
HOUSE BILL 2786

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By Representatives Ballasiotes, Chappell, Long, Sehlin, Foreman, Carlson, Sheahan, Schmidt, Rayburn, Silver, Cooke, Forner, Brough, Backlund, Chandler, Dyer, Talcott, Wood, Brumsickle, Roland and Horn

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

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

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

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

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

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

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

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

37 (2) Before entry of an order deferring prosecution, a petitioner
38 shall be advised of his or her rights as an accused and execute, as a

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

17 (3) Before entering an order deferring prosecution, the court shall
18 make specific findings that: (a) The petitioner has stipulated to the
19 admissibility of the facts as contained in the written police report;
20 (b) the petitioner has acknowledged the admissibility of the stipulated
21 facts in any criminal hearing or trial on the underlying offense or
22 offenses held subsequent to revocation of the order granting deferred
23 prosecution; and (c) the petitioner's statements were made knowingly
24 and voluntarily. Such findings shall be included in the order granting
25 deferred prosecution.

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

28 If the report recommends treatment, the court shall examine the
29 treatment plan. If it approves the plan and the petitioner agrees to
30 comply with its terms and conditions and agrees to pay the cost
31 thereof, if able to do so, or arrange for the treatment, an entry shall
32 be made upon the person's court docket showing that the person has been
33 accepted for deferred prosecution. A copy of the treatment plan shall
34 be attached to the docket, which shall then be removed from the regular
35 court dockets and filed in a special court deferred prosecution file.
36 If the charge be one that an abstract of the docket showing the charge
37 and the date of petitioner's acceptance is required to be sent to the
38 department of licensing, an abstract shall be sent, and the department

1 of licensing shall make an entry of the charge and of the petitioner's
2 acceptance for deferred prosecution on the department's driving record
3 of the petitioner. The entry is not a conviction for purposes of Title
4 46 RCW. The department shall maintain the record for ~~((five))~~ ten
5 years from date of entry of the order granting deferred prosecution.

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

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

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

30 If a petitioner is subsequently convicted of a similar offense
31 while in a deferred prosecution program, upon notice the court shall
32 remove the petitioner's docket from the deferred prosecution file and
33 the court shall enter judgment pursuant to RCW 10.05.020. For the
34 purposes of this section, a "similar offense" to a violation of RCW
35 46.61.502 or 46.61.504 includes any criminal traffic offense.

1 **Sec. 6.** RCW 10.05.120 and 1985 c 352 s 15 are each amended to read
2 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, the court shall
8 dismiss the charges pending against the petitioner upon proof of
9 successful completion of the two-year treatment program and
10 verification that the petitioner has not been convicted of a similar
11 offense during the five-year period of deferred prosecution.

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

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

21 As a condition of granting a deferred prosecution petition for a
22 violation of RCW 46.61.502 or 46.61.504, the court shall order that the
23 petitioner (~~shall~~): (i) Not operate a motor vehicle (~~upon the~~
24 public highways)) within this state without a valid operator's license
25 and proof of (~~liability insurance~~) financial responsibility for the
26 future, as defined in RCW 46.29.260; (ii) not drive a motor vehicle
27 within this state while having any measurable alcohol in his or her
28 breath or blood within two hours after driving; and (iii) not refuse to
29 submit to a test of his or her breath or blood to determine alcohol
30 concentration upon request of a law enforcement officer who has
31 reasonable grounds to believe the person was driving or was in actual
32 physical control of a motor vehicle within this state while under the
33 influence of intoxicating liquor. The amount of liability insurance
34 shall be established by the court at not less than that established by
35 RCW 46.29.490. As a condition of granting a deferred prosecution
36 petition, the court may order the petitioner to make restitution and to
37 pay costs as defined in RCW 10.01.160. The court (~~may~~) shall

1 terminate the deferred prosecution program upon violation of any of the
2 conditions authorized or required by this section.

