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3 By Conference Committee

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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, or a person who
9 violates RCW 46.61.502(1)(b) or (c) or 46.61.504(1)(b) or (c) and for
10 any reason other than the person's refusal to take a test offered
11 pursuant to RCW 46.20.308 the person's alcohol concentration is not
12 proved, is guilty of a gross misdemeanor and shall be punished as
13 follows:

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

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

26 (c) By suspension of the offender's license or permit to drive, or
27 suspension of any nonresident privilege to drive, for a period of
28 ninety days. The court may suspend all or part of the ninety-day
29 period of suspension upon a plea agreement executed by the defendant
30 and the prosecutor. The court shall notify the department of licensing
31 of the conviction and of any period of suspension and shall notify the
32 department of the person's completion of any period of suspension.
33 Upon receiving notification of the conviction, or if applicable, upon
34 receiving notification of the completion of any period of suspension,
35 the department shall issue the offender a probationary license in
36 accordance with section 8 of this act.

37 (2) A person whose driver's license is not in a probationary,
38 suspended, or revoked status, and who has not been convicted of a

1 violation of RCW 46.61.502 or 46.61.504 that was committed within five
2 years before the commission of the current violation, and who either:

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

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

10 (i) By imprisonment for not less than two days nor more than one
11 year. Forty-eight 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 (ii) By a fine of not less than five hundred dollars nor more than
19 five thousand dollars. Five hundred dollars of the fine may not be
20 suspended or deferred unless the court finds the offender to be
21 indigent; and

22 (iii) By suspension by the department of the offender's license or
23 permit to drive, or suspension of any nonresident privilege to drive,
24 for a period of one hundred twenty days. The court shall notify the
25 department of the conviction, and upon receiving notification of the
26 conviction the department shall suspend the offender's license and
27 shall issue the offender a probationary license in accordance with
28 section 8 of this 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 issuance of a probationary license under section 8 of
36 this act. Being on probationary status does not authorize a person to
37 drive during any period of license suspension imposed as a penalty for
38 the 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 (6)(a) In addition to any nonsuspendable and nondeferrable jail
4 sentence required by this section, whenever the court imposes less than
5 one year in jail, the court shall also suspend but shall not defer a
6 period of confinement for a period not exceeding two years. The court
7 shall impose conditions of probation that include: (i) Not driving a
8 motor vehicle within this state without a valid license to drive and
9 proof of financial responsibility for the future; (ii) not driving a
10 motor vehicle within this state while having an alcohol concentration
11 of 0.08 or more within two hours after driving; and (iii) not refusing
12 to submit to a test of his or her breath or blood to determine alcohol
13 concentration upon request of a law enforcement officer who has
14 reasonable grounds to believe the person was driving or was in actual
15 physical control of a motor vehicle within this state while under the
16 influence of intoxicating liquor. The court may impose conditions of
17 probation that include nonrepetition, alcohol or drug treatment,
18 supervised probation, or other conditions that may be appropriate. The
19 sentence may be imposed in whole or in part upon violation of a
20 condition of probation during the suspension period.

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

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

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

37 (1) A person whose driver's license is in a probationary status and
38 who violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an

1 alcohol concentration of at least 0.10 but less than 0.15 is guilty of
2 a gross misdemeanor and shall be punished as follows:

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

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

15 (c) By suspension of the offender's license or permit to drive, or
16 suspension of any nonresident privilege to drive, for a period of one
17 year. The court shall notify the department of the conviction, and
18 upon receiving notification the department shall suspend the offender's
19 license and shall issue the offender a probationary license in
20 accordance with section 8 of this act.

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

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

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

30 (i) By imprisonment for not less than ten days nor more than one
31 year. Ten consecutive days of the imprisonment may not be suspended or
32 deferred unless the court finds that the imposition of this mandatory
33 minimum sentence would pose a substantial risk to the offender's
34 physical or mental well-being. Whenever the mandatory minimum sentence
35 is suspended or deferred, the court shall state in writing the reason
36 for granting the suspension or deferral and the facts upon which the
37 suspension or deferral is based; and

38 (ii) By a fine of not less than seven hundred fifty dollars nor
39 more than five thousand dollars. Seven hundred fifty dollars of the

1 fine may not be suspended or deferred unless the court finds the
2 offender to be indigent; and

3 (iii) By revocation of the offender's license or permit to drive or
4 of any nonresident privilege to drive, for a period of four hundred
5 fifty days. The court shall notify the department of the conviction,
6 and upon receiving notification of the conviction the department shall
7 revoke the offender's license, and upon determining that the offender
8 is otherwise qualified in accordance with RCW 46.20.311, the department
9 shall issue the offender a probationary license in accordance with
10 section 8 of this act.

11 (3) 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 (4) 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 subsection (1) or (2) of this section is
18 subject to the vehicle seizure and forfeiture provisions of RCW
19 46.61.511. No offender punishable under this section is eligible for
20 an occupational license under RCW 46.20.391.

21 (5)(a) In addition to any nonsuspendable and nondeferrable jail
22 sentence required by this section, whenever the court imposes less than
23 one year in jail, the court shall also suspend but shall not defer a
24 period of confinement for a period not exceeding two years. The court
25 shall impose conditions of probation that include: (i) Not driving a
26 motor vehicle within this state without a valid license to drive and
27 proof of financial responsibility for the future; (ii) not driving a
28 motor vehicle within this state while having an alcohol concentration
29 of 0.08 or more within two hours after driving; and (iii) not refusing
30 to submit to a test of his or her breath or blood to determine alcohol
31 concentration upon request of a law enforcement officer who has
32 reasonable grounds to believe the person was driving or was in actual
33 physical control of a motor vehicle within this state while under the
34 influence of intoxicating liquor. The court may impose conditions of
35 probation that include nonrepetition, alcohol or drug treatment,
36 supervised probation, or other conditions that may be appropriate. The
37 sentence may be imposed in whole or in part upon violation of a
38 condition of probation during the suspension period.

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

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

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

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

23 (a) By imprisonment for not less than ninety days nor more than one
24 year. Ninety consecutive days of the imprisonment may not be suspended
25 or deferred unless the court finds that the imposition of this
26 mandatory minimum sentence would pose a substantial risk to the
27 offender's physical or mental well-being. Whenever the mandatory
28 minimum sentence is suspended or deferred, the court shall state in
29 writing the reason for granting the suspension or deferral and the
30 facts upon which the suspension or deferral is based; and

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

35 (c) By revocation by the department of licensing of the offender's
36 license or permit to drive or of any nonresident privilege to drive,
37 for a period of two years. The court shall notify the department of
38 the conviction, and upon receiving notification of the conviction the

1 department shall revoke the offender's license. Following the
2 revocation and upon determining that the offender is otherwise
3 qualified in accordance with RCW 46.20.311, the department shall issue
4 the offender a probationary license in accordance with section 8 of
5 this act.

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

10 (3) An offender punishable under this section is subject to the
11 alcohol assessment and treatment provisions of section 9 of this act.
12 An offender punishable under this section is subject to the vehicle
13 seizure and forfeiture provisions of RCW 46.61.511. No offender
14 punishable under this section is eligible for an occupational license
15 under RCW 46.20.391.

