

2 SSB 6047 - H COMM AMD **ADOPTED 03/03/94**
3 By Committee on Judiciary

4

5 Strike everything after the enacting clause and insert the
6 following:

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19 **PART I - DUI PENALTIES**

20 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.04 RCW
21 to read as follows:

1 "Alcohol concentration" means (1) grams of alcohol per two hundred
2 ten liters of a person's breath, or (2) the percent by weight of
3 alcohol in a person's blood.

4 **Sec. 2.** RCW 46.61.502 and 1993 c 328 s 1 are each amended to read
5 as follows:

6 ~~(1) ((A person is guilty of driving while under the influence of~~
7 ~~intoxicating liquor or any drug if the person drives a vehicle within~~
8 ~~this state:~~

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

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

15 ~~(c) While the person is under the influence of or affected by~~
16 ~~intoxicating liquor or any drug; or~~

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

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

23 ~~(3) It is an affirmative defense to a violation of subsection (1)~~
24 ~~(a) and (b) of this section which the defendant must prove by a~~
25 ~~preponderance of the evidence that the defendant consumed a sufficient~~
26 ~~quantity of alcohol after the time of driving and before the~~
27 ~~administration of an analysis of the person's breath or blood to cause~~
28 ~~the defendant's alcohol concentration to be 0.10 or more within two~~
29 ~~hours after driving. The court shall not admit evidence of this~~
30 ~~defense unless the defendant notifies the prosecution prior to the~~
31 ~~omnibus or pretrial hearing in the case of the defendant's intent to~~
32 ~~assert the affirmative defense.~~

33 ~~(4) Analyses of blood or breath samples obtained more than two~~
34 ~~hours after the alleged driving may be used as evidence that within two~~
35 ~~hours of the alleged driving, a person had 0.10 grams or more of~~
36 ~~alcohol per two hundred ten liters of breath or 0.10 percent or more of~~
37 ~~alcohol in the person's blood, pursuant to subsection (1) (a) and (b)~~
38 ~~of this section, and may be used as evidence that a person was under~~

1 ~~the influence of or affected by intoxicating liquors or any drug~~
2 ~~pursuant to subsection (1) (c) and (d) of this section.)~~ A person is
3 guilty of driving while under the influence of intoxicating liquor or
4 any drug if the person drives a vehicle within this state:

5 (a) And the person has, within two hours after driving, an alcohol
6 concentration of 0.10 or higher as shown by analysis of the person's
7 breath or blood made under RCW 46.61.506; or

8 (b) While the person is under the influence of or affected by
9 intoxicating liquor or any drug; or

10 (c) While the person is under the combined influence of or affected
11 by intoxicating liquor and any drug.

12 (2) The fact that a person charged with a violation of this section
13 is or has been entitled to use a drug under the laws of this state
14 shall not constitute a defense against a charge of violating this
15 section.

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

26 (4) Analyses of blood or breath samples obtained more than two
27 hours after the alleged driving may be used as evidence that within two
28 hours of the alleged driving, a person had an alcohol concentration of
29 0.10 or more in violation of subsection (1)(a) of this section, and in
30 any case in which the analysis shows an alcohol concentration above
31 0.00 may be used as evidence that a person was under the influence of
32 or affected by intoxicating liquor or any drug in violation of
33 subsection (1) (b) or (c) of this section.

34 (5) A violation of this section is a gross misdemeanor.

35 **Sec. 3.** RCW 46.61.504 and 1993 c 328 s 2 are each amended to read
36 as follows:

37 (1) ~~((A person is guilty of being in actual physical control of a~~
38 ~~motor vehicle while under the influence of intoxicating liquor or any~~

1 drug if the person has actual physical control of a vehicle within this
2 state:

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

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

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

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

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

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

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

1 ~~pursuant to subsection (1) (c) and (d) of this section.)~~ A person is
2 guilty of being in actual physical control of a motor vehicle while
3 under the influence of intoxicating liquor or any drug if the person
4 has actual physical control of a vehicle within this state:

5 (a) And the person has, within two hours after being in actual
6 physical control of the vehicle, an alcohol concentration of 0.10 or
7 higher as shown by analysis of the person's breath or blood made under
8 RCW 46.61.506; or

9 (b) While the person is under the influence of or affected by
10 intoxicating liquor or any drug; or

11 (c) While the person is under the combined influence of or affected
12 by intoxicating liquor and any drug.

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

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

29 (4) Analyses of blood or breath samples obtained more than two
30 hours after the alleged being in actual physical control of a vehicle
31 may be used as evidence that within two hours of the alleged being in
32 such control, a person had an alcohol concentration of 0.10 or more in
33 violation of subsection (1)(a) of this section, and in any case in
34 which the analysis shows an alcohol concentration above 0.00 may be
35 used as evidence that a person was under the influence of or affected
36 by intoxicating liquor or any drug in violation of subsection (1) (b)
37 or (c) of this section.

38 (5) A violation of this section is a gross misdemeanor.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 46.61 RCW
2 to read as follows:

3 (1) A person whose driver's license is not in a probationary,
4 suspended, or revoked status, and who has not been convicted of a
5 violation of RCW 46.61.502 or 46.61.504 that was committed within five
6 years before the commission of the current violation, and who violates
7 RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an alcohol
8 concentration of at least 0.10 but less than 0.15 is guilty of a gross
9 misdemeanor and shall be punished as follows:

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

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

22 (c) By suspension of the offender's license or permit to drive, or
23 suspension of any nonresident privilege to drive, for a period of not
24 less than thirty days nor more than one hundred twenty days as
25 determined by the court. Thirty days of the suspension may not be
26 suspended or deferred. The court shall notify the department of
27 licensing of the conviction and of any period of suspension and shall
28 notify the department of the person's completion of any period of
29 suspension. Upon receiving notification of the conviction, or if
30 applicable, upon receiving notification of the completion of any period
31 of suspension, the department shall issue the offender a probationary
32 license in accordance with section 8 of this act.

33 (2) A person whose driver's license is not in a probationary,
34 suspended, or revoked status, and who has not been convicted of a
35 violation of RCW 46.61.502 or 46.61.504 that was committed within five
36 years before the commission of the current violation, and who either:

37 (a) Violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an
38 alcohol concentration of 0.15 or more; or

1 (b) Violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c)
2 and, because of the person's refusal to take a test offered pursuant to
3 RCW 46.20.308, there is no test result indicating the person's alcohol
4 concentration, is guilty of a gross misdemeanor and shall be punished
5 as follows:

6 (i) By imprisonment for not less than seven days nor more than one
7 year. Seven consecutive days of the imprisonment may not be suspended
8 or deferred unless the court finds that the imposition of this
9 mandatory minimum sentence would impose a substantial risk to the
10 offender's physical or mental well-being. Whenever the mandatory
11 minimum sentence is suspended or deferred, the court shall state in
12 writing the reason for granting the suspension or deferral and the
13 facts upon which the suspension or deferral is based; and

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

18 (iii) By suspension of the offender's license or permit to drive,
19 or suspension of any nonresident privilege to drive, for a period of
20 not less than sixty days nor more than one hundred eighty days as
21 determined by the court. Sixty days of the suspension may not be
22 suspended or deferred. The court shall notify the department of any
23 period of suspension and shall notify the department of the completion
24 of any period of suspension. Upon receiving notification of the
25 conviction, or if applicable, upon receiving notification of the
26 completion of any period of suspension, the department shall issue the
27 offender a probationary license in accordance with section 8 of this
28 act.

29 (3) In exercising its discretion in setting penalties within the
30 limits allowed by this section, the court shall particularly consider
31 whether the person's driving at the time of the offense was responsible
32 for injury or damage to another or another's property.

33 (4) Upon conviction under this section, the offender's driver's
34 license is deemed to be in a probationary status for five years from
35 the date of the offense, unless before the expiration of the five years
36 the license is suspended or revoked for some other violation of law.
37 Being on probationary status does not authorize a person to drive
38 during any period of license suspension imposed as a penalty for the
39 infraction.

1 (5) An offender punishable under this section is subject to the
2 alcohol assessment and treatment provisions of section 9 of this act.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 46.61 RCW
4 to read as follows:

5 (1) A person whose driver's license is in a probationary status and
6 who violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an
7 alcohol concentration of at least 0.10 but less than 0.15 is guilty of
8 a gross misdemeanor and shall be punished as follows:

9 (a) By imprisonment for not less than seven days nor more than one
10 year. Seven consecutive days of the imprisonment may not be suspended
11 or deferred unless the court finds that the imposition of this
12 mandatory minimum sentence would pose a substantial risk to the
13 offender's physical or mental well-being. Whenever the mandatory
14 minimum sentence is suspended or deferred, the court shall state in
15 writing the reason for granting the suspension or deferral and the
16 facts upon which the suspension or deferral is based; and

17 (b) By a fine of not less than six hundred dollars nor more than
18 five thousand dollars. Six hundred dollars of the fine may not be
19 suspended or deferred unless the court finds the offender to be
20 indigent; and

21 (c) By suspension of the offender's license or permit to drive, or
22 suspension of any nonresident privilege to drive, for a period of not
23 less than one hundred twenty days nor more than one year as determined
24 by the court. One hundred twenty days of the suspension may not be
25 suspended or deferred. The court shall notify the department of the
26 imposition of any period of suspension and of the completion of any
27 period of suspension.

28 (2) A person whose driver's license is in a probationary status and
29 who either:

30 (a) Violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an
31 alcohol concentration of 0.15 or more; or

32 (b) Violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c)
33 and, because of the person's refusal to take a test offered pursuant to
34 RCW 46.20.308, there is no test result indicating the person's alcohol
35 concentration, is guilty of a gross misdemeanor and shall be punished
36 as follows:

37 (i) By imprisonment for not less than seven days nor more than one
38 year. Seven consecutive days of the imprisonment may not be suspended

1 or deferred unless the court finds that the imposition of this
2 mandatory minimum sentence would pose a risk to the offender's physical
3 or mental well-being. Whenever the mandatory minimum sentence is
4 suspended or deferred, the court shall state in writing the reason for
5 granting the suspension or deferral and the facts upon which the
6 suspension or deferral is based; and

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

11 (iii) By revocation of the offender's license or permit to drive or
12 of any nonresident privilege to drive, for a period of not less than
13 one year nor more than two years as determined by the court. One year
14 of the revocation may not be suspended or deferred.

15 (3) In exercising its discretion in setting penalties within the
16 limits allowed by this section, the court shall particularly consider
17 whether the person's driving at the time of the offense was responsible
18 for injury or damage to another or another's property.

