

2 SSB 6166 - S AMD - 632

3 By Senators Rossi, Roach, Fairley and Kline

4 ADOPTED 2/12/98

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

7 "Sec. 1. RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are  
8 each reenacted and amended to read as follows:

9 (1) A person who is convicted of a violation of RCW 46.61.502 or  
10 46.61.504 and who has no prior offense (~~within five years~~) shall be  
11 punished as follows:

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

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

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

28 (iii) By suspension of the offender's license or permit to drive,  
29 or suspension of any nonresident privilege to drive, for a period of  
30 ninety days. The period of license, permit, or privilege suspension  
31 may not be suspended. The court shall notify the department of  
32 licensing of the conviction, and upon receiving notification of the  
33 conviction the department shall suspend the offender's license, permit,  
34 or privilege; or

35 (b) In the case of a person whose alcohol concentration was at  
36 least 0.15, or for whom by reason of the person's refusal to take a

1 test offered pursuant to RCW 46.20.308 there is no test result  
2 indicating the person's alcohol concentration:

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

11 (ii) 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 (iii) By revocation of the offender's license or permit to drive,  
16 or suspension of any nonresident privilege to drive, for a period of  
17 one year. The period of license, permit, or privilege suspension may  
18 not be suspended. The court shall notify the department of licensing  
19 of the conviction, and upon receiving notification of the conviction  
20 the department shall suspend the offender's license, permit, or  
21 privilege.

22 (2) A person who is convicted of a violation of RCW 46.61.502 or  
23 46.61.504 and who has one prior offense (~~within five years~~) shall be  
24 punished as follows:

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

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

37 (ii) By a fine of not less than five hundred dollars nor more than  
38 five thousand dollars. Five hundred dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be  
2 indigent; and

3 (iii) By revocation of the offender's license or permit to drive,  
4 or suspension of any nonresident privilege to drive, for a period of  
5 two years. The period of license, permit, or privilege revocation may  
6 not be suspended. The court shall notify the department of licensing  
7 of the conviction, and upon receiving notification of the conviction  
8 the department shall revoke the offender's license, permit, or  
9 privilege; or

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

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

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

26 (iii) By revocation of the offender's license or permit to drive,  
27 or suspension of any nonresident privilege to drive, for a period of  
28 nine hundred days. The period of license, permit, or privilege  
29 revocation may not be suspended. The court shall notify the department  
30 of licensing of the conviction, and upon receiving notification of the  
31 conviction the department shall revoke the offender's license, permit,  
32 or privilege.

33 (3) A person who is convicted of a violation of RCW 46.61.502 or  
34 46.61.504 and who has two or more prior offenses (~~within five years~~)  
35 shall be punished as follows:

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

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

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

13 (iii) By revocation of the offender's license or permit to drive,  
14 or suspension of any nonresident privilege to drive, for a period of  
15 three years. The period of license, permit, or privilege revocation  
16 may not be suspended. The court shall notify the department of  
17 licensing of the conviction, and upon receiving notification of the  
18 conviction the department shall revoke the offender's license, permit,  
19 or privilege; or

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

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

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

36 (iii) By revocation of the offender's license or permit to drive,  
37 or suspension of any nonresident privilege to drive, for a period of  
38 four years. The period of license, permit, or privilege revocation may  
39 not be suspended. The court shall notify the department of licensing

1 of the conviction, and upon receiving notification of the conviction  
2 the department shall revoke the offender's license, permit, or  
3 privilege.

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

8 (5) An offender punishable under this section is subject to the  
9 alcohol assessment and treatment provisions of RCW 46.61.5056.

10 (6) After expiration of any period of suspension or revocation of  
11 the offender's license, permit, or privilege to drive required by this  
12 section, the department shall place the offender's driving privilege in  
13 probationary status pursuant to RCW 46.20.355.