16 (4)(a) In addition to any nonsuspendable and nondeferrable jail
17 sentence required by this section, whenever the court imposes less than
18 one year in jail, the court shall also suspend but shall not defer a
19 period of confinement for a period not exceeding two years. The court
20 shall impose conditions of probation that include: (i) Not driving a
21 motor vehicle within this state without a valid license to drive and
22 proof of financial responsibility for the future; (ii) not driving a
23 motor vehicle within this state while having an alcohol concentration
24 of 0.08 or more within two hours after driving; and (iii) not refusing
25 to submit to a test of his or her breath or blood to determine alcohol
26 concentration upon request of a law enforcement officer who has
27 reasonable grounds to believe the person was driving or was in actual
28 physical control of a motor vehicle within this state while under the
29 influence of intoxicating liquor. The court may impose conditions of
30 probation that include nonrepetition, alcohol or drug treatment,
31 supervised probation, or other conditions that may be appropriate. The
32 sentence may be imposed in whole or in part upon violation of a
33 condition of probation during the suspension period.

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

38 (c) For each incident involving a violation of a mandatory
39 condition of probation imposed under this subsection, the license,

1 permit, or privilege to drive of the person shall be suspended by the
2 court for thirty days or, if such license, permit, or privilege to
3 drive already is suspended, revoked, or denied at the time the finding
4 of probation violation is made, the suspension, revocation, or denial
5 then in effect shall be extended by thirty days. The court shall
6 notify the department of any suspension, revocation, or denial or any
7 extension of a suspension, revocation, or denial imposed under this
8 subsection.

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

11 (1)(a) In addition to penalties set forth in sections 4 through 6
12 of this act, a one hundred twenty-five dollar fee shall be assessed to
13 a person who is either convicted, sentenced to a lesser charge, or
14 given deferred prosecution, as a result of an arrest for violating RCW
15 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the
16 purpose of funding the Washington state toxicology laboratory and the
17 Washington state patrol breath test program.

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

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

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

30 (a) Forty percent shall be subject to distribution under RCW
31 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

32 (b) If the case involves a blood test by the state toxicology
33 laboratory, the remainder of the fee shall be forwarded to the state
34 treasurer for deposit in the death investigations account to be used
35 solely for funding the state toxicology laboratory blood testing
36 program.

37 (c) Otherwise, the remainder of the fee shall be forwarded to the
38 state treasurer for deposit in the state patrol highway account to be

1 used solely for funding the Washington state patrol breath test
2 program.

3

PART II - PROBATIONARY LICENSES

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

6 (1) Upon notification of a conviction under RCW 46.61.502 or
7 46.61.504 for which the issuance of a probationary driver's license is
8 required, or upon receipt of an abstract indicating a deferred
9 prosecution has been granted under RCW 10.05.060, the department of
10 licensing shall order the person to surrender his or her license. The
11 department shall revoke the license of any person who fails to
12 surrender it as required by this section.

13 (2) Upon receipt of the surrendered license, and following the
14 expiration of any period of license suspension or revocation, or
15 following receipt of a sworn statement under section 12 of this act
16 that requires issuance of a probationary license, the department shall
17 issue the person a probationary license if otherwise qualified. The
18 probationary license shall be renewed on the same cycle as the person's
19 regular license would have been renewed until five years after the date
20 of its issuance.

21 (3) For each issue or reissue of a license under this section, the
22 department may charge the fee authorized under RCW 46.20.311 for the
23 reissuance of a license following a revocation for a violation of RCW
24 46.61.502 or 46.61.504.

25 (4) A probationary license shall enable the department and law
26 enforcement personnel to determine that the person is on probationary
27 status, including the period of that status, for a violation of RCW
28 46.61.502 or 46.61.504 or section 12 of this act. That fact that a
29 person has been issued a probationary license shall not be a part of
30 the person's record that is available to insurance companies.

31

PART III - ASSESSMENT AND TREATMENT

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

34 (1) A person subject to alcohol assessment and treatment under
35 section 4, 5, or 6 of this act shall be required by the court to

1 complete a course in an alcohol information school approved by the
2 department of social and health services or to complete more intensive
3 treatment in a program approved by the department of social and health
4 services, as determined by the court. The court shall notify the
5 department of licensing whenever it orders a person to complete a
6 course or treatment program under this section.

7 (2) A diagnostic evaluation and treatment recommendation shall be
8 prepared under the direction of the court by an alcoholism agency
9 approved by the department of social and health services or a qualified
10 probation department approved by the department of social and health
11 services. A copy of the report shall be forwarded to the department of
12 licensing. Based on the diagnostic evaluation, the court shall
13 determine whether the person shall be required to complete a course in
14 an alcohol information school approved by the department of social and
15 health services or more intensive treatment in a program approved by
16 the department of social and health services.

17 (3) Standards for approval for alcohol treatment programs shall be
18 prescribed by the department of social and health services. The
19 department of social and health services shall periodically review the
20 costs of alcohol information schools and treatment programs.

21 (4) Any agency that provides treatment ordered under section 4, 5,
22 or 6 of this act, shall immediately report to the appropriate probation
23 department where applicable, otherwise to the court, and to the
24 department of licensing any noncompliance by a person with the
25 conditions of his or her ordered treatment. The court shall notify the
26 department of licensing and the department of social and health
27 services of any failure by an agency to so report noncompliance. Any
28 agency with knowledge of noncompliance that fails to so report shall be
29 fined two hundred fifty dollars by the department of social and health
30 services. Upon three such failures by an agency within one year, the
31 department of social and health services shall revoke the agency's
32 approval under this section.

33 (5) The department of licensing and the department of social and
34 health services may adopt such rules as are necessary to carry out this
35 section.

36 **PART IV - ADMINISTRATIVE REVOCATION**

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

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

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

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

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

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

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

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

31 (c) Confiscate the person's Washington state license or permit to
32 drive, if any, and issue a temporary license to replace any confiscated
33 license or permit. The temporary license shall be valid for thirty
34 days from the date of the traffic stop or until the suspension or
35 revocation of the person's license or permit is sustained at a hearing
36 as provided by subsection (7) of this section, whichever occurs first.
37 No temporary license is valid to any greater degree than the license or
38 permit it replaces;

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

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

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

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

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

12 (6) Upon receipt of the sworn report of a law enforcement officer
13 under subsection (5) of this section, the department shall suspend or
14 revoke the driver's license or driving privilege beginning thirty days
15 from the date of the traffic stop or beginning when the suspension,
16 revocation, or denial is sustained at a hearing as provided by
17 subsection (7) of this section. Within fifteen days after notice of a
18 suspension or revocation has been given, the person may, in writing,
19 request a formal hearing. If such a request is not made within the
20 prescribed time the right to a hearing is waived. Upon receipt of such
21 request, the department shall afford the person an opportunity for a
22 hearing as provided in RCW 46.20.329 and 46.20.332. The hearing shall
23 be conducted in the county of the arrest. For the purposes of this
24 section, the hearing shall cover the issues of whether a law
25 enforcement officer had reasonable grounds to believe the person had
26 been driving or was in actual physical control of a motor vehicle
27 within this state while having alcohol in his or her system, whether
28 the person refused to submit to the test or tests upon request of the
29 officer after having been informed that the refusal would result in the
30 revocation of the person's driver's license or driving privilege, and,
31 if the test or tests of the person's breath or blood was administered,
32 whether the results indicated an alcohol concentration of 0.02 or more.
33 The department shall order that the suspension or revocation of the
34 person's driver's license or driving privilege either be rescinded or
35 sustained. Any decision by the department suspending or revoking a
36 person's driver's license or driving privilege is stayed and does not
37 take effect while a formal hearing is pending under this section or
38 during the pendency of a subsequent appeal to superior court so long as
39 there is no conviction for a moving violation or no finding that the

1 person has committed a traffic infraction that is a moving violation
2 during the pendency of the hearing and appeal. If the suspension or
3 revocation of the person's driver's license or driving privilege is
4 sustained after the hearing, the person may file a petition in the
5 superior court of the county of arrest to review the final order of
6 suspension or revocation by the department in the manner provided in
7 RCW 46.20.334.