19 (4) An offender punishable under this section is subject to the
20 alcohol assessment and treatment provisions of section 9 of this act.
21 An offender punishable under subsection (1) or (2) of this section is
22 subject to the vehicle seizure and forfeiture provisions of RCW
23 46.61.511. No offender punishable under this section is eligible for
24 an occupational license under RCW 46.20.391.

25 NEW SECTION. **Sec. 6.** A new section is added to chapter 46.61 RCW
26 to read as follows:

27 (1) A person who violates RCW 46.61.502 or 46.61.504 and who either
28 has a driver's license in a suspended or revoked status or who has been
29 convicted under section 5 of this act or RCW 46.61.502 or 46.61.504 of
30 an offense that was committed within five years before the commission
31 of the current violation, is guilty of a gross misdemeanor and shall be
32 punished as follows:

33 (a) By imprisonment for not less than ninety days nor more than one
34 year. Ninety consecutive days of the imprisonment may not be suspended
35 or deferred unless the court finds that the imposition of this
36 mandatory minimum sentence would pose a substantial risk to the
37 offender's physical or mental well-being. Whenever the mandatory
38 minimum sentence is suspended or deferred, the court shall state in

1 writing the reason for granting the suspension or deferral and the
2 facts upon which the suspension or deferral is based; and

3 (b) By a fine of not less than seven hundred fifty dollars nor more
4 than five thousand dollars. Seven hundred fifty dollars of the fine
5 may not be suspended or deferred unless the court finds the offender to
6 be indigent; and

7 (c) By revocation by the department of licensing of the offender's
8 license or permit to drive or of any nonresident privilege to drive,
9 for a period of two years. The revocation of license, permit, or
10 privilege may not be suspended or deferred.

11 (2) In exercising its discretion in setting penalties within the
12 limits allowed by this section, the court shall particularly consider
13 whether the person's driving at the time of the offense was responsible
14 for injury or damage to another or another's property.

15 (3) An offender punishable under this section is subject to the
16 alcohol assessment and treatment provisions of section 9 of this act.
17 An offender punishable under this section is subject to the vehicle
18 seizure and forfeiture provisions of RCW 46.61.511. No offender
19 punishable under this section is eligible for an occupational license
20 under RCW 46.20.391.

21 NEW SECTION. **Sec. 7.** A new section is added to chapter 46.61 RCW
22 to read as follows:

23 (1)(a) In addition to penalties set forth in sections 4 through 6
24 of this act, a one hundred twenty-five dollar fee shall be assessed to
25 a person who is either convicted, sentenced to a lesser charge, or
26 given deferred prosecution, as a result of an arrest for violating RCW
27 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the
28 purpose of funding the Washington state toxicology laboratory and the
29 Washington state patrol breath test program.

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

33 (c) When a minor has been adjudicated a juvenile offender for an
34 offense which, if committed by an adult, would constitute a violation
35 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall
36 assess the one hundred twenty-five dollar fee under (a) of this
37 subsection. Upon a verified petition by a minor assessed the fee, the

1 court may suspend payment of all or part of the fee if it finds that
2 the minor does not have the ability to pay the fee.

3 (2) The fee assessed under subsection (1) of this section shall be
4 collected by the clerk of the court and distributed as follows:

5 (a) Forty percent shall be subject to distribution under RCW
6 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

7 (b) If the case involves a blood test by the state toxicology
8 laboratory, the remainder of the fee shall be forwarded to the state
9 treasurer for deposit in the death investigations account to be used
10 solely for funding the state toxicology laboratory blood testing
11 program.

12 (c) Otherwise, the remainder of the fee shall be forwarded to the
13 state treasurer for deposit in the state patrol highway account to be
14 used solely for funding the Washington state patrol breath test
15 program.

16 **PART II - PROBATIONARY LICENSES**

17 NEW SECTION. **Sec. 8.** A new section is added to chapter 46.61 RCW
18 to read as follows:

19 (1) Upon notification of a conviction under RCW 46.61.502 or
20 46.61.504 for which the issuance of a probationary driver's license is
21 required, or upon receipt of an abstract indicating a deferred
22 prosecution has been granted under RCW 10.05.060, the department of
23 licensing shall order the person to surrender his or her license. The
24 department shall revoke the license of any person who fails to
25 surrender it as required by this section.

26 (2) Upon receipt of the surrendered license, and following the
27 expiration of any period of license suspension ordered by a court, or
28 following receipt of a sworn statement under section 12 of this act
29 that requires issuance of a probationary license, the department shall
30 issue the person a probationary license. The probationary license
31 shall be renewed on the same cycle as the person's regular license
32 would have been renewed until five years after the date of the
33 commission of the offense, at which time the department shall reissue
34 a regular license if the person otherwise qualifies for one.

35 (3) For each issue or reissue of a license under this section, the
36 department may charge the fee authorized under RCW 46.20.311 for the

1 reissuance of a license following a revocation for a violation of RCW
2 46.61.502 or 46.61.504.

3 (4) A probationary license shall enable the department and law
4 enforcement personnel to determine that the person is on probationary
5 status, including the period of that status, for a violation of RCW
6 46.61.502 or 46.61.504. That fact that a person has been issued a
7 probationary license shall not be a part of the person's record that is
8 available to insurance companies.

9 **PART III - ASSESSMENT AND TREATMENT**

10 NEW SECTION. **Sec. 9.** A new section is added to chapter 46.61 RCW
11 to read as follows:

12 (1) A person subject to alcohol assessment and treatment under
13 section 4, 5, or 6 of this act shall be required by the court to
14 complete a course in an alcohol information school approved by the
15 department of social and health services or to complete more intensive
16 treatment in a program approved by the department of social and health
17 services, as determined by the court. The court shall notify the
18 department of licensing whenever it orders a person to complete a
19 course or treatment program under this section.

20 (2) A diagnostic evaluation and treatment recommendation shall be
21 prepared under the direction of the court by an alcoholism agency
22 approved by the department of social and health services or a qualified
23 probation department approved by the department of social and health
24 services. A copy of the report shall be forwarded to the department of
25 licensing. Based on the diagnostic evaluation, the court shall
26 determine whether the person shall be required to complete a course in
27 an alcohol information school approved by the department of social and
28 health services or more intensive treatment in a program approved by
29 the department of social and health services.

30 (3) Standards for approval for alcohol treatment programs shall be
31 prescribed by the department of social and health services. The
32 department of social and health services shall periodically review the
33 costs of alcohol information schools and treatment programs.

34 (4) The department of social and health services shall require as
35 a condition of approval under this section that any agency that offers
36 outpatient treatment must provide all phases of such treatment as
37 determined by the department of social and health services.

1 (5) Any agency that provides treatment ordered under section 4, 5,
2 or 6 of this act, shall immediately report to the court and to the
3 department of licensing any noncompliance by a person with the
4 conditions of his or her ordered treatment. The court shall notify the
5 department of licensing and the department of social and health
6 services of any failure by an agency to so report noncompliance. Any
7 agency with knowledge of noncompliance that fails to so report shall be
8 fined two hundred fifty dollars by the department of social and health
9 services. Upon three such failures by an agency within one year, the
10 department of social and health services shall revoke the agency's
11 approval under this section.

12 (6) The department of licensing and the department of social and
13 health services may adopt such rules as are necessary to carry out this
14 section.

15 **PART IV - ADMINISTRATIVE REVOCATION**

16 NEW SECTION. **Sec. 10.** A new section is added to chapter 46.20 RCW
17 to read as follows:

18 (1) Notwithstanding any other provision of this title, a person
19 under the age of twenty-one may not drive, operate, or be in physical
20 control of a motor vehicle while having alcohol in his or her system in
21 a concentration of 0.02 or above.

22 (2) A person under the age of twenty-one who drives or is in
23 physical control of a motor vehicle within this state is deemed to have
24 given consent, subject to the relevant portions of RCW 46.61.506, to be
25 detained long enough, and be transported if necessary, to take a test
26 or tests of that person's blood or breath for the purpose of
27 determining the alcohol concentration in his or her system.

28 (3) A test or tests may be administered at the direction of a law
29 enforcement officer, who after stopping or detaining the driver, has
30 reasonable grounds to believe that the driver was driving or in actual
31 physical control of a motor vehicle while having alcohol in his or her
32 system.

33 (4) The law enforcement officer requesting the test or tests under
34 subsection (2) of this section shall warn the person requested to
35 submit to the test that a refusal to submit will result in that
36 person's driver's license or driving privilege being revoked.

1 (5) If the person refuses testing, or submits to a test that
2 discloses an alcohol concentration of 0.02 or more, the law enforcement
3 officer shall:

4 (a) Serve the person notice in writing on behalf of the department
5 of licensing of its intention to suspend, revoke, or deny the person's
6 license, permit, or privilege to drive;

7 (b) Serve the person notice in writing on behalf of the department
8 of licensing of the person's right to a hearing, specifying the steps
9 required to obtain a hearing;

10 (c) Confiscate the person's Washington state license or permit to
11 drive, if any, and issue a temporary license to replace any confiscated
12 license or permit. The temporary license shall be valid for thirty
13 days from the date of the traffic stop or until the suspension or
14 revocation of the person's license or permit is sustained at a hearing
15 as provided by subsection (7) of this section, whichever occurs first.
16 No temporary license is valid to any greater degree than the license or
17 permit it replaces;

18 (d) Notify the department of licensing of the traffic stop, and
19 transmit to the department any confiscated license or permit and a
20 sworn report stating:

21 (i) That the officer had reasonable grounds to believe the person
22 was driving or in actual physical control of a motor vehicle within
23 this state with alcohol in his or her system;

24 (ii) That pursuant to this section a test of the person's alcohol
25 concentration was administered or that the person refused to be tested;

26 (iii) If administered, that the test indicated the person's alcohol
27 concentration was 0.02 or higher; and

28 (iv) Any other information that the department may require by rule.

