  
27 or denial. A court shall not stay the suspension, revocation, or  
28 denial unless it finds that the appellant is likely to prevail in the  
29 appeal and without a stay the appellant will suffer irreparable injury.  
30 If the court stays the suspension, revocation, or denial, it may impose  
31 conditions on such stay. The stay shall not exceed ninety days, except  
32 for good cause shown, but shall in no event exceed one hundred eighty  
33 days.

34 (12) When it has been finally determined under the procedures of  
35 this section that a nonresident's privilege to operate a motor vehicle  
36 in this state has been suspended or revoked, the department shall give  
37 information in writing of the action taken to the motor vehicle  
38 administrator of the state of the person's residence and of any state  
39 in which he or she has a license.

1       **Sec. 16.** RCW 46.20.311 and 1993 c 501 s 5 are each amended to read  
2 as follows:

3       (1) The department shall not suspend a driver's license or  
4 privilege to drive a motor vehicle on the public highways for a fixed  
5 period of more than one year, except as permitted under RCW 46.20.308,  
6 46.20.342, or 46.61.515. Except for a suspension under RCW 46.20.289  
7 and 46.20.291(5), whenever the license or driving privilege of any  
8 person is suspended by reason of a conviction, a finding that a traffic  
9 infraction has been committed, pursuant to chapter 46.29 RCW, (~~or~~)  
10 pursuant to RCW 46.20.291 or 46.20.308, or because of a violation of a  
11 mandatory condition of probation imposed under RCW 46.61.515, the  
12 suspension of license or privilege to drive shall remain in effect  
13 until the person gives and thereafter maintains proof of financial  
14 responsibility for the future as provided in chapter 46.29 RCW. The  
15 department shall not issue to the person a new, duplicate, or renewal  
16 license until the person pays a reissue fee of twenty dollars. If the  
17 suspension is imposed under RCW 46.20.308 or the result of a violation  
18 of RCW 46.61.502 or 46.61.504 or a violation of a mandatory condition  
19 of probation imposed under RCW 46.61.515, the reissue fee shall be  
20 (~~fifty~~) one hundred dollars.

21       (2) Any person whose license or privilege to drive a motor vehicle  
22 on the public highways has been revoked, unless the revocation was for  
23 a cause which has been removed, is not entitled to have the license or  
24 privilege renewed or restored until: (a) After the expiration of one  
25 year from the date the license or privilege to drive was revoked; (b)  
26 after the expiration of the applicable revocation period provided by  
27 RCW 46.61.515(3) (b) or (c); (c) after the expiration of two years for  
28 persons convicted of vehicular homicide; (d) after the expiration of  
29 one year in cases of revocation for the first refusal within five years  
30 to submit to a chemical test under RCW 46.20.308; (e) after the  
31 expiration of two years in cases of revocation for the second or  
32 subsequent refusal within five years to submit to a chemical test under  
33 RCW 46.20.308; or (f) after the expiration of the applicable revocation  
34 period provided by RCW 46.20.265. After the expiration of the  
35 appropriate period, the person may make application for a new license  
36 as provided by law together with a reissue fee in the amount of twenty  
37 dollars, but if the revocation is the result of a violation of RCW  
38 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be (~~fifty~~)  
39 one hundred dollars. Except for a revocation under RCW 46.20.265, the

1 department shall not then issue a new license unless it is satisfied  
2 after investigation of the driving ability of the person that it will  
3 be safe to grant the privilege of driving a motor vehicle on the public  
4 highways, and until the person gives and thereafter maintains proof of  
5 financial responsibility for the future as provided in chapter 46.29  
6 RCW. For a revocation under RCW 46.20.265, the department shall not  
7 issue a new license unless it is satisfied after investigation of the  
8 driving ability of the person that it will be safe to grant that person  
9 the privilege of driving a motor vehicle on the public highways.

10 (3) Whenever the driver's license of any person is suspended  
11 pursuant to Article IV of the nonresident violators compact or RCW  
12 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue  
13 to the person any new or renewal license until the person pays a  
14 reissue fee of twenty dollars. If the suspension is the result of a  
15 violation of the laws of this or any other state, province, or other  
16 jurisdiction involving (a) the operation or physical control of a motor  
17 vehicle upon the public highways while under the influence of  
18 intoxicating liquor or drugs, ~~((or))~~ (b) the refusal to submit to a  
19 ~~((chemical))~~ test of the driver's breath or blood alcohol content, or  
20 (c) the result of a test of the driver's breath or blood showing an  
21 alcohol concentration of 0.08 or more, the reissue fee shall be  
22 ~~((fifty))~~ one hundred dollars.

23 **Sec. 17.** RCW 46.20.391 and 1985 c 407 s 5 are each amended to read  
24 as follows:

25 (1) Any person licensed under this chapter who is convicted of an  
26 offense relating to motor vehicles for which suspension or revocation  
27 of the driver's license is mandatory, other than vehicular homicide or  
28 vehicular assault, or whose license is suspended pursuant to RCW  
29 46.20.308(7) may submit to the department an application for an  
30 occupational driver's license. The department, upon receipt of the  
31 prescribed fee and upon determining that the petitioner is engaged in  
32 an occupation or trade that makes it essential that the petitioner  
33 operate a motor vehicle, may issue an occupational driver's license and  
34 may set definite restrictions as provided in RCW 46.20.394. No person  
35 may petition for, and the department shall not issue, an occupational  
36 driver's license that is effective during the first thirty days of any  
37 suspension or revocation imposed under RCW 46.61.515 or 46.20.308(7).  
38 A person aggrieved by the decision of the department on the application

1 for an occupational driver's license may request a hearing as provided  
2 by rule of the department.