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

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

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

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

11 (3) Failure of the court to comply with the requirements of RCW
12 10.05.100 or 10.05.140;

13 (4) Failure of the evaluation facility to provide the information
14 required in RCW 10.05.040 and 10.05.050, if the defendant has been
15 referred to the facility for treatment. If an appeal on such basis is
16 successful, the trial court may consider the use of another treatment
17 (~~facility~~) program.

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

20 As a condition of granting deferred prosecution, the court (~~may~~)
21 shall order supervision of the petitioner during the period of deferral
22 and may levy a monthly assessment upon the petitioner as provided in
23 RCW 10.64.120. In a jurisdiction with a probation department, the
24 court (~~may~~) shall appoint the probation department to supervise the
25 petitioner. In a jurisdiction without a probation department, the
26 court (~~may~~) shall appoint an appropriate person or agency to
27 supervise the petitioner. A supervisor appointed under this section
28 shall be required to do at least the following:

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

34 (2) At least once every month make contact with the petitioner or
35 with any agency to which the petitioner has been directed for treatment
36 as a part of the deferral to determine the petitioner's compliance with
37 the treatment plan and notify the court if the petitioner has failed or

1 neglected to carry out and fulfill any term or condition of the
2 treatment plan.

3 NEW SECTION. Sec. 10. A new section is added to chapter 46.20 RCW
4 to read as follows:

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

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

10 (b) The arrested person received the warnings as provided in RCW
11 46.20.308(2) or has been deemed to have received the warnings as
12 provided in RCW 46.20.308(4); and

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

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

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

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

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

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

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

8 (a) The expiration date of the confiscated license or permit to
9 drive; or

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

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

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

17 **Sec. 11.** RCW 46.20.291 and 1993 c 501 s 4 are each amended to read
18 as follows:

19 The department is authorized to suspend the license of a driver
20 upon a showing by its records or other sufficient evidence that the
21 licensee:

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

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

28 (3) Has been convicted of offenses against traffic regulations
29 governing the movement of vehicles, or found to have committed traffic
30 infractions, with such frequency as to indicate a disrespect for
31 traffic laws or a disregard for the safety of other persons on the
32 highways;

33 (4) Is incompetent to drive a motor vehicle under RCW 46.20.031(3);
34 ((~~or~~))

35 (5) Has failed to respond to a notice of traffic infraction, failed
36 to appear at a requested hearing, violated a written promise to appear
37 in court, or has failed to comply with the terms of a notice of traffic
38 infraction or citation, as provided in RCW 46.20.289; ((~~or~~))

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

3 (7) Submitted to a test of his or her breath or blood for alcohol
4 concentration pursuant to RCW 46.20.308 and a result of that test
5 showed an alcohol concentration of the person's breath or blood of 0.08
6 or more within two hours after driving or being in actual physical
7 control of a motor vehicle in this state.

8 **Sec. 12.** RCW 46.20.308 and 1989 c 337 s 8 are each amended to read
9 as follows:

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

18 (2) The test or tests of breath shall be administered at the
19 direction of a law enforcement officer having reasonable grounds to
20 believe the person to have been driving or in actual physical control
21 of a motor vehicle within this state while under the influence of
22 intoxicating liquor. However, in those instances where: (a) The
23 person is incapable due to physical injury, physical incapacity, or
24 other physical limitation, of providing a breath sample; or (b) as a
25 result of a traffic accident the person is being treated for a medical
26 condition in a hospital, clinic, doctor's office, or other similar
27 facility in which a breath testing instrument is not present, a blood
28 test shall be administered by a qualified person as provided in RCW
29 46.61.506(4). The officer shall inform the person of his or her right
30 to refuse the breath or blood test, and of his or her right to have
31 additional tests administered by any qualified person of his or her
32 choosing as provided in RCW 46.61.506. The officer shall warn the
33 ~~((driver))~~ person that (a) his or her license, permit, or privilege to
34 drive will be revoked or denied if he or she refuses to submit to the
35 test, ~~((and))~~ (b) ~~((that))~~ his or her license, permit, or privilege to
36 drive will be suspended, revoked, or denied if result of the test shows
37 an alcohol concentration of his or her breath or blood of 0.08 or more
38 within two hours after driving or being in actual physical control of

1 a motor vehicle within this state, and (c) his or her refusal to take
2 the test may be used in a criminal trial.