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

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

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

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

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

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

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

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

24 NEW SECTION. Sec. 11. A new section is added to chapter 46.61 RCW
25 to read as follows:

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

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

34 (3) Any person requested to identify himself or herself to a law
35 enforcement officer pursuant to an investigation under section 10 of
36 this act has a duty to identify himself or herself, give his or her
37 current address, and sign an acknowledgement of receipt of the warning

1 required by section 10(4) of this act and receipt of the notice and
2 temporary license issued under section 10(5) of this act.

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

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

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

10 (a) Serve the person notice in writing on behalf of the department
11 of licensing of its intention to suspend, revoke, or deny the person's
12 license, permit, or privilege to drive or to issue a probationary
13 license;

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

17 (c) Confiscate the person's Washington state license or permit to
18 drive, if any, and issue a temporary license to replace any confiscated
19 license or permit. The temporary license shall be valid for thirty
20 days from the date of arrest or until the suspension or revocation of
21 the person's license or permit, or the issuance of a probationary
22 license, is sustained at a hearing pursuant to subsection (5) of this
23 section, whichever occurs first. If the person has not within the
24 previous five years committed an offense for which he or she was
25 granted a deferred prosecution under chapter 10.05 RCW, and within
26 thirty days of the arrest the person petitions a court for a deferred
27 prosecution on criminal charges arising out of the arrest, the court
28 shall direct the department to extend the period of the temporary
29 license by at least an additional thirty days but not more than an
30 additional sixty days. If a deferred prosecution treatment plan is not
31 recommended in the report made under RCW 10.05.050, or if treatment is
32 rejected by the court, or if the person declines to accept an offered
33 treatment plan, then the court shall immediately direct the department
34 to cancel any period of extension of the temporary license. No
35 temporary license is valid to any greater degree than the license or
36 permit it replaces;

1 (d) Notify the department of the arrest, and transmit to the
2 department any confiscated license or permit and a sworn report
3 stating:

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

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

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

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

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

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

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

26 (4) A person receiving notification under subsection (2) of this
27 section may, within five days after his or her arrest, request a
28 hearing before the department under subsection (5) of this section.
29 The request shall be in writing. The person shall pay a fee of one
30 hundred dollars as part of the request. If the request is mailed, it
31 must be postmarked within five days after the arrest.

32 (5) Upon timely receipt of a request and a one hundred dollar fee
33 under subsection (4) of this section, the department shall afford the
34 person an opportunity for a hearing. Except as otherwise provided in
35 this section, the hearing is subject to and shall be scheduled and
36 conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing
37 shall be conducted in the county of arrest, except that all or part of
38 the hearing may, at the discretion of the department, be conducted by
39 telephone or other electronic means. The hearing shall be held within

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

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

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

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

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

22 (7) If the suspension, revocation, denial, or issuance is sustained
23 after such a hearing, the person whose license, privilege, or permit is
24 suspended, revoked, or denied, or who has been issued a probationary
25 license, has the right to file a petition in the superior court of the
26 county of arrest in the same manner as an appeal from a decision of a
27 court of limited jurisdiction. The appellant must pay the costs
28 associated with obtaining the record of the hearing before the hearing
29 officer. A court may stay the suspension, revocation, or denial if it
30 finds that the appellant is likely to prevail in the appeal and that
31 without a stay the appellant will suffer irreparable injury. If the
32 court stays the suspension, revocation, or denial, it may impose
33 conditions on such stay.

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

PART V - IMPLIED CONSENT

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

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

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. However, in those instances where: (a) The person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample; or (b) as a result of a traffic accident the person is being treated for a medical condition in a hospital, clinic, doctor's office, or other similar facility in which a breath testing instrument is not present, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(4). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver that (a) his or her privilege to drive will be revoked or denied if he or she refuses to submit to the test, and (b) that his or her refusal to take the test may be used in a criminal trial.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which another person has been injured and there is a reasonable likelihood that such other person may die as a

1 result of injuries sustained in the accident, a breath or blood test
2 may be administered without the consent of the individual so arrested.

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

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

14 (6) The department of licensing, upon the receipt of a sworn report
15 of the law enforcement officer that the officer had reasonable grounds
16 to believe the arrested person had been driving or was in actual
17 physical control of a motor vehicle within this state while under the
18 influence of intoxicating liquor and that the person had refused to
19 submit to the test or tests upon the request of the law enforcement
20 officer after being informed that refusal would result in the
21 revocation of the person's privilege to drive, shall revoke the
22 person's license or permit to drive or any nonresident operating
23 privilege.

24 (7) Upon revoking the license or permit to drive or the nonresident
25 operating privilege of any person, the department shall immediately
26 notify the person involved in writing by personal service or by
27 certified mail of its decision and the grounds therefor, and of the
28 person's right to a hearing, specifying the steps he or she must take
29 to obtain a hearing. Within fifteen days after the notice has been
30 given, the person may, in writing, request a formal hearing. The
31 person shall pay a fee of one hundred dollars as part of the request.
32 Upon receipt of such request and such fee, the department shall afford
33 the person an opportunity for a hearing as provided in RCW 46.20.329
34 and 46.20.332. The hearing shall be conducted in the county of the
35 arrest. For the purposes of this section, the scope of such hearing
36 shall cover the issues of whether a law enforcement officer had
37 reasonable grounds to believe the person had been driving or was in
38 actual physical control of a motor vehicle within this state while
39 under the influence of intoxicating liquor, whether the person was

1 placed under arrest, and whether the person refused to submit to the
2 test or tests upon request of the officer after having been informed
3 that such refusal would result in the revocation of the person's
4 privilege to drive. The department shall order that the revocation
5 either be rescinded or sustained. Any decision by the department
6 revoking a person's driving privilege shall be stayed and shall not
7 take effect while a formal hearing is pending as provided in this
8 section or during the pendency of a subsequent appeal to superior court
9 so long as there is no conviction for a moving violation or no finding
10 that the person has committed a traffic infraction that is a moving
11 violation during pendency of the hearing and appeal.

12 (8) If the revocation is sustained after such a hearing, the person
13 whose license, privilege, or permit is revoked has the right to file a
14 petition in the superior court of the county of arrest to review the
15 final order of revocation by the department in the manner provided in
16 RCW 46.20.334.

17 (9) When it has been finally determined under the procedures of
18 this section that a nonresident's privilege to operate a motor vehicle
19 in this state has been revoked, the department shall give information
20 in writing of the action taken to the motor vehicle administrator of
21 the state of the person's residence and of any state in which he or she
22 has a license.

23 **PART VI - DRIVING RECORDS**

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

26 (1) Except as provided in subsection (2) of this section, the
27 director, in his or her discretion, may destroy applications for
28 vehicle licenses, copies of vehicle licenses issued, applications for
29 drivers' licenses, copies of issued drivers' licenses, certificates of
30 title and registration or other documents, records or supporting papers
31 on file in his or her office which have been microfilmed or
32 photographed or are more than five years old. If the applications for
33 vehicle licenses are renewal applications, the director may destroy
34 such applications when the computer record thereof has been updated.

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

1 (i) Convictions or adjudications of the following offenses: RCW
2 46.61.502, 46.61.504, 46.61.520(1)(a), or 46.61.522(1)(b);
3 (ii) If the offense was originally charged as one of the offenses
4 designated in (a)(i) of this subsection, convictions or adjudications
5 of the following offenses: RCW 46.61.500 or 46.61.525, or any other
6 violation that was originally charged as one of the offenses designated
7 in (a)(i) of this subsection; or
8 (iii) Deferred prosecutions granted under RCW 10.05.120.
9 (b) For purposes of RCW 46.52.100 and 46.52.130, offenses subject
10 to this subsection shall be considered "alcohol-related" offenses.