3 (2) An applicant for an occupational driver's license is eligible  
4 to receive such license only if:

5 (a) Within one year immediately preceding the present conviction or  
6 suspension imposed under RCW 46.20.308(7), the applicant has not been  
7 convicted of any offense relating to motor vehicles for which  
8 suspension or revocation of a driver's license is mandatory; and

9 (b) Within five years immediately preceding the present conviction  
10 or suspension imposed under RCW 46.20.308(7), the applicant has not  
11 been convicted of driving or being in actual physical control of a  
12 motor vehicle while under the influence of intoxicating liquor under  
13 RCW 46.61.502 or 46.61.504, of vehicular homicide under RCW 46.61.520,  
14 or of vehicular assault under RCW 46.61.522 nor has the applicant's  
15 license, permit, or privilege to drive been suspended, revoked, or  
16 denied pursuant to RCW 46.20.308; and

17 (c) The applicant is engaged in an occupation or trade that makes  
18 it essential that he or she operate a motor vehicle; and

19 (d) The applicant files satisfactory proof of financial  
20 responsibility pursuant to chapter 46.29 RCW.

21 (3) The director shall cancel an occupational driver's license upon  
22 receipt of notice that the holder thereof has been convicted of  
23 operating a motor vehicle in violation of its restrictions, or of an  
24 offense that pursuant to chapter 46.20 RCW would warrant suspension or  
25 revocation of a regular driver's license. The cancellation is  
26 effective as of the date of the conviction, and continues with the same  
27 force and effect as any suspension or revocation under this title.

28 **Sec. 18.** RCW 46.61.502 and 1993 c 328 s 1 are each amended to read  
29 as follows:

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

33 (a) And the person has ~~((0.10))~~ 0.08 grams or more of alcohol per  
34 two hundred ten liters of breath within two hours after driving, as  
35 shown by analysis of the person's breath made under RCW 46.61.506; or

36 (b) And the person has ~~((0.10))~~ 0.08 percent or more by weight of  
37 alcohol in the person's blood within two hours after driving, as shown  
38 by analysis of the person's blood made under RCW 46.61.506; or

1 (c) While the person is under the influence of or affected by  
2 intoxicating liquor or any drug; or

3 (d) While the person is under the combined influence of or affected  
4 by intoxicating liquor and any drug.

5 (2) The fact that any person charged with a violation of this  
6 section is or has been entitled to use such drug under the laws of this  
7 state shall not constitute a defense against any charge of violating  
8 this section.

9 (3) It is an affirmative defense to a violation of subsection (1)  
10 (a) and (b) of this section which the defendant must prove by a  
11 preponderance of the evidence that the defendant consumed a sufficient  
12 quantity of alcohol after the time of driving and before the  
13 administration of an analysis of the person's breath or blood to cause  
14 the defendant's alcohol concentration to be ((0.10)) 0.08 or more  
15 within two hours after driving. The court shall not admit evidence of  
16 this defense unless the defendant notifies the prosecution prior to the  
17 earlier of (a) seven days prior to trial or (b) the omnibus or pretrial  
18 hearing in the case of the defendant's intent to assert the affirmative  
19 defense.

20 (4) Analyses of blood or breath samples obtained more than two  
21 hours after the alleged driving may be used as evidence that within two  
22 hours of the alleged driving, a person had ((0.10)) 0.08 grams or more  
23 of alcohol per two hundred ten liters of breath or ((0.10)) 0.08  
24 percent or more of alcohol in the person's blood, pursuant to  
25 subsection (1) (a) and (b) of this section, and may be used as evidence  
26 that a person was under the influence of or affected by intoxicating  
27 liquors or any drug pursuant to subsection (1) (c) and (d) of this  
28 section.

29 **Sec. 19.** RCW 46.61.504 and 1993 c 328 s 2 are each amended to read  
30 as follows:

31 (1) A person is guilty of being in actual physical control of a  
32 motor vehicle while under the influence of intoxicating liquor or any  
33 drug if the person has actual physical control of a vehicle within this  
34 state:

35 (a) And the person has ((0.10)) 0.08 grams or more of alcohol per  
36 two hundred ten liters of breath within two hours after being in actual  
37 physical control of a motor vehicle, as shown by analysis of the  
38 person's breath made under RCW 46.61.506; or

1 (b) And the person has ((0.10)) 0.08 percent or more by weight of  
2 alcohol in the person's blood within two hours after being in actual  
3 physical control of a motor vehicle, as shown by analysis of the  
4 person's blood made under RCW 46.61.506; or

5 (c) While the person is under the influence of or affected by  
6 intoxicating liquor or any drug; or

7 (d) While the person is under the combined influence of or affected  
8 by intoxicating liquor and any drug.

9 (2) The fact that any person charged with a violation of this  
10 section is or has been entitled to use such drug under the laws of this  
11 state shall not constitute a defense against any charge of violating  
12 this section. No person may be convicted under this section if, prior  
13 to being pursued by a law enforcement officer, the person has moved the  
14 vehicle safely off the roadway.