29 (6) Upon receipt of the sworn report of a law enforcement officer
30 under subsection (5) of this section, the department shall suspend or
31 revoke the driver's license or driving privilege beginning thirty days
32 from the date of the traffic stop or beginning when the suspension,
33 revocation, or denial is sustained at a hearing as provided by
34 subsection (7) of this section. Within fifteen days after notice of a
35 suspension or revocation has been given, the person may, in writing,
36 request a formal hearing. If such a request is not made within the
37 prescribed time the right to a hearing is waived. Upon receipt of such
38 request, the department shall afford the person an opportunity for a
39 hearing as provided in RCW 46.20.329 and 46.20.332. The hearing shall

1 be conducted in the county of the arrest. For the purposes of this
2 section, the hearing shall cover the issues of whether a law
3 enforcement officer had reasonable grounds to believe the person had
4 been driving or was in actual physical control of a motor vehicle
5 within this state while having alcohol in his or her system, whether
6 the person refused to submit to the test or tests upon request of the
7 officer after having been informed that the refusal would result in the
8 revocation of the person's driver's license or driving privilege, and,
9 if the test or tests of the person's breath or blood was administered,
10 whether the results indicated an alcohol concentration of 0.02 or more.
11 The department shall order that the suspension or revocation of the
12 person's driver's license or driving privilege either be rescinded or
13 sustained. Any decision by the department suspending or revoking a
14 person's driver's license or driving privilege is stayed and does not
15 take effect while a formal hearing is pending under this section or
16 during the pendency of a subsequent appeal to superior court so long as
17 there is no conviction for a moving violation or no finding that the
18 person has committed a traffic infraction that is a moving violation
19 during the pendency of the hearing and appeal. If the suspension or
20 revocation of the person's driver's license or driving privilege is
21 sustained after the hearing, the person may file a petition in the
22 superior court of the county of arrest to review the final order of
23 suspension or revocation by the department in the manner provided in
24 RCW 46.20.334.

25 (7) The department shall suspend or revoke the driver's license or
26 driving privilege of a person as required by this section as follows:

27 (a) In the case of a person who has refused a test or tests:

28 (i) For a first refusal within five years, revocation for one year;

29 (ii) For a second or subsequent refusal within five years,
30 revocation or denial for two years.

31 (b) In the case of an incident where a person has submitted to a
32 test or tests indicating an alcohol concentration of 0.02 or more:

33 (i) For a first incident within five years, suspension for ninety
34 days;

35 (ii) For a second or subsequent incident within five years,
36 revocation for one year or until the person reaches age twenty-one
37 whichever occurs later.

1 (8) For purposes of this section, "alcohol concentration" means (a)
2 grams of alcohol per two hundred ten liters of a person's breath, or
3 (b) the percent by weight of alcohol in a person's blood.

4 NEW SECTION. **Sec. 11.** A new section is added to chapter 46.61 RCW
5 to read as follows:

6 (1) Any person requested or signaled to stop by a law enforcement
7 officer pursuant to section 10 of this act has a duty to stop.

8 (2) Whenever any person is stopped pursuant to section 10 of this
9 act, the officer may detain that person for a reasonable period of time
10 necessary to: Identify the person; check the status of the person's
11 license, insurance identification card, and the vehicle's registration;
12 and transport the person, if necessary, to and administer a test or
13 tests to determine the alcohol concentration in the person's system.

14 (3) Any person requested to identify himself or herself to a law
15 enforcement officer pursuant to an investigation under section 10 of
16 this act has a duty to identify himself or herself, give his or her
17 current address, and sign an acknowledgement of receipt of the warning
18 required by section 10(4) of this act and receipt of the notice and
19 temporary license issued under section 10(5) of this act.

20 NEW SECTION. **Sec. 12.** A new section is added to chapter 46.61 RCW
21 to read as follows:

22 (1) This section applies to any person arrested for a violation of
23 RCW 46.61.502 or 46.61.504 who has an alcohol concentration of 0.10 or
24 higher as shown by a test administered under RCW 46.20.308.

25 (2) The arresting officer or other law enforcement officer at whose
26 direction the test was given shall:

27 (a) Serve the person notice in writing on behalf of the department
28 of licensing of its intention to suspend, revoke, or deny the person's
29 license, permit, or privilege to drive or to issue a probationary
30 license;

31 (b) Serve the person notice in writing on behalf of the department
32 of the person's right to a hearing, specifying the steps required to
33 obtain a hearing;

34 (c) Confiscate the person's Washington state license or permit to
35 drive, if any, and issue a temporary license to replace any confiscated
36 license or permit. The temporary license shall be valid for thirty
37 days from the date of arrest or until the suspension or revocation of

1 the person's license or permit, or the issuance of a probationary
2 license, is sustained at a hearing pursuant to subsection (5) of this
3 section, whichever occurs first. No temporary license is valid to any
4 greater degree than the license or permit it replaces;

5 (d) Notify the department of the arrest, and transmit to the
6 department any confiscated license or permit and a sworn report
7 stating:

8 (i) That the officer had reasonable grounds to believe the arrested
9 person was driving or in actual physical control of a motor vehicle
10 within this state while under the influence of intoxicating liquor or
11 drug, or both;

12 (ii) That pursuant to RCW 46.20.308 a test of the person's alcohol
13 concentration was administered;

14 (iii) That the test indicated that the person's alcohol
15 concentration was 0.10 or higher; and

16 (iv) Any other information that the department may require by rule.

17 (3) Upon receipt of a sworn statement under subsection (2) of this
18 section, the department shall suspend, revoke, or deny the person's
19 license, permit, or driving privilege, or shall issue a probationary
20 license, effective beginning thirty days from the date of the arrest or
21 beginning when the suspension, revocation, denial, or issuance is
22 sustained at a hearing pursuant to subsection (5) of this section,
23 whichever occurs first. The suspension, revocation, or denial, or
24 issuance of a probationary license, shall be as follows:

25 (a) Upon receipt of a first sworn statement, issuance of a
26 probationary license under section 8 of this act;

27 (b) Upon receipt of a second or subsequent statement indicating an
28 arrest date that is within five years of the arrest date indicated by
29 a previous statement, revocation for two years.

30 (4) A person receiving notification under subsection (2) of this
31 section may, within five days after his or her arrest, request a
32 hearing before the department under subsection (5) of this section.
33 The request shall be in writing. If the request is mailed, it must be
34 postmarked within five days after the arrest.

35 (5) Upon timely receipt of a request under subsection (4) of this
36 section, the department shall afford the person an opportunity for a
37 hearing. Except as otherwise provided in this section, the hearing is
38 subject to and shall be scheduled and conducted in accordance with RCW
39 46.20.329 and 46.20.332. The hearing shall be conducted in the county

1 of arrest and within thirty days following the arrest, unless otherwise
2 agreed to by the department and the person. The hearing shall cover
3 the issues of:

4 (a) Whether the law enforcement officer had reasonable grounds to
5 believe the person was driving or in actual physical control of a motor
6 vehicle within this state while under the influence of intoxicating
7 liquor;

8 (b) Whether the test of the person's alcohol concentration was
9 administered in accordance with RCW 46.20.308; and

10 (c) Whether the test indicated that the person's alcohol
11 concentration was 0.10 or higher.

12 (6) If the suspension, revocation, or denial, or issuance of a
13 probationary license, is sustained after a hearing conducted under
14 subsection (5) of this section, the person affected may file a petition
15 in the superior court of the county of arrest seeking review as
16 provided in RCW 46.20.334.

17 (7) The period of any suspension, revocation, or denial imposed
18 under this section shall run consecutively to the period of any
19 suspension, revocation, or denial imposed pursuant to a criminal
20 conviction arising out of the same incident. A suspension, revocation,
21 or denial imposed under this section shall be stayed if the person is
22 accepted for deferred prosecution as provided in chapter 10.05 RCW for
23 the incident upon which the suspension, revocation, or denial is based.
24 If the deferred prosecution is terminated, the stay shall be lifted and
25 the suspension, revocation, or denial reinstated. If the deferred
26 prosecution is completed, the stay shall be lifted and the suspension,
27 revocation, or denial canceled.

28 (8) If the suspension, revocation, denial, or issuance is sustained
29 after such a hearing, the person whose license, privilege, or permit is
30 suspended, revoked, or denied, or who has been issued a probationary
31 license, has the right to file a petition in the superior court of the
32 county of arrest to review the final order of suspension, revocation,
33 denial, or issuance by the department in the manner provided in RCW
34 46.20.334.

35 (9) When it has been finally determined under the procedures of
36 this section that a nonresident's privilege to operate a motor vehicle
37 in this state has been suspended, revoked, or denied, the department
38 shall give information in writing of the action taken to the motor

1 vehicle administrator of the state of the person's residence and of any
2 state in which he or she has a license.

3

PART V - IMPLIED CONSENT

4 **Sec. 13.** RCW 46.20.308 and 1989 c 337 s 8 are each amended to read
5 as follows:

6 (1) Any person who operates a motor vehicle within this state is
7 deemed to have given consent, subject to the provisions of RCW
8 46.61.506, to a test or tests of his or her breath or blood for the
9 purpose of determining the alcoholic content of his or her breath or
10 blood if arrested for any offense where, at the time of the arrest, the
11 arresting officer has reasonable grounds to believe the person had been
12 driving or was in actual physical control of a motor vehicle while
13 under the influence of intoxicating liquor.

14 (2) The test or tests of breath shall be administered at the
15 direction of a law enforcement officer having reasonable grounds to
16 believe the person to have been driving or in actual physical control
17 of a motor vehicle within this state while under the influence of
18 intoxicating liquor. However, in those instances where: (a) The
19 person is incapable due to physical injury, physical incapacity, or
20 other physical limitation, of providing a breath sample; or (b) as a
21 result of a traffic accident the person is being treated for a medical
22 condition in a hospital, clinic, doctor's office, or other similar
23 facility in which a breath testing instrument is not present, a blood
24 test shall be administered by a qualified person as provided in RCW
25 46.61.506(4). The officer shall inform the person (~~of his or her~~
26 ~~right to refuse the breath or blood test, and~~) of his or her right to
27 have additional tests administered by any qualified person of his or
28 her choosing as provided in RCW 46.61.506. The officer shall warn the
29 driver (~~that~~) (a) that refusal to take the test is a crime punishable
30 by a fine and imprisonment; (b) that his or her privilege to drive will
31 be revoked or denied if he or she refuses to submit to the test(~~, and~~
32 ~~(b)~~); (c) that the fact of his or her refusal to take the test may be
33 used as evidence in a criminal trial on charges related to driving or
34 being in physical control of a vehicle while under the influence of
35 alcohol; and (d) that if he or she takes the test his or her privilege
36 to drive may be suspended, revoked, or denied depending on the test
37 results.

1 (3) Except as provided in this section, the test administered shall
2 be of the breath only. If an individual is unconscious or is under
3 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
4 or vehicular assault as provided in RCW 46.61.522, or if an individual
5 is under arrest for the crime of driving while under the influence of
6 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
7 results from an accident in which another person has been injured and
8 there is a reasonable likelihood that such other person may die as a
9 result of injuries sustained in the accident, a breath or blood test
10 may be administered without the consent of the individual so arrested.