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

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

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

24 (6) The department of licensing, upon the receipt of a sworn report
25 of the law enforcement officer or a report of the law enforcement
26 officer under a declaration authorized by RCW 9A.72.085 that the
27 officer had reasonable grounds to believe the arrested person had been
28 driving or was in actual physical control of a motor vehicle within
29 this state while under the influence of intoxicating liquor and that
30 the person had refused to submit to the test or tests upon the request
31 of the law enforcement officer after ~~((being informed that refusal~~
32 ~~would result in the revocation of the person's privilege to drive))~~
33 receiving the warnings as provided in subsection (2) of this section,
34 shall revoke or deny the person's license ((or)), permit, or privilege
35 to drive ((or any nonresident operating privilege)). The revocation or
36 denial shall be effective the date the revocation or denial is
37 sustained after a hearing provided under subsection (8) of this section
38 or thirty days after the date of the person's arrest, whichever is
39 sooner.

1 (7) (~~Upon revoking the license or permit to drive or the~~
2 ~~nonresident operating privilege of any person, the department shall~~
3 ~~immediately notify the person involved in writing by personal service~~
4 ~~or by certified mail of its decision and the grounds therefor, and of~~
5 ~~the person's right to a hearing, specifying the steps he or she must~~
6 ~~take to obtain a hearing. Within fifteen days after the notice has~~
7 ~~been given, the person may, in writing, request a formal hearing.))~~
8 The department of licensing, upon the receipt of a sworn report of the
9 law enforcement officer or a report of the law enforcement officer
10 under a declaration authorized by RCW 9A.72.085 that the officer had
11 reasonable grounds to believe the arrested person had been driving or
12 was in actual physical control of a motor vehicle within this state
13 while under the influence of intoxicating liquor, the person submitted
14 to a test upon the request of the law enforcement officer after
15 receiving the warnings as provided in subsection (2) of this section or
16 was administered the test without the person's consent as provided in
17 subsection (3) of this section and the result of the test showed an
18 alcohol concentration of the person's breath or blood of 0.08 or more
19 within two hours after driving or being in actual physical control of
20 a motor vehicle within this state, shall suspend, revoke, or deny the
21 person's license, permit, or privilege to drive. Upon the first such
22 report within five years, the period of suspension or denial shall be
23 until the person reaches age nineteen or ninety days, whichever is
24 longer. Upon the second such report within five years, the period of
25 revocation or denial shall be one year. Upon the third or subsequent
26 report within five years, the period of revocation or denial shall be
27 two years. For any report for which the result of the test showed an
28 alcohol concentration of the person's breath or blood of 0.15 or more
29 within two hours after driving or being in actual physical control of
30 a motor vehicle within this state, the period of suspension,
31 revocation, or denial shall be increased by ninety days.

32 The suspension, revocation, or denial shall be effective the date
33 the suspension, revocation, or denial is sustained after a hearing
34 provided in subsection (8) of this section or thirty days after the
35 date of the person's arrest, whichever is sooner. The suspension,
36 revocation, or denial shall be stayed if the person is accepted for
37 deferred prosecution as provided in chapter 10.05 RCW for the incident
38 upon which the suspension, revocation, or denial is based. If the
39 deferred prosecution is terminated, the stay shall be lifted and the

1 suspension, revocation, or denial reinstated. If the deferred
2 prosecution is completed, the stay shall be lifted and the suspension,
3 revocation, or denial canceled.

4 (8)(a) Upon timely receipt of ((such)) a request for a hearing
5 contesting the suspension, revocation, or denial of the person's
6 license, permit, or privilege to drive, along with the fee, the
7 department shall afford the person an opportunity for a hearing ((as
8 provided in RCW 46.20.329 and 46.20.332)). An administrative law judge
9 shall conduct the hearing, may issue subpoenas for the attendance of
10 witnesses and the production of documents, and shall administer oaths
11 to witnesses. The rules of evidence shall apply at the hearing. The
12 person may be represented by counsel, may question witnesses, may
13 present evidence, and may testify. The hearing shall be recorded and
14 shall be conducted in the county of the arrest. ((For the purposes of
15 this section, the scope of such hearing shall cover the issues of
16 whether))

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

35 (8)) receiving the warnings as provided in subsection (2) of this
36 section.