15 (3) It is an affirmative defense to a violation of subsection (1)  
16 (a) and (b) of this section which the defendant must prove by a  
17 preponderance of the evidence that the defendant consumed a sufficient  
18 quantity of alcohol after the time of being in actual physical control  
19 of a motor vehicle and before the administration of an analysis of the  
20 person's breath or blood to cause the defendant's alcohol concentration  
21 to be ((0.10)) 0.08 or more within two hours after being in actual  
22 physical control of a motor vehicle. The court shall not admit  
23 evidence of this defense unless the defendant notifies the prosecution  
24 prior to the earlier of (a) seven days prior to trial or (b) the  
25 omnibus or pretrial hearing in the case of the defendant's intent to  
26 assert the affirmative defense.

27 (4) Analyses of blood or breath samples obtained more than two  
28 hours after the alleged actual physical control of a motor vehicle may  
29 be used as evidence that within two hours of the alleged actual  
30 physical control of a motor vehicle, a person had ((0.10)) 0.08 grams  
31 or more of alcohol per two hundred ten liters of breath or ((0.10))  
32 0.08 percent or more of alcohol in the person's blood, pursuant to  
33 subsection (1) (a) and (b) of this section, and may be used as evidence  
34 that a person was under the influence of or affected by intoxicating  
35 liquors or any drug pursuant to subsection (1) (c) and (d) of this  
36 section.

37 **Sec. 20.** RCW 46.61.506 and 1987 c 373 s 4 are each amended to read  
38 as follows:

1 (1) Upon the trial of any civil or criminal action or proceeding  
2 arising out of acts alleged to have been committed by any person while  
3 driving or in actual physical control of a vehicle while under the  
4 influence of intoxicating liquor or any drug, if the ~~((amount of))~~  
5 alcohol ~~((in))~~ concentration of the person's blood or breath at the  
6 time alleged as shown by analysis of his or her blood or breath is less  
7 than ~~((0.10 percent by weight of alcohol in his blood or 0.10 grams of~~  
8 ~~alcohol per two hundred ten liters of the person's breath))~~ 0.08, it is  
9 evidence that may be considered with other competent evidence in  
10 determining whether the person was under the influence of intoxicating  
11 liquor or any drug.

12 (2) The breath analysis shall be based upon grams of alcohol per  
13 two hundred ten liters of breath. The foregoing provisions of this  
14 section shall not be construed as limiting the introduction of any  
15 other competent evidence bearing upon the question whether the person  
16 was under the influence of intoxicating liquor or any drug.

17 (3) Analysis of the person's blood or breath to be considered valid  
18 under the provisions of this section or RCW 46.61.502 or 46.61.504  
19 shall have been performed according to methods approved by the state  
20 toxicologist and by an individual possessing a valid permit issued by  
21 the state toxicologist for this purpose. The state toxicologist is  
22 directed to approve satisfactory techniques or methods, to supervise  
23 the examination of individuals to ascertain their qualifications and  
24 competence to conduct such analyses, and to issue permits which shall  
25 be subject to termination or revocation at the discretion of the state  
26 toxicologist.

27 (4) When a blood test is administered under the provisions of RCW  
28 46.20.308, the withdrawal of blood for the purpose of determining its  
29 alcoholic content may be performed only by a physician, a registered  
30 nurse, or a qualified technician. This limitation shall not apply to  
31 the taking of breath specimens.

32 (5) The person tested may have a physician, or a qualified  
33 technician, chemist, registered nurse, or other qualified person of his  
34 or her own choosing administer one or more tests in addition to any  
35 administered at the direction of a law enforcement officer. The  
36 failure or inability to obtain an additional test by a person shall not  
37 preclude the admission of evidence relating to the test or tests taken  
38 at the direction of a law enforcement officer.

1 (6) Upon the request of the person who shall submit to a test or  
2 tests at the request of a law enforcement officer, full information  
3 concerning the test or tests shall be made available to him or her or  
4 his or her attorney.

5 **Sec. 21.** RCW 46.61.515 and 1993 c 501 s 7 and 1993 c 239 s 1 are  
6 each reenacted and amended to read as follows:

7 (1) (~~Every~~) A person who is convicted of a violation of RCW  
8 46.61.502 or 46.61.504 where the result of the test of the person's  
9 breath or blood showed an alcohol concentration of less than 0.15  
10 within two hours after driving or being in actual physical control of  
11 a motor vehicle within this state shall be punished by imprisonment for  
12 not less than twenty-four consecutive hours nor more than one year, and  
13 by a fine of not less than two hundred fifty dollars and not more than  
14 (~~one~~) five thousand dollars. A person who is convicted of a  
15 violation of RCW 46.61.502 or 46.61.504 where the result of the test of  
16 the person's breath or blood showed an alcohol concentration of 0.15 or  
17 more within two hours after driving or being in actual physical control  
18 of a motor vehicle within this state or where the person refused to  
19 submit to a test of the person's breath or blood for alcohol  
20 concentration shall be punished by imprisonment for not less than  
21 forty-eight consecutive hours nor more than one year, and by a fine of  
22 not less than three hundred fifty dollars and not more than five  
23 thousand dollars. For purposes of the preceding sentence, the judge  
24 shall determine, based on a preponderance of the evidence, whether the  
25 person's alcohol concentration was 0.15 or more within two hours after  
26 driving or being in actual physical control of a motor vehicle within  
27 this state or whether the person refused to submit to a test of the  
28 person's breath or blood for alcohol concentration. Unless the judge  
29 finds the person to be indigent, (~~two hundred fifty dollars of~~) the  
30 mandatory minimum fine shall not be suspended or deferred. (~~Twenty-~~  
31 four consecutive hours of) The mandatory minimum jail sentence shall  
32 not be suspended or deferred unless the judge finds that the imposition  
33 of the jail sentence will pose a substantial risk to the defendant's  
34 physical or mental well-being. Whenever the mandatory minimum jail  
35 sentence is suspended or deferred, the judge must state, in writing,  
36 the reason for granting the suspension or deferral and the facts upon  
37 which the suspension or deferral is based. The court shall impose  
38 conditions of probation which include (a) not driving a motor vehicle