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

10 ((~~i~~)) (a) A conviction for a violation of RCW 46.61.502 or an  
11 equivalent local ordinance;

12 ((~~ii~~)) (b) A conviction for a violation of RCW 46.61.504 or an  
13 equivalent local ordinance;

14 ((~~iii~~)) (c) A conviction for a violation of RCW 46.61.520  
15 committed while under the influence of intoxicating liquor or any drug;

16 ((~~iv~~)) (d) A conviction for a violation of RCW 46.61.522  
17 committed while under the influence of intoxicating liquor or any drug;

18 ((~~v~~)) (e) A conviction for a violation of RCW 46.61.5249,  
19 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the  
20 conviction is the result of a charge that was originally filed as a  
21 violation of RCW 46.61.502 or 46.61.504, or an equivalent local  
22 ordinance, or of RCW 46.61.520 or 46.61.522;

23 ((~~vi~~)) (f) An out-of-state conviction for a violation that would  
24 have been a violation of (a)((~~i~~)), ((~~ii~~)) (b), ((~~iii~~)) (c),  
25 ((~~iv~~)) (d), or ((~~v~~)) (e) of this subsection if committed in this  
26 state;

27 ((~~vii~~)) (g) A deferred prosecution under chapter 10.05 RCW  
28 granted in a prosecution for a violation of RCW 46.61.502, 46.61.504,  
29 or an equivalent local ordinance; or

30 ((~~viii~~)) (h) A deferred prosecution under chapter 10.05 RCW  
31 granted in a prosecution for a violation of RCW 46.61.5249, or an  
32 equivalent local ordinance, if the charge under which the deferred  
33 prosecution was granted was originally filed as a violation of RCW  
34 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
35 46.61.520 or 46.61.522.

36 ((~~b~~) "~~Within five years~~" means that the arrest for a prior offense  
37 occurred ~~within five years of the arrest for the current offense.~~)

1       **Sec. 2.** RCW 46.61.5058 and 1995 c 332 s 6 are each amended to read  
2 as follows:

3       (1) Upon the arrest of a person or upon the filing of a complaint,  
4 citation, or information in a court of competent jurisdiction, based  
5 upon probable cause to believe that a person has violated RCW 46.61.502  
6 or 46.61.504 or any similar municipal ordinance, if such person has a  
7 prior offense (~~((within five years))~~) as defined in RCW 46.61.5055, and  
8 where the person has been provided written notice that any transfer,  
9 sale, or encumbrance of such person's interest in the vehicle over  
10 which that person was actually driving or had physical control when the  
11 violation occurred, is unlawful pending either acquittal, dismissal,  
12 sixty days after conviction, or other termination of the charge, such  
13 person shall be prohibited from encumbering, selling, or transferring  
14 his or her interest in such vehicle, except as otherwise provided in  
15 (a), (b), and (c) of this subsection, until either acquittal,  
16 dismissal, sixty days after conviction, or other termination of the  
17 charge. The prohibition against transfer of title shall not be stayed  
18 pending the determination of an appeal from the conviction.

19       (a) A vehicle encumbered by a bona fide security interest may be  
20 transferred to the secured party or to a person designated by the  
21 secured party;

22       (b) A leased or rented vehicle may be transferred to the lessor,  
23 rental agency, or to a person designated by the lessor or rental  
24 agency; and

25       (c) A vehicle may be transferred to a third party or a vehicle  
26 dealer who is a bona fide purchaser or may be subject to a bona fide  
27 security interest in the vehicle unless it is established that (i) in  
28 the case of a purchase by a third party or vehicle dealer, such party  
29 or dealer had actual notice that the vehicle was subject to the  
30 prohibition prior to the purchase, or (ii) in the case of a security  
31 interest, the holder of the security interest had actual notice that  
32 the vehicle was subject to the prohibition prior to the encumbrance of  
33 title.

34       (2) On conviction for a violation of either RCW 46.61.502 or  
35 46.61.504 or any similar municipal ordinance where the person convicted  
36 has a prior offense (~~((within five years))~~) as defined in RCW 46.61.5055,  
37 the motor vehicle the person was driving or over which the person had  
38 actual physical control at the time of the offense, if the person has

1 a financial interest in the vehicle, is subject to seizure and  
2 forfeiture pursuant to this section.

3 (3) A vehicle subject to forfeiture under this chapter may be  
4 seized by a law enforcement officer of this state upon process issued  
5 by a court of competent jurisdiction. Seizure of a vehicle may be made  
6 without process if the vehicle subject to seizure has been the subject  
7 of a prior judgment in favor of the state in a forfeiture proceeding  
8 based upon this section.