37 (b) The administrative law judge shall sustain a suspension,
38 revocation, or denial based on a result of the test if the
39 administrative law judge determines, by a preponderance of the

1 evidence, that (i) a law enforcement officer had reasonable grounds to
2 believe the person had been driving or was in actual physical control
3 of a motor vehicle within this state while under the influence of
4 intoxicating liquor, (ii) the person was placed under arrest, (iii) the
5 person submitted to the test upon request of the officer after
6 receiving the warnings as provided in subsection (2) of this section or
7 was administered the test without the person's consent as provided in
8 subsection (3) of this section, and (iv) the result of the test showed
9 an alcohol concentration of the person's breath or blood of 0.08 or
10 more within two hours after driving or being in actual physical control
11 of a motor vehicle within this state.

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

15 (10) If the suspension, revocation, or denial is rescinded, the
16 person shall be awarded the amount of the hearing fee and the
17 department shall reissue the person's license, permit, or privilege to
18 drive without cost. If the suspension, revocation, or denial is
19 sustained ((after such a hearing)), the person whose license,
20 privilege, or permit is suspended, revoked, or denied has the right to
21 ((file a petition in)) appeal to the superior court of the county of
22 arrest ((to review the final order of revocation by the department in
23 the manner provided in RCW 46.20.334.

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

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

1 **Sec. 13.** RCW 46.20.311 and 1993 c 501 s 5 are each amended to read
2 as follows:

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

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

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

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

23 **Sec. 14.** RCW 46.61.502 and 1993 c 328 s 1 are each amended to read
24 as follows:

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

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

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

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

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

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

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

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

24 **Sec. 15.** RCW 46.61.504 and 1993 c 328 s 2 are each amended to read
25 as follows:

26 (1) A person is guilty of being in actual physical control of a
27 motor vehicle while under the influence of intoxicating liquor or any
28 drug if the person has actual physical control of a vehicle within this
29 state:

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

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

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

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

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

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

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

32 **Sec. 16.** RCW 46.61.506 and 1987 c 373 s 4 are each amended to read
33 as follows:

34 (1) Upon the trial of any civil or criminal action or proceeding
35 arising out of acts alleged to have been committed by any person while
36 driving or in actual physical control of a vehicle while under the
37 influence of intoxicating liquor or any drug, if the ~~((amount of))~~
38 alcohol ~~((in))~~ concentration of the person's blood or breath at the

1 time alleged as shown by analysis of his or her blood or breath is less
2 than (~~0.10 percent by weight of alcohol in his blood or 0.10 grams of~~
3 ~~alcohol per two hundred ten liters of the person's breath~~) 0.08, it is
4 evidence that may be considered with other competent evidence in
5 determining whether the person was under the influence of intoxicating
6 liquor or any drug.

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

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

22 (4) When a blood test is administered under the provisions of RCW
23 46.20.308, the withdrawal of blood for the purpose of determining its
24 alcoholic content may be performed only by a physician, a registered
25 nurse, or a qualified technician. This limitation shall not apply to
26 the taking of breath specimens.

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

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

1 **Sec. 17.** RCW 46.61.515 and 1993 c 501 s 7 and 1993 c 239 s 1 are
2 each reenacted and amended to read as follows:

3 (1) (~~Every~~) A person who is convicted of a violation of RCW
4 46.61.502 or 46.61.504 where the result of the test of the person's
5 breath or blood showed an alcohol concentration of less than 0.15
6 within two hours after driving or being in actual physical control of
7 a motor vehicle within this state shall be punished by imprisonment for
8 not less than twenty-four consecutive hours nor more than one year, and
9 by a fine of not less than two hundred fifty dollars and not more than
10 one thousand dollars. A person who is convicted of a violation of RCW
11 46.61.502 or 46.61.504 where the result of the test of the person's
12 breath or blood showed an alcohol concentration of 0.15 or more within
13 two hours after driving or being in actual physical control of a motor
14 vehicle within this state or where the person refused to submit to a
15 test of the person's breath or blood for alcohol concentration shall be
16 punished by imprisonment for not less than forty-eight consecutive
17 hours nor more than one year, and by a fine of not less than three
18 hundred fifty dollars and not more than one thousand dollars. For
19 purposes of the preceding sentence, the judge shall determine, based on
20 a preponderance of the evidence, whether the person's alcohol
21 concentration was 0.15 or more within two hours after driving or being
22 in actual physical control of a motor vehicle within this state or
23 whether the person refused to submit to a test of the person's breath
24 or blood for alcohol concentration. Unless the judge finds the person
25 to be indigent, (~~two hundred fifty dollars of~~) the mandatory minimum
26 fine shall not be suspended or deferred. (~~Twenty-four consecutive~~
27 hours of)) The mandatory minimum jail sentence shall not be suspended
28 or deferred unless the judge finds that the imposition of the jail
29 sentence will pose a substantial risk to the defendant's physical or
30 mental well-being. Whenever the mandatory minimum jail sentence is
31 suspended or deferred, the judge must state, in writing, the reason for
32 granting the suspension or deferral and the facts upon which the
33 suspension or deferral is based. The court shall impose conditions of
34 probation which include (a) not driving a motor vehicle within this
35 state without a valid license to drive and proof of financial
36 responsibility for the future, (b) not driving a motor vehicle within
37 this state while having an alcohol concentration of 0.04 or more within
38 two hours after driving, and (c) not refusing to submit to a test of
39 his or her breath or blood to determine alcohol concentration upon

1 request of a law enforcement officer who has reasonable grounds to
2 believe the person was driving or was in actual physical control of a
3 motor vehicle within this state while under the influence of
4 intoxicating liquor. The court may impose conditions of probation that
5 may include nonrepetition, alcohol or drug treatment, supervised
6 probation, or other conditions that may be appropriate. The convicted
7 person shall, in addition, be required to complete a course in an
8 alcohol information school approved by the department of social and
9 health services or more intensive treatment in a program approved by
10 the department of social and health services, as determined by the
11 court. A diagnostic evaluation and treatment recommendation shall be
12 prepared under the direction of the court by an alcoholism agency
13 approved by the department of social and health services or a qualified
14 probation department approved by the department of social and health
15 services. A copy of the report shall be forwarded to the department of
16 licensing. Based on the diagnostic evaluation, the court shall
17 determine whether the convicted person shall be required to complete a
18 course in an alcohol information school approved by the department of
19 social and health services or more intensive treatment in a program
20 approved by the department of social and health services. Standards
21 for approval for alcohol treatment programs shall be prescribed by rule
22 under the Administrative Procedure Act, chapter 34.05 RCW. The
23 department of social and health services shall periodically review the
24 costs of alcohol information schools and treatment programs as part of
25 the approval process.

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

31 (2)(a) On a second (~~or subsequent~~) conviction (~~for driving or~~
32 ~~being in physical control of a motor vehicle while under the influence~~
33 ~~of intoxicating liquor or drugs)) of a violation of RCW 46.61.502 or
34 46.61.504 within a five-year period where the result of the test of the
35 person's breath or blood showed an alcohol concentration of less than
36 0.15 within two hours after driving or being in actual physical control
37 of a motor vehicle within this state a person shall be punished by
38 imprisonment for not less than seven days nor more than one year and by
39 a fine of not less than five hundred dollars and not more than two~~