1 within this state without a valid license to drive and proof of  
2 financial responsibility for the future, (b) not driving a motor  
3 vehicle within this state while having an alcohol concentration of 0.04  
4 or more within two hours after driving, and (c) not refusing to submit  
5 to a test of his or her breath or blood to determine alcohol  
6 concentration upon request of a law enforcement officer who has  
7 reasonable grounds to believe the person was driving or was in actual  
8 physical control of a motor vehicle within this state while under the  
9 influence of intoxicating liquor. The court may impose conditions of  
10 probation that may include nonrepetition, alcohol or drug treatment,  
11 supervised probation, or other conditions that may be appropriate. The  
12 convicted person shall, in addition, be required to complete a course  
13 in an alcohol information school approved by the department of social  
14 and health services or more intensive treatment in a program approved  
15 by the department of social and health services, as determined by the  
16 court. A diagnostic evaluation and treatment recommendation shall be  
17 prepared under the direction of the court by an alcoholism agency  
18 approved by the department of social and health services or a qualified  
19 probation department approved by the department of social and health  
20 services. A copy of the report shall be forwarded to the department of  
21 licensing. Based on the diagnostic evaluation, the court shall  
22 determine whether the convicted person shall be required to complete a  
23 course in an alcohol information school approved by the department of  
24 social and health services or more intensive treatment in a program  
25 approved by the department of social and health services. Standards  
26 for approval for alcohol treatment programs shall be prescribed by rule  
27 under the Administrative Procedure Act, chapter 34.05 RCW. The  
28 department of social and health services shall periodically review the  
29 costs of alcohol information schools and treatment programs as part of  
30 the approval process.

31 For each violation of mandatory conditions of probation under (a)  
32 and (b) or (a) and (c) of this subsection, the court shall order the  
33 convicted person to be confined for not less than thirty days, which  
34 may not be suspended or deferred. Upon violation of a mandatory  
35 condition of probation, the court shall notify the department.

36 (2)(a) On a second ((or subsequent)) conviction ((for driving or  
37 being in physical control of a motor vehicle while under the influence  
38 of intoxicating liquor or drugs)) of a violation of RCW 46.61.502 or  
39 46.61.504 within a five-year period where the result of the test of the

1 person's breath or blood showed an alcohol concentration of less than  
2 0.15 within two hours after driving or being in actual physical control  
3 of a motor vehicle within this state a person shall be punished by  
4 imprisonment for not less than seven days nor more than one year and by  
5 a fine of not less than five hundred dollars and not more than ((two))  
6 five thousand dollars. On a second conviction of a violation of RCW  
7 46.61.502 or 46.61.504 within a five-year period where the result of  
8 the test of the person's breath or blood showed an alcohol  
9 concentration of 0.15 or more within two hours after driving or being  
10 in actual physical control of a motor vehicle within this state or  
11 where the person refused to submit to a test of the person's breath or  
12 blood for alcohol concentration, a person shall be punished by  
13 imprisonment for not less than fourteen days nor more than one year and  
14 by a fine of not less than six hundred dollars and not more than five  
15 thousand dollars. For purposes of the preceding sentence, the judge  
16 shall determine, based on a preponderance of the evidence, whether the  
17 person's alcohol concentration was 0.15 or more within two hours after  
18 driving or being in actual physical control of a motor vehicle within  
19 this state or whether the person refused to submit to a test of the  
20 person's breath or blood for alcohol concentration.

21 (b) On a third or subsequent conviction of a violation of RCW  
22 46.61.502 or 46.61.504 within a five-year period where the result of  
23 the test of the person's breath or blood showed an alcohol  
24 concentration of less than 0.15 within two hours after driving or being  
25 in actual physical control of a motor vehicle within this state a  
26 person shall be punished by imprisonment for not less than ninety days  
27 nor more than one year and by a fine of not less than seven hundred  
28 fifty dollars and not more than five thousand dollars. On a third or  
29 subsequent conviction of a violation of RCW 46.61.502 or 46.61.504  
30 within a five-year period where the result of the test of the person's  
31 breath or blood showed an alcohol concentration of 0.15 or more within  
32 two hours after driving or being in actual physical control of a motor  
33 vehicle within this state or where the person refused to submit to a  
34 test of the person's breath or blood for alcohol concentration a person  
35 shall be punished by imprisonment for not less than one hundred eighty  
36 days nor more than one year and by a fine of not less than one thousand  
37 dollars and not more than five thousand dollars. For purposes of the  
38 preceding sentence, the judge shall determine, based on a preponderance  
39 of the evidence, whether the person's alcohol concentration was 0.15 or

1 more within two hours after driving or being in actual physical control  
2 of a motor vehicle within this state or whether the person refused to  
3 submit to a test of the person's breath or blood for alcohol  
4 concentration.