9 (4) Seizure under subsection (3) of this section automatically  
10 commences proceedings for forfeiture. The law enforcement agency under  
11 whose authority the seizure was made shall cause notice of the seizure  
12 and intended forfeiture of the seized vehicle to be served within  
13 fifteen days after the seizure on the owner of the vehicle seized, on  
14 the person in charge of the vehicle, and on any person having a known  
15 right or interest in the vehicle, including a community property  
16 interest. The notice of seizure may be served by any method authorized  
17 by law or court rule, including but not limited to service by certified  
18 mail with return receipt requested. Service by mail is complete upon  
19 mailing within the fifteen-day period after the seizure. Notice of  
20 seizure in the case of property subject to a security interest that has  
21 been perfected on a certificate of title shall be made by service upon  
22 the secured party or the secured party's assignee at the address shown  
23 on the financing statement or the certificate of title.

24 (5) If no person notifies the seizing law enforcement agency in  
25 writing of the person's claim of ownership or right to possession of  
26 the seized vehicle within forty-five days of the seizure, the vehicle  
27 is deemed forfeited.

28 (6) If a person notifies the seizing law enforcement agency in  
29 writing of the person's claim of ownership or right to possession of  
30 the seized vehicle within forty-five days of the seizure, the law  
31 enforcement agency shall give the person or persons a reasonable  
32 opportunity to be heard as to the claim or right. The hearing shall be  
33 before the chief law enforcement officer of the seizing agency or the  
34 chief law enforcement officer's designee, except where the seizing  
35 agency is a state agency as defined in RCW 34.12.020, the hearing shall  
36 be before the chief law enforcement officer of the seizing agency or an  
37 administrative law judge appointed under chapter 34.12 RCW, except that  
38 any person asserting a claim or right may remove the matter to a court  
39 of competent jurisdiction. Removal may only be accomplished according



1 to the rules of civil procedure. The person seeking removal of the  
2 matter must serve process against the state, county, political  
3 subdivision, or municipality that operates the seizing agency, and any  
4 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,  
5 within forty-five days after the person seeking removal has notified  
6 the seizing law enforcement agency of the person's claim of ownership  
7 or right to possession. The court to which the matter is to be removed  
8 shall be the district court when the aggregate value of the vehicle is  
9 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
10 before the seizing agency and any appeal therefrom shall be under Title  
11 34 RCW. In a court hearing between two or more claimants to the  
12 vehicle involved, the prevailing party shall be entitled to a judgment  
13 for costs and reasonable attorneys' fees. The burden of producing  
14 evidence shall be upon the person claiming to be the legal owner or the  
15 person claiming to have the lawful right to possession of the vehicle.  
16 The seizing law enforcement agency shall promptly return the vehicle to  
17 the claimant upon a determination by the administrative law judge or  
18 court that the claimant is the present legal owner under Title 46 RCW  
19 or is lawfully entitled to possession of the vehicle.

20 (7) When a vehicle is forfeited under this chapter the seizing law  
21 enforcement agency may sell the vehicle, retain it for official use, or  
22 upon application by a law enforcement agency of this state release the  
23 vehicle to that agency for the exclusive use of enforcing this title;  
24 provided, however, that the agency shall first satisfy any bona fide  
25 security interest to which the vehicle is subject under subsection (1)  
26 (a) or (c) of this section.

27 (8) When a vehicle is forfeited, the seizing agency shall keep a  
28 record indicating the identity of the prior owner, if known, a  
29 description of the vehicle, the disposition of the vehicle, the value  
30 of the vehicle at the time of seizure, and the amount of proceeds  
31 realized from disposition of the vehicle.

32 (9) Each seizing agency shall retain records of forfeited vehicles  
33 for at least seven years.

34 (10) Each seizing agency shall file a report including a copy of  
35 the records of forfeited vehicles with the state treasurer each  
36 calendar quarter.

37 (11) The quarterly report need not include a record of a forfeited  
38 vehicle that is still being held for use as evidence during the

1 investigation or prosecution of a case or during the appeal from a  
2 conviction.

3 (12) By January 31st of each year, each seizing agency shall remit  
4 to the state treasurer an amount equal to ten percent of the net  
5 proceeds of vehicles forfeited during the preceding calendar year.  
6 Money remitted shall be deposited in the public safety and education  
7 account.

8 (13) The net proceeds of a forfeited vehicle is the value of the  
9 forfeitable interest in the vehicle after deducting the cost of  
10 satisfying a bona fide security interest to which the vehicle is  
11 subject at the time of seizure; and in the case of a sold vehicle,  
12 after deducting the cost of sale, including reasonable fees or  
13 commissions paid to independent selling agents.