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

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

22 (6) Refusal to take a test as requested under this section is a
23 gross misdemeanor punishable as provided for in chapter 9A.20 RCW.
24 Regardless of whether criminal charges are filed, the department of
25 licensing, upon the receipt of a sworn report of the law enforcement
26 officer that the officer had reasonable grounds to believe the arrested
27 person had been driving or was in actual physical control of a motor
28 vehicle within this state while under the influence of intoxicating
29 liquor and that the person had refused to submit to the test or tests
30 upon the request of the law enforcement officer after being informed
31 that refusal would result in the revocation of the person's privilege
32 to drive, shall revoke the person's license or permit to drive or any
33 nonresident operating privilege as follows:

34 (a) Except as otherwise provided in this subsection, for a first
35 refusal for a period of one year;

36 (b) Except as otherwise provided in this subsection, for a second
37 refusal within five years, for a period of two years;

38 (c) For a first refusal by a person with a probationary license
39 issued under section 9 of this act, for a period of one year;

1 (d) For a second refusal within five years when the second refusal
2 occurs while the person has a probationary license issued under section
3 9 of this act, for a period of three years;

4 (e) For a first refusal by a person on suspended or revoked status,
5 for a period of two years;

6 (f) For a second refusal within five years by a person on suspended
7 or revoked status, for a period of three years.

8 (7) Upon revoking the license or permit to drive or the nonresident
9 operating privilege of any person, the department shall immediately
10 notify the person involved in writing by personal service or by
11 certified mail of its decision and the grounds therefor, and of the
12 person's right to a hearing, specifying the steps he or she must take
13 to obtain a hearing. Within fifteen days after the notice has been
14 given, the person may, in writing, request a formal hearing. Upon
15 receipt of such request, the department shall afford the person an
16 opportunity for a hearing as provided in RCW 46.20.329 and 46.20.332.
17 The hearing shall be conducted in the county of the arrest. For the
18 purposes of this section, the scope of such hearing shall cover the
19 issues of whether a law enforcement officer had reasonable grounds to
20 believe the person had been driving or was in actual physical control
21 of a motor vehicle within this state while under the influence of
22 intoxicating liquor, whether the person was placed under arrest, and
23 whether the person refused to submit to the test or tests upon request
24 of the officer after having been informed that such refusal would
25 result in the revocation of the person's privilege to drive. The
26 department shall order that the revocation either be rescinded or
27 sustained. Any decision by the department revoking a person's driving
28 privilege shall be stayed and shall not take effect while a formal
29 hearing is pending as provided in this section or during the pendency
30 of a subsequent appeal to superior court so long as there is no
31 conviction for a moving violation or no finding that the person has
32 committed a traffic infraction that is a moving violation during
33 pendency of the hearing and appeal.

34 (8) The period of any revocation imposed under this section shall
35 run consecutively to the period of any revocation imposed pursuant to
36 a criminal conviction arising out of the same incident.

37 (9) If the revocation is sustained after such a hearing, the person
38 whose license, privilege, or permit is revoked has the right to file a
39 petition in the superior court of the county of arrest to review the

1 final order of revocation by the department in the manner provided in
2 RCW 46.20.334.

3 ~~((+9))~~ (10) When it has been finally determined under the
4 procedures of this section that a nonresident's privilege to operate a
5 motor vehicle in this state has been revoked, the department shall give
6 information in writing of the action taken to the motor vehicle
7 administrator of the state of the person's residence and of any state
8 in which he or she has a license.

9

PART VI - DRIVING RECORDS

10 **Sec. 14.** RCW 46.01.260 and 1984 c 241 s 1 are each amended to read
11 as follows:

12 (1) Except as provided in subsection (2) of this section, the
13 director, in his or her discretion, may destroy applications for
14 vehicle licenses, copies of vehicle licenses issued, applications for
15 drivers' licenses, copies of issued drivers' licenses, certificates of
16 title and registration or other documents, records or supporting papers
17 on file in his or her office which have been microfilmed or
18 photographed or are more than five years old. If the applications for
19 vehicle licenses are renewal applications, the director may destroy
20 such applications when the computer record thereof has been updated.

21 (2)(a) The director shall not, within ten years from the date of
22 conviction, adjudication, or entry of deferred prosecution, destroy
23 records of the following:

24 (i) Convictions or adjudications of the following offenses: RCW
25 46.61.502, 46.61.504, 46.61.520(1)(a), or 46.61.522(1)(b);

26 (ii) If the offense was originally charged as one of the offenses
27 designated in (a)(i) of this subsection, convictions or adjudications
28 of the following offenses: RCW 46.61.500 or 46.61.525, or any other
29 violation that was originally charged as one of the offenses designated
30 in (a)(i) of this subsection; or

31 (iii) Deferred prosecutions granted under RCW 10.05.120.

32 (b) For purposes of RCW 46.52.100 and 46.52.130, offenses subject
33 to this subsection shall be considered "alcohol-related" offenses.

34 **Sec. 15.** RCW 46.52.100 and 1991 c 363 s 123 are each amended to
35 read as follows:

1 Every district court, municipal court, and clerk of superior court
2 shall keep or cause to be kept a record of every traffic complaint,
3 traffic citation, notice of infraction, or other legal form of traffic
4 charge deposited with or presented to the court or a traffic violations
5 bureau, and shall keep a record of every official action by ((said))
6 the court or its traffic violations bureau in reference thereto,
7 including but not limited to a record of every conviction, forfeiture
8 of bail, judgment of acquittal, finding that a traffic infraction has
9 been committed, dismissal of a notice of infraction, and the amount of
10 fine, forfeiture, or penalty resulting from every ((said)) traffic
11 complaint, citation, or notice of infraction deposited with or
12 presented to the district court, municipal court, superior court, or
13 traffic violations bureau.

14 The Monday following the conviction, forfeiture of bail, or finding
15 that a traffic infraction was committed for violation of any provisions
16 of this chapter or other law regulating the operating of vehicles on
17 highways, every ((said)) magistrate of the court or clerk of the court
18 of record in which such conviction was had, bail was forfeited, or the
19 finding made shall prepare and immediately forward to the director of
20 licensing at Olympia an abstract of the record of ((said)) the court
21 covering the case, which abstract must be certified by the person so
22 required to prepare the same to be true and correct. Report need not
23 be made of any finding involving the illegal parking or standing of a
24 vehicle.

25 ((Said)) The abstract must be made upon a form furnished by the
26 director and shall include the name and address of the party charged,
27 the number, if any, of the party's driver's or chauffeur's license, the
28 registration number of the vehicle involved, the nature of the offense,
29 the date of hearing, the plea, the judgment, whether the offense was an
30 alcohol-related offense as defined in RCW 46.01.260(2), whether bail
31 forfeited, whether the determination that a traffic infraction was
32 committed was contested, and the amount of the fine, forfeiture, or
33 penalty as the case may be.

34 Every court of record shall also forward a like report to the
35 director upon the conviction of any person of manslaughter or other
36 felony in the commission of which a vehicle was used.

37 The failure of any such judicial officer to comply with any of the
38 requirements of this section shall constitute misconduct in office and
39 shall be grounds for removal therefrom.

1 The director shall keep all abstracts received hereunder at the
2 director's office in Olympia and the same shall be open to public
3 inspection during reasonable business hours.

4 Venue in all district courts shall be before one of the two nearest
5 district judges in incorporated cities and towns nearest to the point
6 the violation allegedly occurred: PROVIDED, That in counties with
7 populations of one hundred twenty-five thousand or more such cases may
8 be tried in the county seat at the request of the defendant.

9 It shall be the duty of the officer, prosecuting attorney, or city
10 attorney signing the charge or information in any case involving a
11 charge of driving under the influence of intoxicating liquor or any
12 drug immediately to make request to the director for an abstract of
13 convictions and forfeitures which the director shall furnish.

14 **Sec. 16.** RCW 46.52.130 and 1991 c 243 s 1 are each amended to read
15 as follows:

16 A certified abstract of the driving record shall be furnished only
17 to the individual named in the abstract, an employer, the insurance
18 carrier that has insurance in effect covering the employer or a
19 prospective employer, the insurance carrier that has insurance in
20 effect covering the named individual, the insurance carrier to which
21 the named individual has applied, ~~((or))~~ an alcohol/drug assessment or
22 treatment agency approved by the department of social and health
23 services, to which the named individual has applied or been assigned
24 for evaluation or treatment, or city and county prosecuting attorneys.
25 City attorneys and county prosecuting attorneys may provide the driving
26 record to alcohol/drug assessment or treatment agencies approved by the
27 department of social and health services to which the named individual
28 has applied or been assigned for evaluation or treatment. The
29 director, upon proper request, shall furnish a certified abstract
30 covering the period of not more than the last three years to insurance
31 companies ~~((and))~~. Upon proper request, the director shall furnish a
32 certified abstract covering a period of not more than the last five
33 years to state approved alcohol/drug assessment or treatment agencies,
34 except that the certified abstract shall also include records of
35 alcohol-related offenses as defined in RCW 46.01.260(2) covering a
36 period of not more than the last ten years. Upon proper request, a
37 certified abstract of the full driving record maintained by the
38 department shall be furnished to a city or county prosecuting attorney,

1 to the individual((s-and)) named in the abstract or to an employer((s))
2 or prospective employer((s)) of the named individual. The abstract,
3 whenever possible, shall include an enumeration of motor vehicle
4 accidents in which the person was driving; the total number of vehicles
5 involved; whether the vehicles were legally parked or moving; whether
6 the vehicles were occupied at the time of the accident; any reported
7 convictions, forfeitures of bail, or findings that an infraction was
8 committed based upon a violation of any motor vehicle law; and the
9 status of the person's driving privilege in this state. The
10 enumeration shall include any reports of failure to appear in response
11 to a traffic citation or failure to respond to a notice of infraction
12 served upon the named individual by an arresting officer. Certified
13 abstracts furnished to prosecutors and alcohol/drug assessment or
14 treatment agencies shall also indicate whether a recorded violation is
15 an alcohol-related offense as defined in RCW 46.01.260(2) that was
16 originally charged as one of the alcohol-related offenses designated in
17 RCW 46.01.260(2)(a)(i).