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

16 (b) On a third or subsequent conviction of a violation of RCW
17 46.61.502 or 46.61.504 within a five-year period where the result of
18 the test of the person's breath or blood showed an alcohol
19 concentration of less than 0.15 within two hours after driving or being
20 in actual physical control of a motor vehicle within this state a
21 person shall be punished by imprisonment for not less than ninety days
22 nor more than one year and by a fine of not less than seven hundred
23 fifty dollars and not more than two thousand dollars. On a third or
24 subsequent conviction of a violation of RCW 46.61.502 or 46.61.504
25 within a five-year period where the result of the test of the person's
26 breath or blood showed an alcohol concentration of 0.15 or more within
27 two hours after driving or being in actual physical control of a motor
28 vehicle within this state or where the person refused to submit to a
29 test of the person's breath or blood for alcohol concentration a person
30 shall be punished by imprisonment for not less than one hundred eighty
31 days nor more than one year and by a fine of not less than one thousand
32 dollars and not more than two thousand dollars. For purposes of the
33 preceding sentence, the judge shall determine, based on a preponderance
34 of the evidence, whether the person's alcohol concentration was 0.15 or
35 more within two hours after driving or being in actual physical control
36 of a motor vehicle within this state or whether the person refused to
37 submit to a test of the person's breath or blood for alcohol
38 concentration.

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

11 (d) If, at the time of the arrest on a second or subsequent
12 offense, the driver is without a license or permit because of a
13 previous suspension or revocation for a reason listed in RCW
14 46.20.342(1) (a) or (b), or because of a previous suspension or
15 revocation for a reason listed in RCW 46.20.342(1)(c) if the original
16 suspension or revocation was the result of a conviction of RCW
17 46.61.502 or 46.61.504, the minimum mandatory sentence shall be ninety
18 days in jail and a (~~five~~) seven hundred fifty dollar fine. The
19 penalty so imposed shall not be suspended or deferred.

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

28 (f) In addition to any nonsuspendable and nondeferrable jail
29 sentence required by this subsection, whenever the court imposes less
30 than one year in jail, the court shall also suspend but shall not defer
31 a period of confinement for a period not exceeding two years. The
32 court shall impose conditions of probation that include (i) not driving
33 a motor vehicle within this state without a valid license to drive and
34 proof of financial responsibility for the future, (ii) not driving a
35 motor vehicle within this state while having an alcohol concentration
36 of 0.04 or more within two hours after driving, and (iii) not refusing
37 to submit to a test of his or her breath or blood to determine alcohol
38 concentration upon request of a law enforcement officer who has
39 reasonable grounds to believe the person was driving or was in actual

1 physical control of a motor vehicle within this state while under the
2 influence of intoxicating liquor. The ((suspension of the sentence may
3 be conditioned upon)) court may impose conditions of probation that
4 include nonrepetition, alcohol or drug treatment, supervised probation,
5 or other conditions that may be appropriate. The sentence may be
6 imposed in whole or in part upon violation of a condition of
7 ((suspension)) probation during the suspension period.

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

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

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

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

33 ((+c)) (iii) On a third or subsequent conviction of driving or
34 being in physical control of a motor vehicle while under the influence
35 of intoxicating liquor or drugs, vehicular homicide, or vehicular
36 assault, or any combination thereof within a five-year period, be
37 revoked by the department for two years.

38 (b) For any conviction for which the result of the test showed an
39 alcohol concentration of the person's breath or blood of 0.15 or more

1 within two hours after driving or being in actual physical control of
2 a motor vehicle within this state, the period of suspension,
3 revocation, or denial shall be increased by ninety days.

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

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

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

30 (5)(a) In addition to penalties set forth in this section, a one
31 hundred twenty-five dollar fee shall be assessed to a person who is
32 either convicted, sentenced to a lesser charge, or given deferred
33 prosecution, as a result of an arrest for violating RCW 46.61.502,
34 46.61.504, 46.61.520, or 46.61.522. This fee is for the purpose of
35 funding the Washington state toxicology laboratory and the Washington
36 state patrol breath test program.

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

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

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

10 (a) Forty percent shall be subject to distribution under RCW
11 3.62.020, 3.62.040, or 10.82.040.

12 (b) If the case involves a blood test by the state toxicology
13 laboratory, the remainder of the fee shall be forwarded to the state
14 treasurer for deposit in the death investigations account to be used
15 solely for funding the state toxicology laboratory blood testing
16 program.