14 (14) The value of a sold forfeited vehicle is the sale price. The  
15 value of a retained forfeited vehicle is the fair market value of the  
16 vehicle at the time of seizure, determined when possible by reference  
17 to an applicable commonly used index, such as the index used by the  
18 department of licensing. A seizing agency may, but need not, use an  
19 independent qualified appraiser to determine the value of retained  
20 vehicles. If an appraiser is used, the value of the vehicle appraised  
21 is net of the cost of the appraisal.

22 **Sec. 3.** RCW 46.61.520 and 1996 c 199 s 7 are each amended to read  
23 as follows:

24 (1) When the death of any person ensues within three years as a  
25 proximate result of injury proximately caused by the driving of any  
26 vehicle by any person, the driver is guilty of vehicular homicide if  
27 the driver was operating a motor vehicle:

28 (a) While under the influence of intoxicating liquor or any drug,  
29 as defined by RCW 46.61.502; or

30 (b) In a reckless manner; or

31 (c) With disregard for the safety of others.

32 (2) Vehicular homicide is a class A felony punishable under chapter  
33 9A.20 RCW, except that, for a conviction under subsection (1)(a) of  
34 this section, an additional two years shall be added to the sentence  
35 for each prior offense as defined in RCW 46.61.5055.

36 **Sec. 4.** RCW 9.94A.310 and 1997 c 365 s 3 and 1997 c 338 s 50 are  
37 each reenacted and amended to read as follows:

1 (1)

TABLE 1

2

Sentencing Grid

3 SERIOUSNESS

4 SCORE

OFFENDER SCORE

	0	1	2	3	4	5	6	7	8	9 or more
--	---	---	---	---	---	---	---	---	---	-----------

7

8 XV Life Sentence without Parole/Death Penalty

9

10	XIV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
11		240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
12		320	333	347	361	374	388	416	450	493	548

13

14	XIII	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
15		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
16		220	234	244	254	265	275	295	316	357	397

17

18	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
19		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
20		123	136	147	160	171	184	216	236	277	318

21

22	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
23		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
24		102	114	125	136	147	158	194	211	245	280

25

26	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
27		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
28		68	75	82	89	96	102	130	144	171	198

29

30	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
31		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
32		41	48	54	61	68	75	102	116	144	171

33

34	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
35		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
36		27	34	41	48	54	61	89	102	116	144

37

1	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
2		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
3		20	27	34	41	48	54	75	89	102	116
4											
5	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
6		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
7		14	20	27	34	41	48	61	75	89	102
8											
9	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
10		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
11		12	14	17	20	29	43	54	68	82	96
12											
13	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
14		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
15		9	12	14	17	20	29	43	57	70	84
16											
17	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
18		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
19		3	8	12	12	16	22	29	43	57	68
20											
21	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
22		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
23		Days	6	9	12	14	18	22	29	43	57
24											
25	I			3m	4m	5m	8m	13m	16m	20m	2y2m
26		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
27		Days	Days	5	6	8	12	14	18	22	29
28											

29 NOTE: Numbers in the first horizontal row of each seriousness category  
30 represent sentencing midpoints in years(y) and months(m). Numbers in  
31 the second and third rows represent presumptive sentencing ranges in  
32 months, or in days if so designated. 12+ equals one year and one day.

33 (2) For persons convicted of the anticipatory offenses of criminal  
34 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
35 presumptive sentence is determined by locating the sentencing grid  
36 sentence range defined by the appropriate offender score and the  
37 seriousness level of the completed crime, and multiplying the range by  
38 75 percent.

1           (3) The following additional times shall be added to the  
2 presumptive sentence for felony crimes committed after July 23, 1995,  
3 if the offender or an accomplice was armed with a firearm as defined in  
4 RCW 9.41.010 and the offender is being sentenced for one of the crimes  
5 listed in this subsection as eligible for any firearm enhancements  
6 based on the classification of the completed felony crime. If the  
7 offender or an accomplice was armed with a firearm as defined in RCW  
8 9.41.010 and the offender is being sentenced for an anticipatory  
9 offense under chapter 9A.28 RCW to commit one of the crimes listed in  
10 this subsection as eligible for any firearm enhancements, the following  
11 additional times shall be added to the presumptive sentence determined  
12 under subsection (2) of this section based on the felony crime of  
13 conviction as classified under RCW 9A.28.020:

14           (a) Five years for any felony defined under any law as a class A  
15 felony or with a maximum sentence of at least twenty years, or both,  
16 and not covered under (f) of this subsection.