18 The abstract provided to the insurance company shall exclude any
19 information, except that related to the commission of misdemeanors or
20 felonies by the individual, pertaining to law enforcement officers or
21 fire fighters as defined in RCW 41.26.030, or any officer of the
22 Washington state patrol, while driving official vehicles in the
23 performance of occupational duty. The abstract provided to the
24 insurance company shall exclude any deferred prosecution under RCW
25 10.05.060, except that if a person is removed from a deferred
26 prosecution under RCW 10.05.090, the abstract shall show the deferred
27 prosecution as well as the removal.

28 The director shall collect for each abstract the sum of four
29 dollars and fifty cents which shall be deposited in the highway safety
30 fund.

31 Any insurance company or its agent receiving the certified abstract
32 shall use it exclusively for its own underwriting purposes and shall
33 not divulge any of the information contained in it to a third party.
34 No policy of insurance may be canceled, nonrenewed, denied, or have the
35 rate increased on the basis of such information unless the policyholder
36 was determined to be at fault. No insurance company or its agent for
37 underwriting purposes relating to the operation of commercial motor
38 vehicles may use any information contained in the abstract relative to
39 any person's operation of motor vehicles while not engaged in such

1 employment, nor may any insurance company or its agent for underwriting
2 purposes relating to the operation of noncommercial motor vehicles use
3 any information contained in the abstract relative to any person's
4 operation of commercial motor vehicles.

5 Any employer or prospective employer receiving the certified
6 abstract shall use it exclusively for his or her own purpose to
7 determine whether the licensee should be permitted to operate a
8 commercial vehicle or school bus upon the public highways of this state
9 and shall not divulge any information contained in it to a third party.

10 Any alcohol/drug assessment or treatment agency approved by the
11 department of social and health services receiving the certified
12 abstract shall use it exclusively for the purpose of assisting its
13 employees in making a determination as to what level of treatment, if
14 any, is appropriate. The agency, or any of its employees, shall not
15 divulge any information contained in the abstract to a third party.

16 Any violation of this section is a gross misdemeanor.

17 **PART VII - DEFERRED PROSECUTION**

18 **Sec. 17.** RCW 10.05.060 and 1990 c 250 s 13 are each amended to
19 read as follows:

20 If the report recommends treatment, the court shall examine the
21 treatment plan. If it approves the plan and the petitioner agrees to
22 comply with its terms and conditions and agrees to pay the cost
23 thereof, if able to do so, or arrange for the treatment, an entry shall
24 be made upon the person's court docket showing that the person has been
25 accepted for deferred prosecution. A copy of the treatment plan shall
26 be attached to the docket, which shall then be removed from the regular
27 court dockets and filed in a special court deferred prosecution file.
28 If the charge be one that an abstract of the docket showing the charge,
29 the date of the violation for which the charge was made, and the date
30 of petitioner's acceptance is required to be sent to the department of
31 licensing, an abstract shall be sent, and the department of licensing
32 shall make an entry of the charge and of the petitioner's acceptance
33 for deferred prosecution on the department's driving record of the
34 petitioner. The entry is not a conviction for purposes of Title 46
35 RCW. Upon receipt of the abstract of the docket, the department shall
36 issue the petitioner a probationary license in accordance with section
37 8 of this act, and the petitioner's driver's license shall be on

1 probationary status for five years from the date of the violation that
2 gave rise to the charge. The department shall maintain the record for
3 ((five)) ten years from date of entry of the order granting deferred
4 prosecution.

5 **Sec. 18.** RCW 10.05.090 and 1985 c 352 s 12 are each amended to
6 read as follows:

7 If a petitioner, who has been accepted for a deferred prosecution,
8 fails or neglects to carry out and fulfill any term or condition of the
9 petitioner's treatment plan, the facility, center, institution, or
10 agency administering the treatment shall immediately report such breach
11 to the court, the prosecutor, and the petitioner or petitioner's
12 attorney of record, together with its recommendation. The court upon
13 receiving such a report shall hold a hearing to determine whether the
14 petitioner should be removed from the deferred prosecution program. At
15 the hearing, evidence shall be taken of the petitioner's alleged
16 failure to comply with the treatment plan and the petitioner shall have
17 the right to present evidence on his or her own behalf. The court
18 shall either order that the petitioner continue on the treatment plan
19 or be removed from deferred prosecution. If removed from deferred
20 prosecution, the court shall enter judgment pursuant to RCW 10.05.020
21 and shall notify the department of licensing of the removal.

22 **Sec. 19.** RCW 10.05.120 and 1985 c 352 s 15 are each amended to
23 read as follows:

24 Upon proof of successful completion of the two-year treatment
25 program, the court shall dismiss the charges pending against the
26 petitioner.

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

34 **PART VIII - VEHICULAR HOMICIDE**

1 **Sec. 20.** RCW 9.94A.320 and 1992 c 145 s 4 and 1992 c 75 s 3 are
2 each reenacted and amended to read as follows:

3 TABLE 2

4 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

5 XV Aggravated Murder 1 (RCW 10.95.020)

6 XIV Murder 1 (RCW 9A.32.030)

7 Homicide by abuse (RCW 9A.32.055)

8 XIII Murder 2 (RCW 9A.32.050)

9 XII Assault 1 (RCW 9A.36.011)

10 Assault of a Child 1 (RCW 9A.36.120)

11 XI Rape 1 (RCW 9A.44.040)

12 Rape of a Child 1 (RCW 9A.44.073)

13 X Kidnapping 1 (RCW 9A.40.020)

14 Rape 2 (RCW 9A.44.050)

15 Rape of a Child 2 (RCW 9A.44.076)

16 Child Molestation 1 (RCW 9A.44.083)

17 Damaging building, etc., by explosion with

18 threat to human being (RCW

19 70.74.280(1))

20 Over 18 and deliver heroin or narcotic

21 from Schedule I or II to someone

22 under 18 (RCW 69.50.406)

23 Leading Organized Crime (RCW

24 9A.82.060(1)(a))

25 IX Assault of a Child 2 (RCW 9A.36.130)

26 Robbery 1 (RCW 9A.56.200)

27 Manslaughter 1 (RCW 9A.32.060)

28 Explosive devices prohibited (RCW

29 70.74.180)

30 Indecent Liberties (with forcible

31 compulsion) (RCW 9A.44.100(1)(a))

32 Endangering life and property by

33 explosives with threat to human being

34 (RCW 70.74.270)

1 Over 18 and deliver narcotic from Schedule
2 III, IV, or V or a nonnarcotic from
3 Schedule I-V to someone under 18 and
4 3 years junior (RCW 69.50.406)
5 Controlled Substance Homicide (RCW
6 69.50.415)
7 Sexual Exploitation (RCW 9.68A.040)
8 Inciting Criminal Profiteering (RCW
9 9A.82.060(1)(b))
10 Vehicular Homicide, by being under the
11 influence of intoxicating liquor or
12 any drug (RCW 46.61.520)
13 VIII Arson 1 (RCW 9A.48.020)
14 Promoting Prostitution 1 (RCW 9A.88.070)
15 Selling for profit (controlled or
16 counterfeit) any controlled substance
17 (RCW 69.50.410)
18 Manufacture, deliver, or possess with
19 intent to deliver heroin or cocaine
20 (RCW 69.50.401(a)(1)(i))
21 Manufacture, deliver, or possess with
22 intent to deliver methamphetamine
23 (RCW 69.50.401(a)(1)(ii))
24 Vehicular Homicide, (~~by being under the~~
25 ~~influence of intoxicating liquor or~~
26 ~~any drug or~~) by the operation of any
27 vehicle in a reckless manner (RCW
28 46.61.520)
29 VII Burglary 1 (RCW 9A.52.020)
30 Vehicular Homicide, by disregard for the
31 safety of others (RCW 46.61.520)
32 Introducing Contraband 1 (RCW 9A.76.140)
33 Indecent Liberties (without forcible
34 compulsion) (RCW 9A.44.100(1) (b) and
35 (c))
36 Child Molestation 2 (RCW 9A.44.086)

1 Dealing in depictions of minor engaged in
2 sexually explicit conduct (RCW
3 9.68A.050)
4 Sending, bringing into state depictions of
5 minor engaged in sexually explicit
6 conduct (RCW 9.68A.060)
7 Involving a minor in drug dealing (RCW
8 69.50.401(f))

9 VI Bribery (RCW 9A.68.010)
10 Manslaughter 2 (RCW 9A.32.070)
11 Rape of a Child 3 (RCW 9A.44.079)
12 Intimidating a Juror/Witness (RCW
13 9A.72.110, 9A.72.130)
14 Damaging building, etc., by explosion with
15 no threat to human being (RCW
16 70.74.280(2))
17 Endangering life and property by
18 explosives with no threat to human
19 being (RCW 70.74.270)
20 Incest 1 (RCW 9A.64.020(1))
21 Manufacture, deliver, or possess with
22 intent to deliver narcotics from
23 Schedule I or II (except heroin or
24 cocaine) (RCW 69.50.401(a)(1)(i))
25 Intimidating a Judge (RCW 9A.72.160)
26 Bail Jumping with Murder 1 (RCW
27 9A.76.170(2)(a))

28 V Criminal Mistreatment 1 (RCW 9A.42.020)
29 Rape 3 (RCW 9A.44.060)
30 Sexual Misconduct with a Minor 1 (RCW
31 9A.44.093)
32 Child Molestation 3 (RCW 9A.44.089)
33 Kidnapping 2 (RCW 9A.40.030)
34 Extortion 1 (RCW 9A.56.120)
35 Incest 2 (RCW 9A.64.020(2))
36 Perjury 1 (RCW 9A.72.020)
37 Extortionate Extension of Credit (RCW
38 9A.82.020)

1 Advancing money or property for
2 extortionate extension of credit (RCW
3 9A.82.030)
4 Extortionate Means to Collect Extensions
5 of Credit (RCW 9A.82.040)
6 Rendering Criminal Assistance 1 (RCW
7 9A.76.070)
8 Bail Jumping with class A Felony (RCW
9 9A.76.170(2)(b))
10 Delivery of imitation controlled substance
11 by person eighteen or over to person
12 under eighteen (RCW 69.52.030(2))