17 (c) Otherwise, the remainder of the fee shall be forwarded to the
18 state treasurer for deposit in the state patrol highway account to be
19 used solely for funding the Washington state patrol breath test
20 program.

21 **Sec. 18.** RCW 46.61.515 and 1993 c 501 s 7 are each amended to read
22 as follows:

23 (1) (~~Every~~) A person who is convicted of a violation of RCW
24 46.61.502 or 46.61.504 where the result of the test of the person's
25 breath or blood showed an alcohol concentration of less than 0.15
26 within two hours after driving or being in actual physical control of
27 a motor vehicle within this state shall be punished by imprisonment for
28 not less than twenty-four consecutive hours nor more than one year, and
29 by a fine of not less than two hundred fifty dollars and not more than
30 one thousand dollars. A person who is convicted of a violation of RCW
31 46.61.502 or 46.61.504 where the result of the test of the person's
32 breath or blood showed an alcohol concentration of 0.15 or more within
33 two hours after driving or being in actual physical control of a motor
34 vehicle within this state or where the person refused to submit to a
35 test of the person's breath or blood for alcohol concentration shall be
36 punished by imprisonment for not less than forty-eight consecutive
37 hours nor more than one year, and by a fine of not less than three
38 hundred fifty dollars and not more than one thousand dollars. For

1 purposes of the preceding sentence, the judge shall determine, based on
2 a preponderance of the evidence, whether the person's alcohol
3 concentration was 0.15 or more within two hours after driving or being
4 in actual physical control of a motor vehicle within this state or
5 whether the person refused to submit to a test of the person's breath
6 or blood for alcohol concentration. Unless the judge finds the person
7 to be indigent, (~~two hundred fifty dollars of~~) the mandatory minimum
8 fine shall not be suspended or deferred. (~~Twenty-four consecutive~~
9 ~~hours of~~) The mandatory minimum jail sentence shall not be suspended
10 or deferred unless the judge finds that the imposition of the jail
11 sentence will pose a substantial risk to the defendant's physical or
12 mental well-being. Whenever the mandatory minimum jail sentence is
13 suspended or deferred, the judge must state, in writing, the reason for
14 granting the suspension or deferral and the facts upon which the
15 suspension or deferral is based. The court shall impose conditions of
16 probation which include (a) not driving a motor vehicle within this
17 state without a valid license to drive and proof of financial
18 responsibility for the future, (b) not driving a motor vehicle within
19 this state while having an alcohol concentration of 0.04 or more within
20 two hours after driving, and (c) not refusing to submit to a test of
21 his or her breath or blood to determine alcohol concentration upon
22 request of a law enforcement officer who has reasonable grounds to
23 believe the person was driving or was in actual physical control of a
24 motor vehicle within this state while under the influence of
25 intoxicating liquor. The court may impose conditions of probation that
26 may include nonrepetition, alcohol or drug treatment, supervised
27 probation, or other conditions that may be appropriate. The convicted
28 person shall, in addition, be required to complete a course in an
29 alcohol information school approved by the department of social and
30 health services or more intensive treatment in a program approved by
31 the department of social and health services, as determined by the
32 court. A diagnostic evaluation and treatment recommendation shall be
33 prepared under the direction of the court by an alcoholism agency
34 approved by the department of social and health services or a qualified
35 probation department approved by the department of social and health
36 services. A copy of the report shall be forwarded to the department of
37 licensing. Based on the diagnostic evaluation, the court shall
38 determine whether the convicted person shall be required to complete a
39 course in an alcohol information school approved by the department of

1 social and health services or more intensive treatment in a program
2 approved by the department of social and health services. Standards
3 for approval for alcohol treatment programs shall be prescribed by rule
4 under the administrative procedure act, chapter 34.05 RCW. The
5 department of social and health services shall periodically review the
6 costs of alcohol information schools and treatment programs as part of
7 the approval process.