5 (c) District courts and courts organized under chapter 35.20 RCW  
6 are authorized to impose such fine. Unless the judge finds the person  
7 to be indigent, (~~five hundred dollars of~~) the mandatory minimum fine  
8 shall not be suspended or deferred. The mandatory minimum jail  
9 sentence shall not be suspended or deferred unless the judge finds that  
10 the imposition of the jail sentence will pose a substantial risk to the  
11 defendant's physical or mental well-being. Whenever the mandatory  
12 minimum jail sentence is suspended or deferred, the judge must state,  
13 in writing, the reason for granting the suspension or deferral and the  
14 facts upon which the suspension or deferral is based.

15 (d) If, at the time of the arrest on a second or subsequent  
16 offense, the driver is without a license or permit because of a  
17 previous suspension or revocation for a reason listed in RCW  
18 46.20.342(1) (a) or (b), or because of a previous suspension or  
19 revocation for a reason listed in RCW 46.20.342(1)(c) if the original  
20 suspension or revocation was the result of a conviction of RCW  
21 46.61.502 or 46.61.504, the minimum mandatory sentence shall be ninety  
22 days in jail and a (~~five~~) seven hundred fifty dollar fine. The  
23 penalty so imposed shall not be suspended or deferred.

24 (e) The person shall, in addition, be required to complete a  
25 diagnostic evaluation by an alcoholism agency approved by the  
26 department of social and health services or a qualified probation  
27 department approved by the department of social and health services.  
28 The report shall be forwarded to the department of licensing. If the  
29 person is found to have an alcohol or drug problem requiring treatment,  
30 the person shall complete treatment at an approved alcoholism treatment  
31 program or approved drug treatment center.

32 (f) In addition to any nonsuspendable and nondeferrable jail  
33 sentence required by this subsection, whenever the court imposes less  
34 than one year in jail, the court shall also suspend but shall not defer  
35 a period of confinement for a period not exceeding two years. The  
36 court shall impose conditions of probation that include (i) not driving  
37 a motor vehicle within this state without a valid license to drive and  
38 proof of financial responsibility for the future, (ii) not driving a  
39 motor vehicle within this state while having an alcohol concentration

1 of 0.04 or more within two hours after driving, and (iii) not refusing  
2 to submit to a test of his or her breath or blood to determine alcohol  
3 concentration upon request of a law enforcement officer who has  
4 reasonable grounds to believe the person was driving or was in actual  
5 physical control of a motor vehicle within this state while under the  
6 influence of intoxicating liquor. The ((suspension of the sentence may  
7 be conditioned upon)) court may impose conditions of probation that  
8 include nonrepetition, alcohol or drug treatment, supervised probation,  
9 or other conditions that may be appropriate. The sentence may be  
10 imposed in whole or in part upon violation of a condition of  
11 ((suspension)) probation during the suspension period.

12 (g) For each violation of mandatory conditions of probation under  
13 (f) (i) and (ii) or (f) (i) and (iii) of this subsection, the court  
14 shall order the convicted person to be confined for thirty days, which  
15 shall not be suspended or deferred. Upon violation of a mandatory  
16 condition of probation, the court shall notify the department of  
17 licensing.

18 (3)(a) The license or permit to drive or any nonresident privilege  
19 of any person convicted of driving or being in physical control of a  
20 motor vehicle while under the influence of intoxicating liquor or drugs  
21 shall:

22 ((+a)) (i) On the first conviction under either offense, be  
23 suspended by the department until the person reaches age nineteen or  
24 for ninety days, whichever is longer. The department of licensing  
25 shall determine the person's eligibility for licensing based upon the  
26 reports provided by the designated alcoholism agency or probation  
27 department and shall deny reinstatement until enrollment and  
28 participation in an approved program has been established and the  
29 person is otherwise qualified;

30 ((+b)) (ii) On a second conviction under either offense within a  
31 five-year period, be revoked by the department for one year. The  
32 department of licensing shall determine the person's eligibility for  
33 licensing based upon the reports provided by the designated alcoholism  
34 agency or probation department and shall deny reinstatement until  
35 satisfactory progress in an approved program has been established and  
36 the person is otherwise qualified;

37 ((+c)) (iii) On a third or subsequent conviction of driving or  
38 being in physical control of a motor vehicle while under the influence  
39 of intoxicating liquor or drugs, vehicular homicide, or vehicular

1 assault, or any combination thereof within a five-year period, be  
2 revoked by the department for two years.

3 (b) For any conviction for which the result of the test showed an  
4 alcohol concentration of the person's breath or blood of 0.15 or more  
5 within two hours after driving or being in actual physical control of  
6 a motor vehicle within this state, the period of suspension,  
7 revocation, or denial shall be increased by ninety days.

8 (c) On and after January 1, 1995, the period of any suspension,  
9 revocation, or denial imposed under (a) and (b) of this subsection  
10 shall be reduced by the length of the period of suspension, revocation,  
11 or denial imposed under RCW 46.20.308(7).

12 (d) For each incident violating a mandatory condition or conditions  
13 of probation imposed under subsection (1) or (2) of this section, the  
14 license, permit, or privilege to drive of the person shall be suspended  
15 by the department for thirty days or, if such license, permit, or  
16 privilege to drive already is suspended, revoked, or denied at the time  
17 the finding of probation violation is made, the suspension, revocation,  
18 or denial then in effect shall be extended by thirty days.