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

13 Every district court, municipal court, and clerk of superior court
14 shall keep or cause to be kept a record of every traffic complaint,
15 traffic citation, notice of infraction, or other legal form of traffic
16 charge deposited with or presented to the court or a traffic violations
17 bureau, and shall keep a record of every official action by ~~((said))~~
18 the court or its traffic violations bureau in reference thereto,
19 including but not limited to a record of every conviction, forfeiture
20 of bail, judgment of acquittal, finding that a traffic infraction has
21 been committed, dismissal of a notice of infraction, and the amount of
22 fine, forfeiture, or penalty resulting from every ~~((said))~~ traffic
23 complaint, citation, or notice of infraction deposited with or
24 presented to the district court, municipal court, superior court, or
25 traffic violations bureau.

26 The Monday following the conviction, forfeiture of bail, or finding
27 that a traffic infraction was committed for violation of any provisions
28 of this chapter or other law regulating the operating of vehicles on
29 highways, every ~~((said))~~ magistrate of the court or clerk of the court
30 of record in which such conviction was had, bail was forfeited, or the
31 finding made shall prepare and immediately forward to the director of
32 licensing at Olympia an abstract of the record of ~~((said))~~ the court
33 covering the case, which abstract must be certified by the person so
34 required to prepare the same to be true and correct. Report need not
35 be made of any finding involving the illegal parking or standing of a
36 vehicle.

37 ~~((said))~~ The abstract must be made upon a form furnished by the
38 director and shall include the name and address of the party charged,

1 the number, if any, of the party's driver's or chauffeur's license, the
2 registration number of the vehicle involved, the nature of the offense,
3 the date of hearing, the plea, the judgment, whether the offense was an
4 alcohol-related offense as defined in RCW 46.01.260(2), whether bail
5 forfeited, whether the determination that a traffic infraction was
6 committed was contested, and the amount of the fine, forfeiture, or
7 penalty as the case may be.

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

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

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

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

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

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

29 A certified abstract of the driving record shall be furnished only
30 to the individual named in the abstract, an employer, the insurance
31 carrier that has insurance in effect covering the employer or a
32 prospective employer, the insurance carrier that has insurance in
33 effect covering the named individual, the insurance carrier to which
34 the named individual has applied, ((or)) an alcohol/drug assessment or
35 treatment agency approved by the department of social and health
36 services, to which the named individual has applied or been assigned
37 for evaluation or treatment, or city and county prosecuting attorneys.
38 City attorneys and county prosecuting attorneys may provide the driving

1 record to alcohol/drug assessment or treatment agencies approved by the
2 department of social and health services to which the named individual
3 has applied or been assigned for evaluation or treatment. The
4 director, upon proper request, shall furnish a certified abstract
5 covering the period of not more than the last three years to insurance
6 companies(~~(, and)~~). Upon proper request, the director shall furnish a
7 certified abstract covering a period of not more than the last five
8 years to state approved alcohol/drug assessment or treatment agencies,
9 except that the certified abstract shall also include records of
10 alcohol-related offenses as defined in RCW 46.01.260(2) covering a
11 period of not more than the last ten years. Upon proper request, a
12 certified abstract of the full driving record maintained by the
13 department shall be furnished to a city or county prosecuting attorney,
14 to the individual(~~(s and)~~) named in the abstract or to an employer(~~(s)~~)
15 or prospective employer(~~(s)~~) of the named individual. The abstract,
16 whenever possible, shall include an enumeration of motor vehicle
17 accidents in which the person was driving; the total number of vehicles
18 involved; whether the vehicles were legally parked or moving; whether
19 the vehicles were occupied at the time of the accident; any reported
20 convictions, forfeitures of bail, or findings that an infraction was
21 committed based upon a violation of any motor vehicle law; and the
22 status of the person's driving privilege in this state. The
23 enumeration shall include any reports of failure to appear in response
24 to a traffic citation or failure to respond to a notice of infraction
25 served upon the named individual by an arresting officer. Certified
26 abstracts furnished to prosecutors and alcohol/drug assessment or
27 treatment agencies shall also indicate whether a recorded violation is
28 an alcohol-related offense as defined in RCW 46.01.260(2) that was
29 originally charged as one of the alcohol-related offenses designated in
30 RCW 46.01.260(2)(a)(i).

31 The abstract provided to the insurance company shall exclude any
32 information, except that related to the commission of misdemeanors or
33 felonies by the individual, pertaining to law enforcement officers or
34 fire fighters as defined in RCW 41.26.030, or any officer of the
35 Washington state patrol, while driving official vehicles in the
36 performance of occupational duty. The abstract provided to the
37 insurance company shall exclude any deferred prosecution under RCW
38 10.05.060, except that if a person is removed from a deferred

1 prosecution under RCW 10.05.090, the abstract shall show the deferred
2 prosecution as well as the removal.

3 The director shall collect for each abstract the sum of four
4 dollars and fifty cents which shall be deposited in the highway safety
5 fund.

6 Any insurance company or its agent receiving the certified abstract
7 shall use it exclusively for its own underwriting purposes and shall
8 not divulge any of the information contained in it to a third party.
9 No policy of insurance may be canceled, nonrenewed, denied, or have the
10 rate increased on the basis of such information unless the policyholder
11 was determined to be at fault. No insurance company or its agent for
12 underwriting purposes relating to the operation of commercial motor
13 vehicles may use any information contained in the abstract relative to
14 any person's operation of motor vehicles while not engaged in such
15 employment, nor may any insurance company or its agent for underwriting
16 purposes relating to the operation of noncommercial motor vehicles use
17 any information contained in the abstract relative to any person's
18 operation of commercial motor vehicles.

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

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

30 Any violation of this section is a gross misdemeanor.

31 **PART VII - DEFERRED PROSECUTION**

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

34 If the report recommends treatment, the court shall examine the
35 treatment plan. If it approves the plan and the petitioner agrees to
36 comply with its terms and conditions and agrees to pay the cost
37 thereof, if able to do so, or arrange for the treatment, an entry shall

1 be made upon the person's court docket showing that the person has been
2 accepted for deferred prosecution. A copy of the treatment plan shall
3 be attached to the docket, which shall then be removed from the regular
4 court dockets and filed in a special court deferred prosecution file.
5 If the charge be one that an abstract of the docket showing the charge,
6 the date of the violation for which the charge was made, and the date
7 of petitioner's acceptance is required to be sent to the department of
8 licensing, an abstract shall be sent, and the department of licensing
9 shall make an entry of the charge and of the petitioner's acceptance
10 for deferred prosecution on the department's driving record of the
11 petitioner. The entry is not a conviction for purposes of Title 46
12 RCW. Upon receipt of the abstract of the docket, the department shall
13 issue the petitioner a probationary license in accordance with section
14 8 of this act, and the petitioner's driver's license shall be on
15 probationary status for five years from the date of the violation that
16 gave rise to the charge. The department shall maintain the record for
17 ((five)) ten years from date of entry of the order granting deferred
18 prosecution.