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

13 (2)(a) On a second ((or subsequent)) conviction ((for driving or
14 being in physical control of a motor vehicle while under the influence
15 of intoxicating liquor or drugs)) of a violation of RCW 46.61.502 or
16 46.61.504 within a five-year period where the result of the test of the
17 person's breath or blood showed an alcohol concentration of less than
18 0.15 within two hours after driving or being in actual physical control
19 of a motor vehicle within this state a person shall be punished by
20 imprisonment for not less than seven days nor more than one year and by
21 a fine of not less than five hundred dollars and not more than two
22 thousand dollars. On a second conviction of a violation of RCW
23 46.61.502 or 46.61.504 within a five-year period where the result of
24 the test of the person's breath or blood showed an alcohol
25 concentration of 0.15 or more within two hours after driving or being
26 in actual physical control of a motor vehicle within this state or
27 where the person refused to submit to a test of the person's breath or
28 blood for alcohol concentration, a person shall be punished by
29 imprisonment for not less than fourteen days nor more than one year and
30 by a fine of not less than six hundred dollars and not more than two
31 thousand dollars. For purposes of the preceding sentence, the judge
32 shall determine, based on a preponderance of the evidence, whether the
33 person's alcohol concentration was 0.15 or more within two hours after
34 driving or being in actual physical control of a motor vehicle within
35 this state or whether the person refused to submit to a test of the
36 person's breath or blood for alcohol concentration.

37 (b) On a third or subsequent conviction of a violation of RCW
38 46.61.502 or 46.61.504 within a five-year period where the result of
39 the test of the person's breath or blood showed an alcohol

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

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

31 (d) If, at the time of the arrest on a second or subsequent
32 offense, the driver is without a license or permit because of a
33 previous suspension or revocation for a reason listed in RCW
34 46.20.342(1) (a) or (b), or because of a previous suspension or
35 revocation for a reason listed in RCW 46.20.342(1)(c) if the original
36 suspension or revocation was the result of a conviction of RCW
37 46.61.502 or 46.61.504, the minimum mandatory sentence shall be ninety
38 days in jail and a (~~five~~) seven hundred fifty dollar fine. The
39 penalty so imposed shall not be suspended or deferred.

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

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

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

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

38 ((+a)) (i) On the first conviction under either offense, be
39 suspended by the department until the person reaches age nineteen or

1 for ninety days, whichever is longer. The department of licensing
2 shall determine the person's eligibility for licensing based upon the
3 reports provided by the designated alcoholism agency or probation
4 department and shall deny reinstatement until enrollment and
5 participation in an approved program has been established and the
6 person is otherwise qualified;

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

14 ~~((e))~~ (iii) On a third or subsequent conviction of driving or
15 being in physical control of a motor vehicle while under the influence
16 of intoxicating liquor or drugs, vehicular homicide, or vehicular
17 assault, or any combination thereof within a five-year period, be
18 revoked by the department for two years.

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

24 (c) The period of any suspension, revocation, or denial imposed
25 under (a) and (b) of this subsection shall be reduced by the length of
26 the period of suspension, revocation, or denial imposed under RCW
27 46.20.308(7).

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

35 ~~(4) ((In any case provided for in this section, where a driver's~~
36 ~~license is to be revoked or suspended, the revocation or suspension~~
37 ~~shall be stayed and shall not take effect until after the determination~~
38 ~~of any appeal from the conviction which may lawfully be taken, but in~~
39 ~~case the conviction is sustained on appeal the revocation or suspension~~

1 ~~takes effect as of the date that the conviction becomes effective for~~
2 ~~other purposes.))~~ The filing of a notice of appeal shall not stay the
3 suspension, revocation, or denial of a person's license, permit, or
4 privilege to drive imposed under this section. A court shall not stay
5 the suspension, revocation, or denial unless it finds that the
6 appellant is likely to prevail in the appeal and without a stay the
7 appellant will suffer irreparable injury. If the court stays the
8 suspension, revocation, or denial, it may impose conditions on such
9 stay. The stay shall not exceed ninety days, except for good cause
10 shown, and shall in no event exceed one hundred eighty days.

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

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

21 NEW SECTION. **Sec. 20.** Section 17 of this act shall expire June
22 30, 1995.

23 NEW SECTION. **Sec. 21.** Section 18 of this act shall take effect
24 June 30, 1995.

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