19 ~~(4) ((In any case provided for in this section, where a driver's~~  
20 ~~license is to be revoked or suspended, the revocation or suspension~~  
21 ~~shall be stayed and shall not take effect until after the determination~~  
22 ~~of any appeal from the conviction which may lawfully be taken, but in~~  
23 ~~case the conviction is sustained on appeal the revocation or suspension~~  
24 ~~takes effect as of the date that the conviction becomes effective for~~  
25 ~~other purposes.))~~ The filing of a notice of appeal shall not stay the  
26 suspension, revocation, or denial of a person's license, permit, or  
27 privilege to drive imposed under this section. A court shall not stay  
28 the suspension, revocation, or denial unless it finds that the  
29 appellant is likely to prevail in the appeal and without a stay the  
30 appellant will suffer irreparable injury. If the court stays the  
31 suspension, revocation, or denial, it may impose conditions on such  
32 stay. The stay shall not exceed ninety days, except for good cause  
33 shown, and shall in no event exceed one hundred eighty days.

34 (5)(a) In addition to penalties set forth in this section, a one  
35 hundred twenty-five dollar fee shall be assessed to a person who is  
36 either convicted, sentenced to a lesser charge, or given deferred  
37 prosecution, as a result of an arrest for violating RCW 46.61.502,  
38 46.61.504, 46.61.520, or 46.61.522. This fee is for the purpose of

1 funding the Washington state toxicology laboratory and the Washington  
2 state patrol breath test program.

3 (b) Upon a verified petition by the person assessed the fee, the  
4 court may suspend payment of all or part of the fee if it finds that  
5 the person does not have the ability to pay.

6 (c) When a minor has been adjudicated a juvenile offender for an  
7 offense which, if committed by an adult, would constitute a violation  
8 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall  
9 assess the one hundred twenty-five dollar fee under (a) of this  
10 subsection. Upon a verified petition by a minor assessed the fee, the  
11 court may suspend payment of all or part of the fee if it finds that  
12 the minor does not have the ability to pay the fee.

13 (6) The fee assessed under subsection (5) of this section shall be  
14 collected by the clerk of the court and distributed as follows:

15 (a) Forty percent shall be subject to distribution under RCW  
16 3.62.020, 3.62.040, or 10.82.040.

17 (b) If the case involves a blood test by the state toxicology  
18 laboratory, the remainder of the fee shall be forwarded to the state  
19 treasurer for deposit in the death investigations account to be used  
20 solely for funding the state toxicology laboratory blood testing  
21 program.

22 (c) Otherwise, the remainder of the fee shall be forwarded to the  
23 state treasurer for deposit in the state patrol highway account to be  
24 used solely for funding the Washington state patrol breath test  
25 program.

26 **Sec. 22.** RCW 46.61.515 and 1993 c 501 s 7 are each amended to read  
27 as follows:

28 (1) (~~Every~~) A person who is convicted of a violation of RCW  
29 46.61.502 or 46.61.504 where the result of the test of the person's  
30 breath or blood showed an alcohol concentration of less than 0.15  
31 within two hours after driving or being in actual physical control of  
32 a motor vehicle within this state shall be punished by imprisonment for  
33 not less than twenty-four consecutive hours nor more than one year, and  
34 by a fine of not less than two hundred fifty dollars and not more than  
35 (~~one~~) five thousand dollars. A person who is convicted of a  
36 violation of RCW 46.61.502 or 46.61.504 where the result of the test of  
37 the person's breath or blood showed an alcohol concentration of 0.15 or  
38 more within two hours after driving or being in actual physical control

1 of a motor vehicle within this state or where the person refused to  
2 submit to a test of the person's breath or blood for alcohol  
3 concentration shall be punished by imprisonment for not less than  
4 forty-eight consecutive hours nor more than one year, and by a fine of  
5 not less than three hundred fifty dollars and not more than five  
6 thousand dollars. For purposes of the preceding sentence, the judge  
7 shall determine, based on a preponderance of the evidence, whether the  
8 person's alcohol concentration was 0.15 or more within two hours after  
9 driving or being in actual physical control of a motor vehicle within  
10 this state or whether the person refused to submit to a test of the  
11 person's breath or blood for alcohol concentration. Unless the judge  
12 finds the person to be indigent, ((two hundred fifty dollars of)) the  
13 mandatory minimum fine shall not be suspended or deferred. ((Twenty-  
14 four consecutive hours of)) The mandatory minimum jail sentence shall  
15 not be suspended or deferred unless the judge finds that the imposition  
16 of the jail sentence will pose a substantial risk to the defendant's  
17 physical or mental well-being. Whenever the mandatory minimum jail  
18 sentence is suspended or deferred, the judge must state, in writing,  
19 the reason for granting the suspension or deferral and the facts upon  
20 which the suspension or deferral is based. The court shall impose  
21 conditions of probation which include (a) not driving a motor vehicle  
22 within this state without a valid license to drive and proof of  
23 financial responsibility for the future, (b) not driving a motor  
24 vehicle within this state while having an alcohol concentration of 0.04  
25 or more within two hours after driving, and (c) not refusing to submit  
26 to a test of his or her breath or blood to determine alcohol  
27 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. The court may impose conditions of  
31 probation that may include nonrepetition, alcohol or drug treatment,  
32 supervised probation, or other conditions that may be appropriate. The  
33 convicted person shall, in addition, be required to complete a course  
34 in an alcohol information school approved by the department of social  
35 and health services or more intensive treatment in a program approved  
36 by the department of social and health services, as determined by the  
37 court. A diagnostic evaluation and treatment recommendation shall be  
38 prepared under the direction of the court by an alcoholism agency  
39 approved by the department of social and health services or a qualified

1 probation department approved by the department of social and health  
2 services. A copy of the report shall be forwarded to the department of  
3 licensing. Based on the diagnostic evaluation, the court shall  
4 determine whether the convicted person shall be required to complete a  
5 course in an alcohol information school approved by the department of  
6 social and health services or more intensive treatment in a program  
7 approved by the department of social and health services. Standards  
8 for approval for alcohol treatment programs shall be prescribed by rule  
9 under the administrative procedure act, chapter 34.05 RCW. The  
10 department of social and health services shall periodically review the  
11 costs of alcohol information schools and treatment programs as part of  
12 the approval process.