17           (b) Three years for any felony defined under any law as a class B  
18 felony or with a maximum sentence of ten years, or both, and not  
19 covered under (f) of this subsection.

20           (c) Eighteen months for any felony defined under any law as a  
21 class C felony or with a maximum sentence of five years, or both, and  
22 not covered under (f) of this subsection.

23           (d) If the offender is being sentenced for any firearm  
24 enhancements under (a), (b), and/or (c) of this subsection and the  
25 offender has previously been sentenced for any deadly weapon  
26 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
27 subsection or subsection (4)(a), (b), and/or (c) of this section, or  
28 both, any and all firearm enhancements under this subsection shall be  
29 twice the amount of the enhancement listed.

30           (e) Notwithstanding any other provision of law, any and all  
31 firearm enhancements under this section are mandatory, shall be served  
32 in total confinement, and shall not run concurrently with any other  
33 sentencing provisions.

34           (f) The firearm enhancements in this section shall apply to all  
35 felony crimes except the following: Possession of a machine gun,  
36 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
37 unlawful possession of a firearm in the first and second degree, and  
38 use of a machine gun in a felony.

1 (g) If the presumptive sentence under this section exceeds the  
2 statutory maximum for the offense, the statutory maximum sentence shall  
3 be the presumptive sentence unless the offender is a persistent  
4 offender as defined in RCW 9.94A.030.

5 (4) The following additional times shall be added to the  
6 presumptive sentence for felony crimes committed after July 23, 1995,  
7 if the offender or an accomplice was armed with a deadly weapon as  
8 defined in this chapter other than a firearm as defined in RCW 9.41.010  
9 and the offender is being sentenced for one of the crimes listed in  
10 this subsection as eligible for any deadly weapon enhancements based on  
11 the classification of the completed felony crime. If the offender or  
12 an accomplice was armed with a deadly weapon other than a firearm as  
13 defined in RCW 9.41.010 and the offender is being sentenced for an  
14 anticipatory offense under chapter 9A.28 RCW to commit one of the  
15 crimes listed in this subsection as eligible for any deadly weapon  
16 enhancements, the following additional times shall be added to the  
17 presumptive sentence determined under subsection (2) of this section  
18 based on the felony crime of conviction as classified under RCW  
19 9A.28.020:

20 (a) Two years for any felony defined under any law as a class A  
21 felony or with a maximum sentence of at least twenty years, or both,  
22 and not covered under (f) of this subsection.

23 (b) One year for any felony defined under any law as a class B  
24 felony or with a maximum sentence of ten years, or both, and not  
25 covered under (f) of this subsection.

26 (c) Six months for any felony defined under any law as a class C  
27 felony or with a maximum sentence of five years, or both, and not  
28 covered under (f) of this subsection.

29 (d) If the offender is being sentenced under (a), (b), and/or (c)  
30 of this subsection for any deadly weapon enhancements and the offender  
31 has previously been sentenced for any deadly weapon enhancements after  
32 July 23, 1995, under (a), (b), and/or (c) of this subsection or  
33 subsection (3)(a), (b), and/or (c) of this section, or both, any and  
34 all deadly weapon enhancements under this subsection shall be twice the  
35 amount of the enhancement listed.

36 (e) Notwithstanding any other provision of law, any and all deadly  
37 weapon enhancements under this section are mandatory, shall be served  
38 in total confinement, and shall not run concurrently with any other  
39 sentencing provisions.

1 (f) The deadly weapon enhancements in this section shall apply to  
2 all felony crimes except the following: Possession of a machine gun,  
3 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
4 unlawful possession of a firearm in the first and second degree, and  
5 use of a machine gun in a felony.

6 (g) If the presumptive sentence under this section exceeds the  
7 statutory maximum for the offense, the statutory maximum sentence shall  
8 be the presumptive sentence unless the offender is a persistent  
9 offender as defined in RCW 9.94A.030.