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

21 If a petitioner, who has been accepted for a deferred prosecution,
22 fails or neglects to carry out and fulfill any term or condition of the
23 petitioner's treatment plan, the facility, center, institution, or
24 agency administering the treatment shall immediately report such breach
25 to the court, the prosecutor, and the petitioner or petitioner's
26 attorney of record, together with its recommendation. The court upon
27 receiving such a report shall hold a hearing to determine whether the
28 petitioner should be removed from the deferred prosecution program. At
29 the hearing, evidence shall be taken of the petitioner's alleged
30 failure to comply with the treatment plan and the petitioner shall have
31 the right to present evidence on his or her own behalf. The court
32 shall either order that the petitioner continue on the treatment plan
33 or be removed from deferred prosecution. If removed from deferred
34 prosecution, the court shall enter judgment pursuant to RCW 10.05.020
35 and, if the charge for which the deferred prosecution was granted was
36 a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the
37 department of licensing of the removal and entry of judgment.

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

3 Upon proof of successful completion of the two-year treatment
4 program, the court shall dismiss the charges pending against the
5 petitioner.

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

13 **PART VIII - VEHICULAR HOMICIDE**

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

16 TABLE 2

17 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

18	XV	Aggravated Murder 1 (RCW 10.95.020)
19	XIV	Murder 1 (RCW 9A.32.030)
20		Homicide by abuse (RCW 9A.32.055)
21	XIII	Murder 2 (RCW 9A.32.050)
22	XII	Assault 1 (RCW 9A.36.011)
23		Assault of a Child 1 (RCW 9A.36.120)
24	XI	Rape 1 (RCW 9A.44.040)
25		Rape of a Child 1 (RCW 9A.44.073)
26	X	Kidnapping 1 (RCW 9A.40.020)
27		Rape 2 (RCW 9A.44.050)
28		Rape of a Child 2 (RCW 9A.44.076)
29		Child Molestation 1 (RCW 9A.44.083)
30		Damaging building, etc., by explosion with
31		threat to human being (RCW
32		70.74.280(1))

1 Over 18 and deliver heroin or narcotic
2 from Schedule I or II to someone
3 under 18 (RCW 69.50.406)
4 Leading Organized Crime (RCW
5 9A.82.060(1)(a))

6 IX Assault of a Child 2 (RCW 9A.36.130)
7 Robbery 1 (RCW 9A.56.200)
8 Manslaughter 1 (RCW 9A.32.060)
9 Explosive devices prohibited (RCW
10 70.74.180)
11 Indecent Liberties (with forcible
12 compulsion) (RCW 9A.44.100(1)(a))
13 Endangering life and property by
14 explosives with threat to human being
15 (RCW 70.74.270)
16 Over 18 and deliver narcotic from Schedule
17 III, IV, or V or a nonnarcotic from
18 Schedule I-V to someone under 18 and
19 3 years junior (RCW 69.50.406)
20 Controlled Substance Homicide (RCW
21 69.50.415)
22 Sexual Exploitation (RCW 9.68A.040)
23 Inciting Criminal Profiteering (RCW
24 9A.82.060(1)(b))
25 Vehicular Homicide, by being under the
26 influence of intoxicating liquor or
27 any drug (RCW 46.61.520)

28 VIII Arson 1 (RCW 9A.48.020)
29 Promoting Prostitution 1 (RCW 9A.88.070)
30 Selling for profit (controlled or
31 counterfeit) any controlled substance
32 (RCW 69.50.410)
33 Manufacture, deliver, or possess with
34 intent to deliver heroin or cocaine
35 (RCW 69.50.401(a)(1)(i))
36 Manufacture, deliver, or possess with
37 intent to deliver methamphetamine
38 (RCW 69.50.401(a)(1)(ii))

1 Vehicular Homicide, (~~by being under the~~
2 ~~influence of intoxicating liquor or~~
3 ~~any drug or~~) by the operation of any
4 vehicle in a reckless manner (RCW
5 46.61.520)

6 VII Burglary 1 (RCW 9A.52.020)
7 Vehicular Homicide, by disregard for the
8 safety of others (RCW 46.61.520)
9 Introducing Contraband 1 (RCW 9A.76.140)
10 Indecent Liberties (without forcible
11 compulsion) (RCW 9A.44.100(1) (b) and
12 (c))
13 Child Molestation 2 (RCW 9A.44.086)
14 Dealing in depictions of minor engaged in
15 sexually explicit conduct (RCW
16 9.68A.050)
17 Sending, bringing into state depictions of
18 minor engaged in sexually explicit
19 conduct (RCW 9.68A.060)
20 Involving a minor in drug dealing (RCW
21 69.50.401(f))

22 VI Bribery (RCW 9A.68.010)
23 Manslaughter 2 (RCW 9A.32.070)
24 Rape of a Child 3 (RCW 9A.44.079)
25 Intimidating a Juror/Witness (RCW
26 9A.72.110, 9A.72.130)
27 Damaging building, etc., by explosion with
28 no threat to human being (RCW
29 70.74.280(2))
30 Endangering life and property by
31 explosives with no threat to human
32 being (RCW 70.74.270)
33 Incest 1 (RCW 9A.64.020(1))
34 Manufacture, deliver, or possess with
35 intent to deliver narcotics from
36 Schedule I or II (except heroin or
37 cocaine) (RCW 69.50.401(a)(1)(i))

1 Intimidating a Judge (RCW 9A.72.160)
2 Bail Jumping with Murder 1 (RCW
3 9A.76.170(2)(a))
4 V Criminal Mistreatment 1 (RCW 9A.42.020)
5 Rape 3 (RCW 9A.44.060)
6 Sexual Misconduct with a Minor 1 (RCW
7 9A.44.093)
8 Child Molestation 3 (RCW 9A.44.089)
9 Kidnapping 2 (RCW 9A.40.030)
10 Extortion 1 (RCW 9A.56.120)
11 Incest 2 (RCW 9A.64.020(2))
12 Perjury 1 (RCW 9A.72.020)
13 Extortionate Extension of Credit (RCW
14 9A.82.020)
15 Advancing money or property for
16 extortionate extension of credit (RCW
17 9A.82.030)
18 Extortionate Means to Collect Extensions
19 of Credit (RCW 9A.82.040)
20 Rendering Criminal Assistance 1 (RCW
21 9A.76.070)
22 Bail Jumping with class A Felony (RCW
23 9A.76.170(2)(b))
24 Delivery of imitation controlled substance
25 by person eighteen or over to person
26 under eighteen (RCW 69.52.030(2))
27 IV Residential Burglary (RCW 9A.52.025)
28 Theft of Livestock 1 (RCW 9A.56.080)
29 Robbery 2 (RCW 9A.56.210)
30 Assault 2 (RCW 9A.36.021)
31 Escape 1 (RCW 9A.76.110)
32 Arson 2 (RCW 9A.48.030)
33 Bribing a Witness/Bribe Received by
34 Witness (RCW 9A.72.090, 9A.72.100)
35 Malicious Harassment (RCW 9A.36.080)
36 Threats to Bomb (RCW 9.61.160)
37 Willful Failure to Return from Furlough
38 (RCW 72.66.060)

1 Hit and Run « Injury Accident (RCW
2 46.52.020(4))
3 Vehicular Assault (RCW 46.61.522)
4 Manufacture, deliver, or possess with
5 intent to deliver narcotics from
6 Schedule III, IV, or V or
7 nonnarcotics from Schedule I-V
8 (except marijuana or
9 methamphetamines) (RCW
10 69.50.401(a)(1)(ii) through (iv))
11 Influencing Outcome of Sporting Event (RCW
12 9A.82.070)
13 Use of Proceeds of Criminal Profiteering
14 (RCW 9A.82.080 (1) and (2))
15 Knowingly Trafficking in Stolen Property
16 (RCW 9A.82.050(2))