13 IV Residential Burglary (RCW 9A.52.025)
14 Theft of Livestock 1 (RCW 9A.56.080)
15 Robbery 2 (RCW 9A.56.210)
16 Assault 2 (RCW 9A.36.021)
17 Escape 1 (RCW 9A.76.110)
18 Arson 2 (RCW 9A.48.030)
19 Bribing a Witness/Bribe Received by
20 Witness (RCW 9A.72.090, 9A.72.100)
21 Malicious Harassment (RCW 9A.36.080)
22 Threats to Bomb (RCW 9.61.160)
23 Willful Failure to Return from Furlough
24 (RCW 72.66.060)
25 Hit and Run « Injury Accident (RCW
26 46.52.020(4))
27 Vehicular Assault (RCW 46.61.522)
28 Manufacture, deliver, or possess with
29 intent to deliver narcotics from
30 Schedule III, IV, or V or
31 nonnarcotics from Schedule I-V
32 (except marijuana or
33 methamphetamines) (RCW
34 69.50.401(a)(1)(ii) through (iv))
35 Influencing Outcome of Sporting Event (RCW
36 9A.82.070)

1 Use of Proceeds of Criminal Profiteering
2 (RCW 9A.82.080 (1) and (2))
3 Knowingly Trafficking in Stolen Property
4 (RCW 9A.82.050(2))

5 III Criminal mistreatment 2 (RCW 9A.42.030)
6 Extortion 2 (RCW 9A.56.130)
7 Unlawful Imprisonment (RCW 9A.40.040)
8 Assault 3 (RCW 9A.36.031)
9 Assault of a Child 3 (RCW 9A.36.140)
10 Custodial Assault (RCW 9A.36.100)
11 Unlawful possession of firearm or pistol by felon (RCW
12 9.41.040)
13 Harassment (RCW 9A.46.020)
14 Promoting Prostitution 2 (RCW 9A.88.080)
15 Willful Failure to Return from Work
16 Release (RCW 72.65.070)
17 Burglary 2 (RCW 9A.52.030)
18 Introducing Contraband 2 (RCW 9A.76.150)
19 Communication with a Minor for Immoral
20 Purposes (RCW 9.68A.090)
21 Patronizing a Juvenile Prostitute (RCW
22 9.68A.100)
23 Escape 2 (RCW 9A.76.120)
24 Perjury 2 (RCW 9A.72.030)
25 Bail Jumping with class B or C Felony (RCW
26 9A.76.170(2)(c))
27 Intimidating a Public Servant (RCW
28 9A.76.180)
29 Tampering with a Witness (RCW 9A.72.120)
30 Manufacture, deliver, or possess with
31 intent to deliver marijuana (RCW
32 69.50.401(a)(1)(ii))
33 Delivery of a material in lieu of a
34 controlled substance (RCW
35 69.50.401(c))
36 Manufacture, distribute, or possess with
37 intent to distribute an imitation
38 controlled substance (RCW
39 69.52.030(1))

1 Recklessly Trafficking in Stolen Property
2 (RCW 9A.82.050(1))
3 Theft of livestock 2 (RCW 9A.56.080)
4 Securities Act violation (RCW 21.20.400)

5 II Malicious Mischief 1 (RCW 9A.48.070)
6 Possession of Stolen Property 1 (RCW
7 9A.56.150)
8 Theft 1 (RCW 9A.56.030)
9 Possession of controlled substance that is
10 either heroin or narcotics from
11 Schedule I or II (RCW 69.50.401(d))
12 Possession of phencyclidine (PCP) (RCW
13 69.50.401(d))
14 Create, deliver, or possess a counterfeit
15 controlled substance (RCW
16 69.50.401(b))
17 Computer Trespass 1 (RCW 9A.52.110)
18 Reckless Endangerment 1 (RCW 9A.36.045)
19 Escape from Community Custody (RCW
20 72.09.310)

21 I Theft 2 (RCW 9A.56.040)
22 Possession of Stolen Property 2 (RCW
23 9A.56.160)
24 Forgery (RCW 9A.60.020)
25 Taking Motor Vehicle Without Permission
26 (RCW 9A.56.070)
27 Vehicle Prowl 1 (RCW 9A.52.095)
28 Attempting to Elude a Pursuing Police
29 Vehicle (RCW 46.61.024)
30 Malicious Mischief 2 (RCW 9A.48.080)
31 Reckless Burning 1 (RCW 9A.48.040)
32 Unlawful Issuance of Checks or Drafts (RCW
33 9A.56.060)
34 Unlawful Use of Food Stamps (RCW 9.91.140
35 (2) and (3))
36 False Verification for Welfare (RCW
37 74.08.055)
38 Forged Prescription (RCW 69.41.020)

1 Forged Prescription for a Controlled
2 Substance (RCW 69.50.403)
3 Possess Controlled Substance that is a
4 Narcotic from Schedule III, IV, or V
5 or Non-narcotic from Schedule I-V
6 (except phencyclidine) (RCW
7 69.50.401(d))

8 **PART IX - INTERLOCK**

9 **Sec. 21.** RCW 46.20.710 and 1987 c 247 s 1 are each amended to read
10 as follows:

11 The legislature finds and declares:

12 (1) There is a need to reduce the incidence of drivers on the
13 highways and roads of this state who, because of their use,
14 consumption, or possession of alcohol, pose a danger to the health and
15 safety of other drivers;

16 (2) One method of dealing with the problem of drinking drivers is
17 to discourage the use of motor vehicles by persons who possess or have
18 consumed alcoholic beverages;

19 (3) The installation of an ignition interlock breath alcohol device
20 or other biological or technical device will provide a means of
21 deterring the use of motor vehicles by persons who have consumed
22 alcoholic beverages;

23 (4) Ignition interlock and other biological and technical devices
24 are designed to supplement other methods of punishment that prevent
25 drivers from using a motor vehicle after using, possessing, or
26 consuming alcohol;

27 (5) It is economically and technically feasible to have an ignition
28 interlock or other biological or technical device installed in a motor
29 vehicle in such a manner that the vehicle will not start if the
30 operator has recently consumed alcohol.

31 **Sec. 22.** RCW 46.20.720 and 1987 c 247 s 2 are each amended to read
32 as follows:

33 The court may order any person convicted of any offense involving
34 the use, consumption, or possession of alcohol while operating a motor
35 vehicle to drive only a motor vehicle equipped with a functioning

1 ignition interlock or other biological or technical device, and the
2 restriction shall be for a period of not less than six months.

3 The court shall establish a specific calibration setting at which
4 the ignition interlock or other biological or technical device will
5 prevent the motor vehicle from being started and the period of time
6 that the person shall be subject to the restriction.

7 For purposes of this section, "convicted" means being found guilty
8 of an offense or being placed on a deferred prosecution program under
9 chapter 10.05 RCW.

10 **Sec. 23.** RCW 46.20.730 and 1987 c 247 s 3 are each amended to read
11 as follows:

12 For the purposes of RCW 46.20.720, 46.20.740, and 46.20.750,
13 "ignition interlock device" means breath alcohol analyzed ignition
14 equipment, certified by the state commission on equipment, designed to
15 prevent a motor vehicle from being operated by a person who has
16 consumed an alcoholic beverage, and "other biological or technical
17 device" means any device meeting the standards of the national highway
18 traffic safety administration or the state commission on equipment,
19 designed to prevent the operation of a motor vehicle by a person who is
20 impaired by alcohol or drugs. The commission shall by rule provide
21 standards for the certification, installation, repair, and removal of
22 the devices.

23 **Sec. 24.** RCW 46.20.740 and 1987 c 247 s 4 are each amended to read
24 as follows:

25 The department shall attach or imprint a notation on the driver's
26 license of any person restricted under RCW 46.20.720 stating that the
27 person may operate only a motor vehicle equipped with an ignition
28 interlock or other biological or technical device.

29 **Sec. 25.** RCW 46.20.750 and 1987 c 247 s 5 are each amended to read
30 as follows:

31 A person who knowingly assists another person who is restricted to
32 the use of an ignition interlock or other biological or technical
33 device to start and operate that vehicle in violation of a court order
34 is guilty of a gross misdemeanor.

35 The provisions of this section do not apply if the starting of a
36 motor vehicle, or the request to start a motor vehicle, equipped with

1 an ignition interlock or other biological or technical device is done
2 for the purpose of safety or mechanical repair of the device or the
3 vehicle and the person subject to the court order does not operate the
4 vehicle.

5 **PART X - MISCELLANEOUS**

6 **Sec. 26.** RCW 46.61.506 and 1987 c 373 s 4 are each amended to read
7 as follows:

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

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

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

34 (4) When a blood test is administered under the provisions of RCW
35 46.20.308, the withdrawal of blood for the purpose of determining its
36 alcoholic content may be performed only by a physician, a registered

1 nurse, or a qualified technician. This limitation shall not apply to
2 the taking of breath specimens.

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

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

14 **Sec. 27.** RCW 46.20.311 and 1993 c 501 s 5 are each amended to read
15 as follows:

16 (1) The department shall not suspend a driver's license or
17 privilege to drive a motor vehicle on the public highways for a fixed
18 period of more than one year, except as specifically permitted under
19 RCW 46.20.342 or (~~(46.61.515)~~) other provision of law. Except for a
20 suspension under RCW 46.20.289 and 46.20.291(5), whenever the license
21 or driving privilege of any person is suspended by reason of a
22 conviction, a finding that a traffic infraction has been committed,
23 pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291, the
24 suspension shall remain in effect until the person gives and thereafter
25 maintains proof of financial responsibility for the future as provided
26 in chapter 46.29 RCW. The department shall not issue to the person a
27 new, duplicate, or renewal license until the person pays a reissue fee
28 of twenty dollars. If the suspension is the result of a violation of
29 RCW 46.61.502 or 46.61.504, the reissue fee shall be fifty dollars.

30 (2) Any person whose license or privilege to drive a motor vehicle
31 on the public highways has been revoked, unless the revocation was for
32 a cause which has been removed, is not entitled to have the license or
33 privilege renewed or restored until: (a) After the expiration of one
34 year from the date the license or privilege to drive was revoked; (b)
35 after the expiration of the applicable revocation period provided by
36 RCW (~~(46.61.515(3) (b) or (c))~~) 46.20.308 or section 5, 6, or 12 of
37 this act; (c) after the expiration of two years for persons convicted
38 of vehicular homicide; or (d) (~~(after the expiration of one year in~~

1 cases of revocation for the first refusal within five years to submit
2 to a chemical test under RCW 46.20.308; (e) after the expiration of two
3 years in cases of revocation for the second or subsequent refusal
4 within five years to submit to a chemical test under RCW 46.20.308; or
5 (f)) after the expiration of the applicable revocation period provided
6 by RCW 46.20.265. After the expiration of the appropriate period, the
7 person may make application for a new license as provided by law
8 together with a reissue fee in the amount of twenty dollars, but if the
9 revocation is the result of a violation of RCW 46.20.308, 46.61.502, or
10 46.61.504 or is the result of administrative action under section 12 of
11 this act, the reissue fee shall be fifty dollars. Except for a
12 revocation under RCW 46.20.265, the department shall not then issue a
13 new license unless it is satisfied after investigation of the driving
14 ability of the person that it will be safe to grant the privilege of
15 driving a motor vehicle on the public highways, and until the person
16 gives and thereafter maintains proof of financial responsibility for
17 the future as provided in chapter 46.29 RCW. For a revocation under
18 RCW 46.20.265, the department shall not issue a new license unless it
19 is satisfied after investigation of the driving ability of the person
20 that it will be safe to grant that person the privilege of driving a
21 motor vehicle on the public highways.