10 (5) The following additional times shall be added to the  
11 presumptive sentence if the offender or an accomplice committed the  
12 offense while in a county jail or state correctional facility as that  
13 term is defined in this chapter and the offender is being sentenced for  
14 one of the crimes listed in this subsection. If the offender or an  
15 accomplice committed one of the crimes listed in this subsection while  
16 in a county jail or state correctional facility as that term is defined  
17 in this chapter, and the offender is being sentenced for an  
18 anticipatory offense under chapter 9A.28 RCW to commit one of the  
19 crimes listed in this subsection, the following additional times shall  
20 be added to the presumptive sentence determined under subsection (2) of  
21 this section:

22 (a) Eighteen months for offenses committed under RCW  
23 69.50.401(a)(1) (i) or (ii) or 69.50.410;

24 (b) Fifteen months for offenses committed under RCW  
25 69.50.401(a)(1) (iii), (iv), and (v);

26 (c) Twelve months for offenses committed under RCW 69.50.401(d).

27 For the purposes of this subsection, all of the real property of  
28 a state correctional facility or county jail shall be deemed to be part  
29 of that facility or county jail.

30 (6) An additional twenty-four months shall be added to the  
31 presumptive sentence for any ranked offense involving a violation of  
32 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

33 (7) An additional two years shall be added to the presumptive  
34 sentence for vehicular homicide committed while under the influence of  
35 intoxicating liquor or any drug as defined by RCW 46.61.502 for each  
36 prior offense as defined in RCW 46.61.5055.

37 **Sec. 5.** RCW 9.94A.360 and 1997 c 338 s 5 are each amended to read  
38 as follows:

1           The offender score is measured on the horizontal axis of the  
2 sentencing grid. The offender score rules are as follows:

3           The offender score is the sum of points accrued under this section  
4 rounded down to the nearest whole number.

5           (1) A prior conviction is a conviction which exists before the  
6 date of sentencing for the offense for which the offender score is  
7 being computed. Convictions entered or sentenced on the same date as  
8 the conviction for which the offender score is being computed shall be  
9 deemed "other current offenses" within the meaning of RCW 9.94A.400.

10           (2) Class A and sex prior felony convictions shall always be  
11 included in the offender score. Class B prior felony convictions other  
12 than sex offenses shall not be included in the offender score, if since  
13 the last date of release from confinement (including full-time  
14 residential treatment) pursuant to a felony conviction, if any, or  
15 entry of judgment and sentence, the offender had spent ten consecutive  
16 years in the community without committing any crime that subsequently  
17 results in a conviction. Class C prior felony convictions other than  
18 sex offenses shall not be included in the offender score if, since the  
19 last date of release from confinement (including full-time residential  
20 treatment) pursuant to a felony conviction, if any, or entry of  
21 judgment and sentence, the offender had spent five consecutive years in  
22 the community without committing any crime that subsequently results in  
23 a conviction. Serious traffic convictions shall not be included in the  
24 offender score if, since the last date of release from confinement  
25 (including full-time residential treatment) pursuant to a felony  
26 conviction, if any, or entry of judgment and sentence, the offender  
27 spent five years in the community without committing any crime that  
28 subsequently results in a conviction. This subsection applies to both  
29 adult and juvenile prior convictions.

30           (3) Out-of-state convictions for offenses shall be classified  
31 according to the comparable offense definitions and sentences provided  
32 by Washington law. Federal convictions for offenses shall be  
33 classified according to the comparable offense definitions and  
34 sentences provided by Washington law. If there is no clearly  
35 comparable offense under Washington law or the offense is one that is  
36 usually considered subject to exclusive federal jurisdiction, the  
37 offense shall be scored as a class C felony equivalent if it was a  
38 felony under the relevant federal statute.



1 (4) Score prior convictions for felony anticipatory offenses  
2 (attempts, criminal solicitations, and criminal conspiracies) the same  
3 as if they were convictions for completed offenses.

4 (5)(a) In the case of multiple prior convictions, for the purpose  
5 of computing the offender score, count all convictions separately,  
6 except:

7 (i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to  
8 encompass the same criminal conduct, shall be counted as one offense,  
9 the offense that yields the highest offender score. The current  
10 sentencing court shall determine with respect to other prior adult  
11 offenses for which sentences were served concurrently or prior juvenile  
12 offenses for which sentences were served consecutively, whether those  
13 offenses shall be counted as one offense or as separate offenses using  
14 the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and  
15 if the court finds that they shall be counted as one offense, then the  
16 offense that yields the highest offender score shall be used. The  
17 current sentencing court may presume that such other prior offenses  
18 were not the same criminal conduct from sentences imposed on separate  
19 dates, or in separate counties or jurisdictions, or in separate  
20 complaints, indictments, or informations;

21 (ii) In the case of multiple prior convictions for offenses  
22 committed before July 1, 1986, for the purpose of computing the  
23 offender score, count all adult convictions served concurrently as one  
24 offense, and count all juvenile convictions entered on the same date as  
25 one offense. Use the conviction for the offense that yields the  
26 highest offender score.