17 III Criminal mistreatment 2 (RCW 9A.42.030)
18 Extortion 2 (RCW 9A.56.130)
19 Unlawful Imprisonment (RCW 9A.40.040)
20 Assault 3 (RCW 9A.36.031)
21 Assault of a Child 3 (RCW 9A.36.140)
22 Custodial Assault (RCW 9A.36.100)
23 Unlawful possession of firearm or pistol by felon (RCW
24 9.41.040)
25 Harassment (RCW 9A.46.020)
26 Promoting Prostitution 2 (RCW 9A.88.080)
27 Willful Failure to Return from Work
28 Release (RCW 72.65.070)
29 Burglary 2 (RCW 9A.52.030)
30 Introducing Contraband 2 (RCW 9A.76.150)
31 Communication with a Minor for Immoral
32 Purposes (RCW 9.68A.090)
33 Patronizing a Juvenile Prostitute (RCW
34 9.68A.100)
35 Escape 2 (RCW 9A.76.120)
36 Perjury 2 (RCW 9A.72.030)
37 Bail Jumping with class B or C Felony (RCW
38 9A.76.170(2)(c))

1 Intimidating a Public Servant (RCW
2 9A.76.180)
3 Tampering with a Witness (RCW 9A.72.120)
4 Manufacture, deliver, or possess with
5 intent to deliver marijuana (RCW
6 69.50.401(a)(1)(ii))
7 Delivery of a material in lieu of a
8 controlled substance (RCW
9 69.50.401(c))
10 Manufacture, distribute, or possess with
11 intent to distribute an imitation
12 controlled substance (RCW
13 69.52.030(1))
14 Recklessly Trafficking in Stolen Property
15 (RCW 9A.82.050(1))
16 Theft of livestock 2 (RCW 9A.56.080)
17 Securities Act violation (RCW 21.20.400)
18 II Malicious Mischief 1 (RCW 9A.48.070)
19 Possession of Stolen Property 1 (RCW
20 9A.56.150)
21 Theft 1 (RCW 9A.56.030)
22 Possession of controlled substance that is
23 either heroin or narcotics from
24 Schedule I or II (RCW 69.50.401(d))
25 Possession of phencyclidine (PCP) (RCW
26 69.50.401(d))
27 Create, deliver, or possess a counterfeit
28 controlled substance (RCW
29 69.50.401(b))
30 Computer Trespass 1 (RCW 9A.52.110)
31 Reckless Endangerment 1 (RCW 9A.36.045)
32 Escape from Community Custody (RCW
33 72.09.310)
34 I Theft 2 (RCW 9A.56.040)
35 Possession of Stolen Property 2 (RCW
36 9A.56.160)
37 Forgery (RCW 9A.60.020)

1 Taking Motor Vehicle Without Permission
2 (RCW 9A.56.070)
3 Vehicle Prowl 1 (RCW 9A.52.095)
4 Attempting to Elude a Pursuing Police
5 Vehicle (RCW 46.61.024)
6 Malicious Mischief 2 (RCW 9A.48.080)
7 Reckless Burning 1 (RCW 9A.48.040)
8 Unlawful Issuance of Checks or Drafts (RCW
9 9A.56.060)
10 Unlawful Use of Food Stamps (RCW 9.91.140
11 (2) and (3))
12 False Verification for Welfare (RCW
13 74.08.055)
14 Forged Prescription (RCW 69.41.020)
15 Forged Prescription for a Controlled
16 Substance (RCW 69.50.403)
17 Possess Controlled Substance that is a
18 Narcotic from Schedule III, IV, or V
19 or Non-narcotic from Schedule I-V
20 (except phencyclidine) (RCW
21 69.50.401(d))

22 **PART IX - INTERLOCK**

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

25 The legislature finds and declares:

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

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

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

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

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

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

11 The court may order any person convicted of any offense involving
12 the use, consumption, or possession of alcohol while operating a motor
13 vehicle to drive only a motor vehicle equipped with a functioning
14 ignition interlock or other biological or technical device, and the
15 restriction shall be for a period of not less than six months.

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

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

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

25 For the purposes of RCW 46.20.720, 46.20.740, and 46.20.750,
26 "ignition interlock device" means breath alcohol analyzed ignition
27 equipment, certified by the state commission on equipment, designed to
28 prevent a motor vehicle from being operated by a person who has
29 consumed an alcoholic beverage, and "other biological or technical
30 device" means any device meeting the standards of the national highway
31 traffic safety administration or the state commission on equipment,
32 designed to prevent the operation of a motor vehicle by a person who is
33 impaired by alcohol or drugs. The commission shall by rule provide
34 standards for the certification, installation, repair, and removal of
35 the devices.

1 other competent evidence bearing upon the question whether the person
2 was under the influence of intoxicating liquor or any drug.

3 (3) Analysis of the person's blood or breath to be considered valid
4 under the provisions of this section or RCW 46.61.502 or 46.61.504
5 shall have been performed according to methods approved by the state
6 toxicologist and by an individual possessing a valid permit issued by
7 the state toxicologist for this purpose. The state toxicologist is
8 directed to approve satisfactory techniques or methods, to supervise
9 the examination of individuals to ascertain their qualifications and
10 competence to conduct such analyses, and to issue permits which shall
11 be subject to termination or revocation at the discretion of the state
12 toxicologist.

13 (4) When a blood test is administered under the provisions of RCW
14 46.20.308, the withdrawal of blood for the purpose of determining its
15 alcoholic content may be performed only by a physician, a registered
16 nurse, or a qualified technician. This limitation shall not apply to
17 the taking of breath specimens.

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

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

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

31 (1) The department shall not suspend a driver's license or
32 privilege to drive a motor vehicle on the public highways for a fixed
33 period of more than one year, except as specifically permitted under
34 RCW 46.20.342 or ((46.61.515)) other provision of law. Except for a
35 suspension under RCW 46.20.289 and 46.20.291(5), whenever the license
36 or driving privilege of any person is suspended by reason of a
37 conviction, a finding that a traffic infraction has been committed,
38 pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291, the

1 suspension shall remain in effect until the person gives and thereafter
2 maintains proof of financial responsibility for the future as provided
3 in chapter 46.29 RCW. The department shall not issue to the person a
4 new, duplicate, or renewal license until the person pays a reissue fee
5 of twenty dollars. If the suspension is the result of a violation of
6 RCW 46.61.502 or 46.61.504, the reissue fee shall be fifty dollars.

7 (2) Any person whose license or privilege to drive a motor vehicle
8 on the public highways has been revoked, unless the revocation was for
9 a cause which has been removed, is not entitled to have the license or
10 privilege renewed or restored until: (a) After the expiration of one
11 year from the date the license or privilege to drive was revoked; (b)
12 after the expiration of the applicable revocation period provided by
13 RCW (~~46.61.515(3) (b) or (c)~~) 46.20.308 or section 5, 6, or 12 of
14 this act; (c) after the expiration of two years for persons convicted
15 of vehicular homicide; or (d) (~~after the expiration of one year in~~
16 ~~cases of revocation for the first refusal within five years to submit~~
17 ~~to a chemical test under RCW 46.20.308~~; (e) ~~after the expiration of two~~
18 ~~years in cases of revocation for the second or subsequent refusal~~
19 ~~within five years to submit to a chemical test under RCW 46.20.308~~; or
20 ~~(f)~~) after the expiration of the applicable revocation period provided
21 by RCW 46.20.265. After the expiration of the appropriate period, the
22 person may make application for a new license as provided by law
23 together with a reissue fee in the amount of twenty dollars, but if the
24 revocation is the result of a violation of RCW 46.20.308, 46.61.502, or
25 46.61.504 or is the result of administrative action under section 12 of
26 this act, the reissue fee shall be fifty dollars. Except for a
27 revocation under RCW 46.20.265, the department shall not then issue a
28 new license unless it is satisfied after investigation of the driving
29 ability of the person that it will be safe to grant the privilege of
30 driving a motor vehicle on the public highways, and until the person
31 gives and thereafter maintains proof of financial responsibility for
32 the future as provided in chapter 46.29 RCW. For a revocation under
33 RCW 46.20.265, the department shall not issue a new license unless it
34 is satisfied after investigation of the driving ability of the person
35 that it will be safe to grant that person the privilege of driving a
36 motor vehicle on the public highways.