13 For each violation of mandatory conditions of probation under (a)  
14 and (b) or (a) and (c) of this subsection, the court shall order the  
15 convicted person to be confined for not less than thirty days, which  
16 may not be suspended or deferred. Upon violation of a mandatory  
17 condition of probation, the court shall notify the department.

18 (2)(a) On a second ((or subsequent)) conviction ((for driving or  
19 being in physical control of a motor vehicle while under the influence  
20 of intoxicating liquor or drugs)) of a violation of RCW 46.61.502 or  
21 46.61.504 within a five-year period where the result of the test of the  
22 person's breath or blood showed an alcohol concentration of less than  
23 0.15 within two hours after driving or being in actual physical control  
24 of a motor vehicle within this state a person shall be punished by  
25 imprisonment for not less than seven days nor more than one year and by  
26 a fine of not less than five hundred dollars and not more than ((two))  
27 five thousand dollars. On a second conviction of a violation of RCW  
28 46.61.502 or 46.61.504 within a five-year period where the result of  
29 the test of the person's breath or blood showed an alcohol  
30 concentration of 0.15 or more within two hours after driving or being  
31 in actual physical control of a motor vehicle within this state or  
32 where the person refused to submit to a test of the person's breath or  
33 blood for alcohol concentration, a person shall be punished by  
34 imprisonment for not less than fourteen days nor more than one year and  
35 by a fine of not less than six hundred dollars and not more than five  
36 thousand dollars. For purposes of the preceding sentence, the judge  
37 shall determine, based on a preponderance of the evidence, whether the  
38 person's alcohol concentration was 0.15 or more within two hours after  
39 driving or being in actual physical control of a motor vehicle within

1 this state or whether the person refused to submit to a test of the  
2 person's breath or blood for alcohol concentration.

3 (b) On a third or subsequent conviction of a violation of RCW  
4 46.61.502 or 46.61.504 within a five-year period where the result of  
5 the test of the person's breath or blood showed an alcohol  
6 concentration of less than 0.15 within two hours after driving or being  
7 in actual physical control of a motor vehicle within this state a  
8 person shall be punished by imprisonment for not less than ninety days  
9 nor more than one year and by a fine of not less than seven hundred  
10 fifty dollars and not more than five thousand dollars. On a third or  
11 subsequent conviction of a violation of RCW 46.61.502 or 46.61.504  
12 within a five-year period where the result of the test of the person's  
13 breath or blood showed an alcohol concentration of 0.15 or more within  
14 two hours after driving or being in actual physical control of a motor  
15 vehicle within this state or where the person refused to submit to a  
16 test of the person's breath or blood for alcohol concentration a person  
17 shall be punished by imprisonment for not less than one hundred eighty  
18 days nor more than one year and by a fine of not less than one thousand  
19 dollars and not more than five thousand dollars. For purposes of the  
20 preceding sentence, the judge shall determine, based on a preponderance  
21 of the evidence, whether the person's alcohol concentration was 0.15 or  
22 more within two hours after driving or being in actual physical control  
23 of a motor vehicle within this state or whether the person refused to  
24 submit to a test of the person's breath or blood for alcohol  
25 concentration.

26 (c) District courts and courts organized under chapter 35.20 RCW  
27 are authorized to impose such fine. Unless the judge finds the person  
28 to be indigent, (~~five hundred dollars of~~) the mandatory minimum fine  
29 shall not be suspended or deferred. The mandatory minimum jail  
30 sentence shall not be suspended or deferred unless the judge finds that  
31 the imposition of the jail sentence will pose a substantial risk to the  
32 defendant's physical or mental well-being. Whenever the mandatory  
33 minimum jail sentence is suspended or deferred, the judge must state,  
34 in writing, the reason for granting the suspension or deferral and the  
35 facts upon which the suspension or deferral is based.

36 (d) If, at the time of the arrest on a second or subsequent  
37 offense, the driver is without a license or permit because of a  
38 previous suspension or revocation for a reason listed in RCW  
39 46.20.342(1) (a) or (b), or because of a previous suspension or

1 revocation for a reason listed in RCW 46.20.342(1)(c) if the original  
2 suspension or revocation was the result of a conviction of RCW  
3 46.61.502 or 46.61.504, the minimum mandatory sentence shall be ninety  
4 days in jail and a ~~((five))~~ seven hundred fifty dollar fine. The  
5 penalty so imposed shall not be suspended or deferred.

6 (e) The person shall, in addition, be required to complete a  
7 diagnostic evaluation by an alcoholism agency approved by the  
8 department of social and health services or a qualified probation  
9 department approved by the department of social and health services.  
10 The report shall be forwarded to the department of licensing. If the  
11 person is found to have an alcohol or drug problem requiring treatment,  
12 the person shall complete treatment at an approved alcoholism treatment  
13 program or approved drug treatment center.