27 (b) As used in this subsection (5), "served concurrently" means  
28 that: (i) The latter sentence was imposed with specific reference to  
29 the former; (ii) the concurrent relationship of the sentences was  
30 judicially imposed; and (iii) the concurrent timing of the sentences  
31 was not the result of a probation or parole revocation on the former  
32 offense.

33 (6) If the present conviction is one of the anticipatory offenses  
34 of criminal attempt, solicitation, or conspiracy, count each prior  
35 conviction as if the present conviction were for a completed offense.

36 (7) If the present conviction is for a nonviolent offense and not  
37 covered by subsection (11) or (12) of this section, count one point for  
38 each adult prior felony conviction and one point for each juvenile

1 prior violent felony conviction and 1/2 point for each juvenile prior  
2 nonviolent felony conviction.

3 (8) If the present conviction is for a violent offense and not  
4 covered in subsection (9), (10), (11), or (12) of this section, count  
5 two points for each prior adult and juvenile violent felony conviction,  
6 one point for each prior adult nonviolent felony conviction, and 1/2  
7 point for each prior juvenile nonviolent felony conviction.

8 (9) If the present conviction is for Murder 1 or 2, Assault 1,  
9 Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or Rape 1, count  
10 three points for prior adult and juvenile convictions for crimes in  
11 these categories, two points for each prior adult and juvenile violent  
12 conviction (not already counted), one point for each prior adult  
13 nonviolent felony conviction, and 1/2 point for each prior juvenile  
14 nonviolent felony conviction.

15 (10) If the present conviction is for Burglary 1, count prior  
16 convictions as in subsection (8) of this section; however count two  
17 points for each prior adult Burglary 2 or residential burglary  
18 conviction, and one point for each prior juvenile Burglary 2 or  
19 residential burglary conviction.

20 (11) If the present conviction is for a felony traffic offense  
21 count two points for each adult or juvenile prior conviction for  
22 Vehicular Homicide or Vehicular Assault; for each felony offense or  
23 serious traffic offense, count one point for each adult and 1/2 point  
24 for each juvenile prior conviction. This subsection shall not apply  
25 when additional time is added to a sentence pursuant to RCW  
26 46.61.520(2).

27 (12) If the present conviction is for a drug offense count three  
28 points for each adult prior felony drug offense conviction and two  
29 points for each juvenile drug offense. All other adult and juvenile  
30 felonies are scored as in subsection (8) of this section if the current  
31 drug offense is violent, or as in subsection (7) of this section if the  
32 current drug offense is nonviolent.

33 (13) If the present conviction is for Willful Failure to Return  
34 from Furlough, RCW 72.66.060, Willful Failure to Return from Work  
35 Release, RCW 72.65.070, or Escape from Community Custody, RCW  
36 72.09.310, count only prior escape convictions in the offender score.  
37 Count adult prior escape convictions as one point and juvenile prior  
38 escape convictions as 1/2 point.

1 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or  
2 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and  
3 juvenile prior convictions as 1/2 point.

4 (15) If the present conviction is for Burglary 2 or residential  
5 burglary, count priors as in subsection (7) of this section; however,  
6 count two points for each adult and juvenile prior Burglary 1  
7 conviction, two points for each adult prior Burglary 2 or residential  
8 burglary conviction, and one point for each juvenile prior Burglary 2  
9 or residential burglary conviction.

10 (16) If the present conviction is for a sex offense, count priors  
11 as in subsections (7) through (15) of this section; however count three  
12 points for each adult and juvenile prior sex offense conviction.

13 (17) If the present conviction is for an offense committed while  
14 the offender was under community placement, add one point.

15 **Sec. 6.** RCW 10.05.010 and 1985 c 352 s 4 are each amended to read  
16 as follows:

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

26 A person charged with a traffic infraction, misdemeanor, or gross  
27 misdemeanor under Title 46 RCW shall not be eligible for a deferred  
28 prosecution program unless the court makes specific findings pursuant  
29 to RCW 10.05.020. Such person shall not be eligible for a deferred  
30 prosecution program more than once (~~in any five year period~~).  
31 Separate offenses committed more than seven days apart may not be  
32 consolidated in a single program.