37 (3) Whenever the driver's license of any person is suspended
38 pursuant to Article IV of the nonresident violators compact or RCW
39 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue

1 to the person any new or renewal license until the person pays a
2 reissue fee of twenty dollars. If the suspension is the result of a
3 violation of the laws of this or any other state, province, or other
4 jurisdiction involving (a) the operation or physical control of a motor
5 vehicle upon the public highways while under the influence of
6 intoxicating liquor or drugs, or (b) the refusal to submit to a
7 chemical test of the driver's blood alcohol content, the reissue fee
8 shall be fifty dollars.

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

11 "Suspend," in all its forms and unless a different period is
12 specified, means invalidation for any period less than one calendar
13 year and thereafter until reinstatement. ((However, under RCW
14 46.61.515 the invalidation may last for more than one calendar year.))

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

17 (1) Any person licensed under this chapter who is convicted of an
18 offense relating to motor vehicles for which suspension or revocation
19 of the driver's license is mandatory, other than vehicular homicide or
20 vehicular assault, may submit to the department an application for an
21 occupational driver's license. The department, upon receipt of the
22 prescribed fee and upon determining that the petitioner is engaged in
23 an occupation or trade that makes it essential that the petitioner
24 operate a motor vehicle, may issue an occupational driver's license and
25 may set definite restrictions as provided in RCW 46.20.394. No person
26 may petition for, and the department shall not issue, an occupational
27 driver's license that is effective during the first thirty days of any
28 suspension or revocation imposed ((under RCW 46.61.515)) for a
29 violation of RCW 46.61.502 or 46.61.504. No person may petition for,
30 and the department shall not issue, an occupational driver's license if
31 the person is ineligible for such a license under section 5 or 6 of
32 this act. A person aggrieved by the decision of the department on the
33 application for an occupational driver's license may request a hearing
34 as provided by rule of the department.

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

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

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

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

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

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

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

25 (1) Except as provided in subsection (2) of this section, it is a
26 complete defense to an action for damages for personal injury or
27 wrongful death that the person injured or killed was under the
28 influence of intoxicating liquor or any drug at the time of the
29 occurrence causing the injury or death and that such condition was a
30 proximate cause of the injury or death and the trier of fact finds such
31 person to have been more than fifty percent at fault. The standard for
32 determining whether a person was under the influence of intoxicating
33 liquor or drugs shall be the same standard established for criminal
34 convictions under RCW 46.61.502, and evidence that a person was under
35 the influence of intoxicating liquor or drugs under the standard
36 established by RCW 46.61.502 shall be conclusive proof that such person
37 was under the influence of intoxicating liquor or drugs.

1 (2) In an action for damages for personal injury or wrongful death
2 that is brought against the driver of a motor vehicle who was under the
3 influence of intoxicating liquor or any drug at the time of the
4 occurrence causing the injury or death and whose condition was a
5 proximate cause of the injury or death, subsection (1) of this section
6 does not create a defense against the action notwithstanding that the
7 person injured or killed was also under the influence so long as such
8 person's condition was not a proximate cause of the occurrence causing
9 the injury or death.

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

12 **Sec. 32.** RCW 46.55.113 and 1987 c 311 s 10 are each amended to
13 read as follows:

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

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

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

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

33 (4) Whenever the driver of a vehicle is arrested and taken into
34 custody by a police officer(~~(, and the driver, because of intoxication~~
35 ~~or otherwise, is mentally incapable of deciding upon steps to be taken~~
36 ~~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 **PART XI - TECHNICAL**

13 **Sec. 33.** RCW 46.63.020 and 1993 c 501 s 8 are each amended to read
14 as follows:

15 Failure to perform any act required or the performance of any act
16 prohibited by this title or an equivalent administrative regulation or
17 local law, ordinance, regulation, or resolution relating to traffic
18 including parking, standing, stopping, and pedestrian offenses, is
19 designated as a traffic infraction and may not be classified as a
20 criminal offense, except for an offense contained in the following
21 provisions of this title or a violation of an equivalent administrative
22 regulation or local law, ordinance, regulation, or resolution:

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

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

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

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

31 (5) Chapter 46.12 RCW relating to certificates of ownership and
32 registration;

33 (6) RCW 46.16.010 relating to initial registration of motor
34 vehicles;

35 (7) RCW 46.16.011 relating to permitting unauthorized persons to
36 drive;

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

1 (9) RCW 46.16.381 (6) or (~~(8)~~) (9) relating to unauthorized use
2 or acquisition of a special placard or license plate for disabled
3 persons' parking;
4 (10) RCW 46.20.021 relating to driving without a valid driver's
5 license;
6 (11) RCW 46.20.336 relating to the unlawful possession and use of
7 a driver's license;
8 (12) RCW 46.20.342 relating to driving with a suspended or revoked
9 license or status;
10 (13) RCW 46.20.410 relating to the violation of restrictions of an
11 occupational driver's license;
12 (14) RCW 46.20.420 relating to the operation of a motor vehicle
13 with a suspended or revoked license;
14 (15) RCW 46.20.750 relating to assisting another person to start a
15 vehicle equipped with an ignition interlock device;
16 (16) RCW 46.25.170 relating to commercial driver's licenses;
17 (17) Chapter 46.29 RCW relating to financial responsibility;
18 (18) RCW 46.30.040 relating to providing false evidence of
19 financial responsibility;
20 (19) RCW 46.37.435 relating to wrongful installation of
21 sunscreening material;
22 (20) RCW 46.44.180 relating to operation of mobile home pilot
23 vehicles;
24 (21) RCW 46.48.175 relating to the transportation of dangerous
25 articles;
26 (22) RCW 46.52.010 relating to duty on striking an unattended car
27 or other property;
28 (23) RCW 46.52.020 relating to duty in case of injury to or death
29 of a person or damage to an attended vehicle;
30 (24) RCW 46.52.090 relating to reports by repairmen, storagemen,
31 and appraisers;
32 (25) RCW 46.52.100 relating to driving under the influence of
33 liquor or drugs;
34 (26) RCW 46.52.130 relating to confidentiality of the driving
35 record to be furnished to an insurance company, an employer, and an
36 alcohol/drug assessment or treatment agency;
37 (27) RCW 46.55.020 relating to engaging in the activities of a
38 registered tow truck operator without a registration certificate;

1 (28) RCW 46.55.035 relating to prohibited practices by tow truck
2 operators;

3 (29) RCW 46.61.015 relating to obedience to police officers,
4 flagmen, or fire fighters;

5 (30) RCW 46.61.020 relating to refusal to give information to or
6 cooperate with an officer;

7 (31) RCW 46.61.022 relating to failure to stop and give
8 identification to an officer;

9 (32) RCW 46.61.024 relating to attempting to elude pursuing police
10 vehicles;

11 (33) RCW 46.61.500 relating to reckless driving;

12 (34) RCW 46.61.502 and 46.61.504 and sections 4, 5, and 6 of this
13 act relating to persons under the influence of intoxicating liquor or
14 drugs;

15 (35) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

16 (36) RCW 46.61.522 relating to vehicular assault;