22 (3) Whenever the driver's license of any person is suspended
23 pursuant to Article IV of the nonresident violators compact or RCW
24 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue
25 to the person any new or renewal license until the person pays a
26 reissue fee of twenty dollars. If the suspension is the result of a
27 violation of the laws of this or any other state, province, or other
28 jurisdiction involving (a) the operation or physical control of a motor
29 vehicle upon the public highways while under the influence of
30 intoxicating liquor or drugs, or (b) the refusal to submit to a
31 chemical test of the driver's blood alcohol content, the reissue fee
32 shall be fifty dollars.

33 **Sec. 28.** RCW 46.04.580 and 1990 c 250 s 22 are each amended to
34 read as follows:

35 "Suspend," in all its forms and unless a different period is
36 specified, means invalidation for any period less than one calendar
37 year and thereafter until reinstatement. ((However, under RCW
38 46.61.515 the invalidation may last for more than one calendar year.))

1 **Sec. 29.** RCW 46.20.391 and 1985 c 407 s 5 are each amended to read
2 as follows:

3 (1) Any person licensed under this chapter who is convicted of an
4 offense relating to motor vehicles for which suspension or revocation
5 of the driver's license is mandatory, other than vehicular homicide or
6 vehicular assault, may submit to the department an application for an
7 occupational driver's license. The department, upon receipt of the
8 prescribed fee and upon determining that the petitioner is engaged in
9 an occupation or trade that makes it essential that the petitioner
10 operate a motor vehicle, may issue an occupational driver's license and
11 may set definite restrictions as provided in RCW 46.20.394. No person
12 may petition for, and the department shall not issue, an occupational
13 driver's license that is effective during the first thirty days of any
14 suspension or revocation imposed (~~(under RCW 46.61.515)~~) for a
15 violation of RCW 46.61.502 or 46.61.504. No person may petition for,
16 and the department shall not issue, an occupational driver's license if
17 the person is ineligible for such a license under section 5 or 6 of
18 this act. A person aggrieved by the decision of the department on the
19 application for an occupational driver's license may request a hearing
20 as provided by rule of the department.

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

23 (a) Within one year immediately preceding the date of the offense
24 that gave rise to the present conviction, the applicant has not (~~been~~
25 ~~convicted~~) committed of any offense relating to motor vehicles for
26 which suspension or revocation of a driver's license is mandatory; and

27 (b) Within five years immediately preceding the date of the offense
28 that gave rise to the present conviction, the applicant has not (~~been~~
29 ~~convicted of~~) committed any of the following offenses: (i) Driving or
30 being in actual physical control of a motor vehicle while under the
31 influence of intoxicating liquor (~~(under RCW 46.61.502 or 46.61.504,~~
32 of); (ii) vehicular homicide under RCW 46.61.520(~~(, or of)~~); or (iii)
33 vehicular assault under RCW 46.61.522; and

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

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

38 (3) The director shall cancel an occupational driver's license upon
39 receipt of notice that the holder thereof has been convicted of

1 operating a motor vehicle in violation of its restrictions, or of an
2 offense that pursuant to chapter 46.20 RCW would warrant suspension or
3 revocation of a regular driver's license. The cancellation is
4 effective as of the date of the conviction, and continues with the same
5 force and effect as any suspension or revocation under this title.

6 **Sec. 30.** RCW 5.40.060 and 1987 c 212 s 1001 are each amended to
7 read as follows:

8 (1) Except as provided in subsection (2) of this section, it is a
9 complete defense to an action for damages for personal injury or
10 wrongful death that the person injured or killed was under the
11 influence of intoxicating liquor or any drug at the time of the
12 occurrence causing the injury or death and that such condition was a
13 proximate cause of the injury or death and the trier of fact finds such
14 person to have been more than fifty percent at fault. The standard for
15 determining whether a person was under the influence of intoxicating
16 liquor or drugs shall be the same standard established for criminal
17 convictions under RCW 46.61.502, and evidence that a person was under
18 the influence of intoxicating liquor or drugs under the standard
19 established by RCW 46.61.502 shall be conclusive proof that such person
20 was under the influence of intoxicating liquor or drugs.

21 (2) In an action for damages for personal injury or wrongful death
22 that is brought against the driver of a motor vehicle who was under the
23 influence of intoxicating liquor or any drug at the time of the
24 occurrence causing the injury or death and whose condition was a
25 proximate cause of the injury or death, subsection (1) of this section
26 does not create a defense against the action notwithstanding that the
27 person injured or killed was also under the influence so long as such
28 person's condition was not a proximate cause of the occurrence causing
29 the injury or death.

30 NEW SECTION. **Sec. 31.** Section 30 of this act is remedial in
31 nature and shall apply retroactively.

32 NEW SECTION. **Sec. 32.** A new section is added to chapter 66.44 RCW
33 to read as follows:

34 (1) No person who is under the influence of liquor to the extent
35 that he or she is significantly impaired shall purchase liquor. For
36 purposes of this section a person is "significantly impaired" if the

1 person has within the previous twelve hours been denied the purchase of
2 liquor on the grounds that the sale would violate RCW 66.44.200, or the
3 person is sufficiently under the influence to present a danger to
4 himself or herself or others, or the person is in danger of losing
5 consciousness from further ingestion of liquor.

6 (2) A violation of this section is a misdemeanor punishable by a
7 fine of not more than five hundred dollars.

8 (3) A defendant's intoxication may not be used as a defense in a
9 prosecution under this section.

10 (4) Notice of the prohibition against the purchase of liquor that
11 is provided for by this section shall be posted conspicuously in every
12 establishment that sells liquor.

13 **Sec. 33.** RCW 46.55.113 and 1987 c 311 s 10 are each amended to
14 read as follows:

15 Whenever the driver of a vehicle is arrested for a violation of RCW
16 46.61.502 or 46.61.504, the arresting officer may take custody of the
17 vehicle and provide for its prompt removal to a place of safety. In
18 addition, a police officer may take custody of a vehicle and provide
19 for its prompt removal to a place of safety under any of the following
20 circumstances:

21 (1) Whenever a police officer finds a vehicle standing upon the
22 roadway in violation of any of the provisions of RCW 46.61.560, the
23 officer may provide for the removal of the vehicle or require the
24 driver or other person in charge of the vehicle to move the vehicle to
25 a position off the roadway;

26 (2) Whenever a police officer finds a vehicle unattended upon a
27 highway where the vehicle constitutes an obstruction to traffic or
28 jeopardizes public safety;

29 (3) Whenever a police officer finds an unattended vehicle at the
30 scene of an accident or when the driver of a vehicle involved in an
31 accident is physically or mentally incapable(~~(, or too intoxicated, to~~
32 ~~decide)) of deciding upon steps to be taken to protect his or her
33 property;~~

34 (4) Whenever the driver of a vehicle is arrested and taken into
35 custody by a police officer(~~(, and the driver, because of intoxication~~
36 ~~or otherwise, is mentally incapable of deciding upon steps to be taken~~
37 ~~to safeguard his or her property)));~~

1 (5) Whenever a police officer discovers a vehicle that the officer
2 determines to be a stolen vehicle;

3 (6) Whenever a vehicle without a special license plate, card, or
4 decal indicating that the vehicle is being used to transport a disabled
5 person under RCW 46.16.381 is parked in a stall or space clearly and
6 conspicuously marked under RCW 46.61.581 which space is provided on
7 private property without charge or on public property.

8 Nothing in this section may derogate from the powers of police
9 officers under the common law. For the purposes of this section, a
10 place of safety may include the business location of a registered tow
11 truck operator.

12 NEW SECTION. **Sec. 34.** A new section is added to chapter 46.61 RCW
13 to read as follows:

14 The state of Washington hereby fully occupies and preempts the
15 entire field of regulating driving or being in physical control of a
16 vehicle while under the influence of intoxicating liquor or any drug
17 within the boundaries of the state. No jurisdiction may enact a law or
18 ordinance that is different from, inconsistent with, more restrictive
19 than, or less restrictive than state law in this field, and any such
20 law or ordinance in existence on the effective date of this section is
21 preempted and repealed, regardless of the nature of the code, charter,
22 or home rule status of the town, city, county, or other jurisdiction
23 that enacted the law or ordinance.

24 **PART XI - TECHNICAL**

25 **Sec. 35.** RCW 46.63.020 and 1993 c 501 s 8 are each amended to read
26 as follows:

27 Failure to perform any act required or the performance of any act
28 prohibited by this title or an equivalent administrative regulation or
29 local law, ordinance, regulation, or resolution relating to traffic
30 including parking, standing, stopping, and pedestrian offenses, is
31 designated as a traffic infraction and may not be classified as a
32 criminal offense, except for an offense contained in the following
33 provisions of this title or a violation of an equivalent administrative
34 regulation or local law, ordinance, regulation, or resolution:

1 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
2 vehicle while under the influence of intoxicating liquor or a
3 controlled substance;

4 (2) RCW 46.09.130 relating to operation of nonhighway vehicles;

5 (3) RCW 46.10.090(2) relating to the operation of a snowmobile
6 while under the influence of intoxicating liquor or narcotics or habit-
7 forming drugs or in a manner endangering the person of another;

8 (4) RCW 46.10.130 relating to the operation of snowmobiles;

9 (5) Chapter 46.12 RCW relating to certificates of ownership and
10 registration;

11 (6) RCW 46.16.010 relating to initial registration of motor
12 vehicles;

13 (7) RCW 46.16.011 relating to permitting unauthorized persons to
14 drive;

15 (8) RCW 46.16.160 relating to vehicle trip permits;

16 (9) RCW 46.16.381 (6) or (~~(+8)~~) (9) relating to unauthorized use
17 or acquisition of a special placard or license plate for disabled
18 persons' parking;

19 (10) RCW 46.20.021 relating to driving without a valid driver's
20 license;

21 (11) RCW 46.20.308 relating to refusal to submit to a breath or
22 blood alcohol test;