14 (f) In addition to any nonsuspendable and nondeferrable jail  
15 sentence required by this subsection, whenever the court imposes less  
16 than one year in jail, the court shall also suspend but shall not defer  
17 a period of confinement for a period not exceeding two years. The  
18 court shall impose conditions of probation that include (i) not driving  
19 a motor vehicle within this state without a valid license to drive and  
20 proof of financial responsibility for the future, (ii) not driving a  
21 motor vehicle within this state while having an alcohol concentration  
22 of 0.04 or more within two hours after driving, and (iii) not refusing  
23 to submit to a test of his or her breath or blood to determine alcohol  
24 concentration upon request of a law enforcement officer who has  
25 reasonable grounds to believe the person was driving or was in actual  
26 physical control of a motor vehicle within this state while under the  
27 influence of intoxicating liquor. The ~~((suspension of the sentence may~~  
28 be conditioned upon)) court may impose conditions of probation that  
29 include nonrepetition, alcohol or drug treatment, supervised probation,  
30 or other conditions that may be appropriate. The sentence may be  
31 imposed in whole or in part upon violation of a condition of  
32 ~~((suspension))~~ probation during the suspension period.

33 (g) For each violation of mandatory conditions of probation under  
34 (f) (i) and (ii) or (f) (i) and (iii) of this subsection, the court  
35 shall order the convicted person to be confined for thirty days, which  
36 shall not be suspended or deferred. Upon violation of a mandatory  
37 condition of probation, the court shall notify the department of  
38 licensing.

1 (3)(a) The license or permit to drive or any nonresident privilege  
2 of any person convicted of driving or being in physical control of a  
3 motor vehicle while under the influence of intoxicating liquor or drugs  
4 shall:

5 (~~(a)~~) (i) On the first conviction under either offense, be  
6 suspended by the department until the person reaches age nineteen or  
7 for ninety days, whichever is longer. The department of licensing  
8 shall determine the person's eligibility for licensing based upon the  
9 reports provided by the designated alcoholism agency or probation  
10 department and shall deny reinstatement until enrollment and  
11 participation in an approved program has been established and the  
12 person is otherwise qualified;

13 (~~(b)~~) (ii) On a second conviction under either offense within a  
14 five-year period, be revoked by the department for one year. The  
15 department of licensing shall determine the person's eligibility for  
16 licensing based upon the reports provided by the designated alcoholism  
17 agency or probation department and shall deny reinstatement until  
18 satisfactory progress in an approved program has been established and  
19 the person is otherwise qualified;

20 (~~(c)~~) (iii) On a third or subsequent conviction of driving or  
21 being in physical control of a motor vehicle while under the influence  
22 of intoxicating liquor or drugs, vehicular homicide, or vehicular  
23 assault, or any combination thereof within a five-year period, be  
24 revoked by the department for two years.

25 (b) For any conviction for which the result of the test showed an  
26 alcohol concentration of the person's breath or blood of 0.15 or more  
27 within two hours after driving or being in actual physical control of  
28 a motor vehicle within this state, the period of suspension,  
29 revocation, or denial shall be increased by ninety days.

30 (c) The period of any suspension, revocation, or denial imposed  
31 under (a) and (b) of this subsection shall be reduced by the length of  
32 the period of suspension, revocation, or denial imposed under RCW  
33 46.20.308(7).

34 (d) For each incident violating a mandatory condition or conditions  
35 of probation imposed under subsection (1) or (2) of this section, the  
36 license, permit, or privilege to drive of the person shall be suspended  
37 by the department for thirty days or, if such license, permit, or  
38 privilege to drive already is suspended, revoked, or denied at the time

1 the finding of probation violation is made, the suspension, revocation,  
2 or denial then in effect shall be extended by thirty days.

3 ~~(4) ((In any case provided for in this section, where a driver's~~  
4 ~~license is to be revoked or suspended, the revocation or suspension~~  
5 ~~shall be stayed and shall not take effect until after the determination~~  
6 ~~of any appeal from the conviction which may lawfully be taken, but in~~  
7 ~~case the conviction is sustained on appeal the revocation or suspension~~  
8 ~~takes effect as of the date that the conviction becomes effective for~~  
9 ~~other purposes.))~~ The filing of a notice of appeal shall not stay the  
10 suspension, revocation, or denial of a person's license, permit, or  
11 privilege to drive imposed under this section. A court shall not stay  
12 the suspension, revocation, or denial unless it finds that the  
13 appellant is likely to prevail in the appeal and without a stay the  
14 appellant will suffer irreparable injury. If the court stays the  
15 suspension, revocation, or denial, it may impose conditions on such  
16 stay. The stay shall not exceed ninety days, except for good cause  
17 shown, and shall in no event exceed one hundred eighty days.

18 **Sec. 23.** RCW 46.61.5151 and 1983 c 165 s 33 are each amended to  
19 read as follows:

20 A sentencing court may allow persons convicted of violating RCW  
21 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in  
22 RCW 46.61.515 (1) or (2) in nonconsecutive or intermittent time  
23 periods. However, the ~~((first twenty four hours of any))~~ mandatory  
24 minimum jail sentence under RCW 46.61.515(1) and the first forty-eight  
25 hours of any sentence under RCW 46.61.515(2) shall be served  
26 consecutively unless suspended or deferred as otherwise provided by  
27 law.

28 NEW SECTION. **Sec. 24.** Section 21 of this act shall expire June  
29 30, 1995.

30 NEW SECTION. **Sec. 25.** (1) Sections 13 and 15 of this act shall  
31 take effect January 1, 1995.

32 (2) Section 22 of this act shall take effect June 30, 1995.

33 NEW SECTION. **Sec. 26.** If any provision of this act or its  
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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