17 (37) RCW 46.61.525 relating to negligent driving;

18 (38) RCW 46.61.530 relating to racing of vehicles on highways;

19 (39) RCW 46.61.685 relating to leaving children in an unattended
20 vehicle with the motor running;

21 (40) RCW 46.64.010 relating to unlawful cancellation of or attempt
22 to cancel a traffic citation;

23 (41) RCW 46.64.048 relating to attempting, aiding, abetting,
24 coercing, and committing crimes;

25 (42) Chapter 46.65 RCW relating to habitual traffic offenders;

26 (43) Chapter 46.70 RCW relating to unfair motor vehicle business
27 practices, except where that chapter provides for the assessment of
28 monetary penalties of a civil nature;

29 (44) Chapter 46.72 RCW relating to the transportation of passengers
30 in for hire vehicles;

31 (45) Chapter 46.80 RCW relating to motor vehicle wreckers;

32 (46) Chapter 46.82 RCW relating to driver's training schools;

33 (47) RCW 46.87.260 relating to alteration or forgery of a cab card,
34 letter of authority, or other temporary authority issued under chapter
35 46.87 RCW;

36 (48) RCW 46.87.290 relating to operation of an unregistered or
37 unlicensed vehicle under chapter 46.87 RCW.

1 **Sec. 34.** RCW 3.62.090 and 1986 c 98 s 4 are each amended to read
2 as follows:

3 (1) There shall be assessed and collected in addition to any fines,
4 forfeitures, or penalties assessed, other than for parking infractions,
5 by all courts organized under Title 3 or 35 RCW a public safety and
6 education assessment equal to sixty percent of such fines, forfeitures,
7 or penalties, which shall be remitted as provided in chapters 3.46,
8 3.50, 3.62, and 35.20 RCW. The assessment required by this section
9 shall not be suspended or waived by the court.

10 (2) There shall be assessed and collected in addition to any fines,
11 forfeitures, or penalties assessed, other than for parking infractions
12 and for fines levied under ((RCW 46.61.515)) sections 4, 5, and 6 of
13 this act, and in addition to the public safety and education assessment
14 required under subsection (1) of this section, by all courts organized
15 under Title 3 or 35 RCW, an additional public safety and education
16 assessment equal to fifty percent of the public safety and education
17 assessment required under subsection (1) of this section, which shall
18 be remitted to the state treasurer and deposited as provided in RCW
19 43.08.250. The additional assessment required by this subsection shall
20 not be suspended or waived by the court.

21 **Sec. 35.** RCW 10.05.120 and 1985 c 352 s 15 are each amended to
22 read as follows:

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

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

33 **Sec. 36.** RCW 35.21.165 and 1983 c 165 s 40 are each amended to
34 read as follows:

35 Except as limited by the maximum penalties authorized by law, no
36 city or town may establish a penalty for an act that constitutes the
37 crime of driving while under the influence of intoxicating liquor or

1 any drug, as provided in RCW 46.61.502, or the crime of being in actual
2 physical control of a motor vehicle while under the influence of
3 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is
4 less than the penalties prescribed for those crimes in ((RCW
5 46.61.515)) sections 4, 5, and 6 of this act.

6 **Sec. 37.** RCW 36.32.127 and 1983 c 165 s 41 are each amended to
7 read as follows:

8 No county may establish a penalty for an act that constitutes the
9 crime of driving while under the influence of intoxicating liquor or
10 any drug, as provided for in RCW 46.61.502, or the crime of being in
11 actual physical control of a motor vehicle while under the influence of
12 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is
13 less than the penalties prescribed for those crimes in ((RCW
14 46.61.515)) sections 4, 5, and 6 of this act.

15 **Sec. 38.** RCW 46.04.480 and 1988 c 148 s 8 are each amended to read
16 as follows:

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

22 **Sec. 39.** RCW 46.61.5151 and 1983 c 165 s 33 are each amended to
23 read as follows:

24 A sentencing court may allow persons convicted of violating RCW
25 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in
26 ((~~RCW 46.61.515 (1) or (2)~~)) section 4, 5, or 6 of this act in
27 nonconsecutive or intermittent time periods. However, ((~~the first~~
28 ~~twenty-four hours of any sentence under RCW 46.61.515(1) and the first~~
29 ~~forty-eight hours of any sentence under RCW 46.61.515(2)~~)) any
30 mandatory minimum sentence under section 4, 5, or 6 of this act shall
31 be served consecutively unless suspended or deferred as otherwise
32 provided by law.

33 **Sec. 40.** RCW 46.61.5152 and 1992 c 64 s 1 are each amended to read
34 as follows:

1 In addition to penalties that may be imposed under ((RCW
2 46.61.515)) section 4, 5, or 6 of this act, the court may require a
3 person who is convicted of a violation of RCW 46.61.502 or 46.61.504 or
4 who enters a deferred prosecution program under RCW 10.05.020 based on
5 a violation of RCW 46.61.502 or 46.61.504, to attend an educational
6 program focusing on the emotional, physical, and financial suffering of
7 victims who were injured by persons convicted of driving while under
8 the influence of intoxicants.

9 NEW SECTION. Sec. 41. The sum of one million five hundred sixty-
10 three thousand five hundred eighty-nine dollars, or as much thereof as
11 may be necessary, is appropriated for the biennium ending June 30,
12 1995, from the highway safety fund to the department of licensing for
13 the purposes of implementing this act.

14 NEW SECTION. Sec. 42. The following acts or parts of acts are
15 each repealed:

16 (1) RCW 46.61.515 and 1993 c 501 s 7, 1993 c 239 s 1, 1985 c 352 s
17 1, 1984 c 258 s 328, 1983 c 165 s 21, 1983 c 150 s 1, 1982 1st ex.s. c
18 47 s 27, 1979 ex.s. c 176 s 6, 1977 ex.s. c 3 s 3, 1975 1st ex.s. c 287
19 s 2, 1974 ex.s. c 130 s 1, 1971 ex.s. c 284 s 1, 1967 c 32 s 68, & 1965
20 ex.s. c 155 s 62; and

21 (2) 1993 c 239 s 3 (uncodified).

22 NEW SECTION. Sec. 43. This act shall be known as the "1994
23 Omnibus Drunk Driving Act."

24 NEW SECTION. Sec. 44. Section 7 of this act shall expire June 30,
25 1995.

26 NEW SECTION. Sec. 45. Part headings and the table of contents as
27 used in this act do not constitute any part of the law.

28 NEW SECTION. Sec. 46. This act shall take effect July 1, 1994."

1 **SSB 6047** - CONF REPT
2 By Conference Committee

ADOPTED 3/10/94

3
4 On page 1, line 2 of the title, after "problems;" strike the
5 remainder of the title and insert "amending RCW 46.61.502, 46.61.504,
6 46.20.308, 46.01.260, 46.52.100, 46.52.130, 10.05.060, 10.05.090,
7 10.05.120, 46.20.710, 46.20.720, 46.20.730, 46.20.740, 46.20.750,
8 46.61.506, 46.20.311, 46.04.580, 46.20.391, 5.40.060, 46.55.113,
9 46.63.020, 3.62.090, 10.05.120, 35.21.165, 36.32.127, 46.04.480,
10 46.61.5151, and 46.61.5152; reenacting and amending RCW 9.94A.320;
11 adding a new section to chapter 46.04 RCW; adding new sections to
12 chapter 46.61 RCW; adding a new section to chapter 46.20 RCW; creating
13 new sections; repealing RCW 46.61.515; repealing 1993 c 239 s 3
14 (uncodified); prescribing penalties; making an appropriation; providing
15 an effective date; and providing an expiration date."

--- END ---