23 (12) RCW 46.20.336 relating to the unlawful possession and use of
24 a driver's license;

25 (~~(+12)~~) (13) RCW 46.20.342 relating to driving with a suspended or
26 revoked license or status;

27 (~~(+13)~~) (14) RCW 46.20.410 relating to the violation of
28 restrictions of an occupational driver's license;

29 (~~(+14)~~) (15) RCW 46.20.420 relating to the operation of a motor
30 vehicle with a suspended or revoked license;

31 (~~(+15)~~) (16) RCW 46.20.750 relating to assisting another person to
32 start a vehicle equipped with an ignition interlock device;

33 (~~(+16)~~) (17) RCW 46.25.170 relating to commercial driver's
34 licenses;

35 (~~(+17)~~) (18) Chapter 46.29 RCW relating to financial
36 responsibility;

37 (~~(+18)~~) (19) RCW 46.30.040 relating to providing false evidence of
38 financial responsibility;

1 ~~((19))~~ (20) RCW 46.37.435 relating to wrongful installation of
2 sunscreening material;
3 ~~((20))~~ (21) RCW 46.44.180 relating to operation of mobile home
4 pilot vehicles;
5 ~~((21))~~ (22) RCW 46.48.175 relating to the transportation of
6 dangerous articles;
7 ~~((22))~~ (23) RCW 46.52.010 relating to duty on striking an
8 unattended car or other property;
9 ~~((23))~~ (24) RCW 46.52.020 relating to duty in case of injury to
10 or death of a person or damage to an attended vehicle;
11 ~~((24))~~ (25) RCW 46.52.090 relating to reports by repairmen,
12 storagemen, and appraisers;
13 ~~((25))~~ (26) RCW 46.52.100 relating to driving under the influence
14 of liquor or drugs;
15 ~~((26))~~ (27) RCW 46.52.130 relating to confidentiality of the
16 driving record to be furnished to an insurance company, an employer,
17 and an alcohol/drug assessment or treatment agency;
18 ~~((27))~~ (28) RCW 46.55.020 relating to engaging in the activities
19 of a registered tow truck operator without a registration certificate;
20 ~~((28))~~ (29) RCW 46.55.035 relating to prohibited practices by tow
21 truck operators;
22 ~~((29))~~ (30) RCW 46.61.015 relating to obedience to police
23 officers, flagmen, or fire fighters;
24 ~~((30))~~ (31) RCW 46.61.020 relating to refusal to give information
25 to or cooperate with an officer;
26 ~~((31))~~ (32) RCW 46.61.022 relating to failure to stop and give
27 identification to an officer;
28 ~~((32))~~ (33) RCW 46.61.024 relating to attempting to elude
29 pursuing police vehicles;
30 ~~((33))~~ (34) RCW 46.61.500 relating to reckless driving;
31 ~~((34))~~ (35) RCW 46.61.502 and 46.61.504 and sections 4, 5, and 6
32 of this act relating to persons under the influence of intoxicating
33 liquor or drugs;
34 ~~((35))~~ (36) RCW 46.61.520 relating to vehicular homicide by motor
35 vehicle;
36 ~~((36))~~ (37) RCW 46.61.522 relating to vehicular assault;
37 ~~((37))~~ (38) RCW 46.61.525 relating to negligent driving;
38 ~~((38))~~ (39) RCW 46.61.530 relating to racing of vehicles on
39 highways;

1 (~~(39)~~) (40) RCW 46.61.685 relating to leaving children in an
2 unattended vehicle with the motor running;
3 (~~(40)~~) (41) RCW 46.64.010 relating to unlawful cancellation of or
4 attempt to cancel a traffic citation;
5 (~~(41)~~) (42) RCW 46.64.048 relating to attempting, aiding,
6 abetting, coercing, and committing crimes;
7 (~~(42)~~) (43) Chapter 46.65 RCW relating to habitual traffic
8 offenders;
9 (~~(43)~~) (44) Chapter 46.70 RCW relating to unfair motor vehicle
10 business practices, except where that chapter provides for the
11 assessment of monetary penalties of a civil nature;
12 (~~(44)~~) (45) Chapter 46.72 RCW relating to the transportation of
13 passengers in for hire vehicles;
14 (~~(45)~~) (46) Chapter 46.80 RCW relating to motor vehicle wreckers;
15 (~~(46)~~) (47) Chapter 46.82 RCW relating to driver's training
16 schools;
17 (~~(47)~~) (48) RCW 46.87.260 relating to alteration or forgery of a
18 cab card, letter of authority, or other temporary authority issued
19 under chapter 46.87 RCW;
20 (~~(48)~~) (49) RCW 46.87.290 relating to operation of an
21 unregistered or unlicensed vehicle under chapter 46.87 RCW.

22 **Sec. 36.** RCW 3.62.090 and 1986 c 98 s 4 are each amended to read
23 as follows:

24 (1) There shall be assessed and collected in addition to any fines,
25 forfeitures, or penalties assessed, other than for parking infractions,
26 by all courts organized under Title 3 or 35 RCW a public safety and
27 education assessment equal to sixty percent of such fines, forfeitures,
28 or penalties, which shall be remitted as provided in chapters 3.46,
29 3.50, 3.62, and 35.20 RCW. The assessment required by this section
30 shall not be suspended or waived by the court.

31 (2) There shall be assessed and collected in addition to any fines,
32 forfeitures, or penalties assessed, other than for parking infractions
33 and for fines levied under (~~(RCW 46.61.515)~~) sections 4, 5, and 6 of
34 this act, and in addition to the public safety and education assessment
35 required under subsection (1) of this section, by all courts organized
36 under Title 3 or 35 RCW, an additional public safety and education
37 assessment equal to fifty percent of the public safety and education
38 assessment required under subsection (1) of this section, which shall

1 be remitted to the state treasurer and deposited as provided in RCW
2 43.08.250. The additional assessment required by this subsection shall
3 not be suspended or waived by the court.

4 **Sec. 37.** RCW 10.05.120 and 1985 c 352 s 15 are each amended to
5 read as follows:

6 Upon proof of successful completion of the two-year treatment
7 program, the court shall dismiss the charges pending against the
8 petitioner.

9 Five years from the date of the court's approval of a deferred
10 prosecution program for an individual petitioner, those entries that
11 remain in the department of licensing records relating to such
12 petitioner shall be removed. A deferred prosecution may be considered
13 for enhancement purposes when imposing mandatory penalties and
14 suspensions under ((RCW 46.61.515)) sections 4, 5, and 6 of this act
15 for subsequent offenses within a five-year period.

16 **Sec. 38.** RCW 35.21.165 and 1983 c 165 s 40 are each amended to
17 read as follows:

18 Except as limited by the maximum penalties authorized by law, no
19 city or town may establish a penalty for an act that constitutes the
20 crime of driving while under the influence of intoxicating liquor or
21 any drug, as provided in RCW 46.61.502, or the crime of being in actual
22 physical control of a motor vehicle while under the influence of
23 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is
24 less than the penalties prescribed for those crimes in ((RCW
25 46.61.515)) sections 4, 5, and 6 of this act.

26 **Sec. 39.** RCW 36.32.127 and 1983 c 165 s 41 are each amended to
27 read as follows:

28 No county may establish a penalty for an act that constitutes the
29 crime of driving while under the influence of intoxicating liquor or
30 any drug, as provided for in RCW 46.61.502, or the crime of being in
31 actual physical control of a motor vehicle while under the influence of
32 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is
33 less than the penalties prescribed for those crimes in ((RCW
34 46.61.515)) sections 4, 5, and 6 of this act.

1 **Sec. 40.** RCW 46.04.480 and 1988 c 148 s 8 are each amended to read
2 as follows:

3 "Revoke," in all its forms, means the invalidation for a period of
4 one calendar year and thereafter until reissue: PROVIDED, That under
5 the provisions of RCW 46.20.285, 46.20.311, 46.20.265, (~~or 46.61.515~~)
6 section 4, 5, or 6 of this act, and chapter 46.65 RCW the invalidation
7 may last for a period other than one calendar year.

8 **Sec. 41.** RCW 46.61.5151 and 1983 c 165 s 33 are each amended to
9 read as follows:

10 A sentencing court may allow persons convicted of violating RCW
11 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in
12 (~~RCW 46.61.515 (1) or (2)~~) section 4, 5, or 6 of this act in
13 nonconsecutive or intermittent time periods. However, (~~the first~~
14 ~~twenty-four hours of any sentence under RCW 46.61.515(1) and the first~~
15 ~~forty-eight hours of any sentence under RCW 46.61.515(2)~~) any
16 mandatory minimum sentence under section 4, 5, or 6 of this act shall
17 be served consecutively unless suspended or deferred as otherwise
18 provided by law.

19 **Sec. 42.** RCW 46.61.5152 and 1992 c 64 s 1 are each amended to read
20 as follows:

21 In addition to penalties that may be imposed under (~~RCW~~
22 ~~46.61.515~~) section 4, 5, or 6 of this act, the court may require a
23 person who is convicted of a violation of RCW 46.61.502 or 46.61.504 or
24 who enters a deferred prosecution program under RCW 10.05.020 based on
25 a violation of RCW 46.61.502 or 46.61.504, to attend an educational
26 program focusing on the emotional, physical, and financial suffering of
27 victims who were injured by persons convicted of driving while under
28 the influence of intoxicants.

29 NEW SECTION. **Sec. 43.** The following acts or parts of acts are
30 each repealed:

31 (1) RCW 46.61.515 and 1993 c 501 s 7, 1993 c 239 s 1, 1985 c 352 s
32 1, 1984 c 258 s 328, 1983 c 165 s 21, 1983 c 150 s 1, 1982 1st ex.s. c
33 47 s 27, 1979 ex.s. c 176 s 6, 1977 ex.s. c 3 s 3, 1975 1st ex.s. c 287
34 s 2, 1974 ex.s. c 130 s 1, 1971 ex.s. c 284 s 1, 1967 c 32 s 68, & 1965
35 ex.s. c 155 s 62; and

36 (2) 1993 c 239 s 3 (uncodified).

1 NEW SECTION. **Sec. 44.** This act shall be known as the "1994
2 Omnibus Drunk Driving Act."

3 NEW SECTION. **Sec. 45.** Section 7 of this act shall expire June 30,
4 1995.

5 NEW SECTION. **Sec. 46.** Part headings and the table of contents as
6 used in this act do not constitute any part of the law.

7 NEW SECTION. **Sec. 47.** This act shall take effect July 1, 1994."

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