33 **Sec. 7.** RCW 10.05.100 and 1985 c 352 s 13 are each amended to  
34 read as follows:

35 If a petitioner (~~is subsequently convicted of a similar offense~~  
36 ~~while in a deferred prosecution program~~), within five years after  
37 entry of an order of deferred prosecution, engages in conduct which

1 results in conviction of an offense listed in RCW 46.61.5055(8), upon  
2 notice the court shall remove the petitioner's docket from the deferred  
3 prosecution file and the court shall enter judgment pursuant to RCW  
4 10.05.020.

5 **Sec. 8.** RCW 10.05.120 and 1994 c 275 s 19 are each amended to  
6 read as follows:

7 ~~((Upon))~~ Three years after receiving proof of successful  
8 completion of the two-year treatment program, but not before five years  
9 following entry of the order of deferred prosecution, the court and  
10 prosecutor shall review and verify the defendant's criminal history and  
11 driving record as provided in section 9 of this act. If the petitioner  
12 has not been arrested for or convicted of an offense listed in RCW  
13 46.61.5055(8) since entry of the order of deferred prosecution, the  
14 court shall dismiss the charges pending against the petitioner. If the  
15 defendant has been arrested for an offense listed in RCW 46.61.5055(8)  
16 since entry of the order of deferred prosecution, and there has been no  
17 disposition of the charge or charges, the court shall maintain the case  
18 in deferred prosecution status until a disposition has occurred.  
19 Unless the disposition was a conviction of an offense listed in RCW  
20 46.61.5055(8), the court shall dismiss the charges pending against the  
21 petitioner.

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

24 (1) Immediately before the court defers prosecution under RCW  
25 10.05.020, dismisses a charge, or orders a sentence for any offense  
26 listed in subsection (2) of this section, the court and prosecutor  
27 shall verify the defendant's criminal history and driving record. The  
28 order shall include specific findings as to the criminal history and  
29 driving record. For purposes of this section, the criminal history  
30 shall include all previous convictions and orders of deferred  
31 prosecution, as reported through the judicial information system or  
32 otherwise available to the court or prosecutor, current to within the  
33 period specified in subsection (3) of this section before the date of  
34 the order. For purposes of this section, the driving record shall  
35 include all information reported to the court by the department of  
36 licensing.

1 (2) The offenses to which this section applies are violations of:  
2 (a) RCW 46.61.502 or an equivalent local ordinance; (b) RCW 46.61.504  
3 or an equivalent local ordinance; (c) RCW 46.61.520 committed while  
4 under the influence of intoxicating liquor or any drug; (d) RCW  
5 46.61.522 committed while under the influence of intoxicating liquor or  
6 any drug; and (e) RCW 46.61.5249, 46.61.500, or 9A.36.050, or an  
7 equivalent local ordinance, if the conviction is the result of a charge  
8 that was originally filed as a violation of RCW 46.61.502 or 46.61.504  
9 or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

10 (3) The periods applicable to previous convictions and orders of  
11 deferred prosecution are: (a) One working day, in the case of previous  
12 actions of courts that fully participate in the state judicial  
13 information system; and (b) seven calendar days, in the case of  
14 previous actions of courts that do not fully participate in the  
15 judicial information system. For purposes of this subsection, "fully  
16 participate" means regularly providing records to and receiving records  
17 from the system by electronic means on a daily basis.

18 **Sec. 10.** RCW 10.05.160 and 1985 c 352 s 18 are each amended to  
19 read as follows:

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

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

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

26 (3) Failure of the court to comply with the requirements of RCW  
27 10.05.100;

28 (4) Failure of the evaluation facility to provide the information  
29 required in RCW 10.05.040 and 10.05.050, if the defendant has been  
30 referred to the facility for treatment. If an appeal on such basis is  
31 successful, the trial court may consider the use of another treatment  
32 facility.

33 **Sec. 11.** RCW 46.01.260 and 1997 c 66 s 11 are each amended to  
34 read as follows:

35 (1) Except as provided in subsection (2) of this section, the  
36 director, in his or her discretion, may destroy applications for  
37 vehicle licenses, copies of vehicle licenses issued, applications for

1 drivers' licenses, copies of issued drivers' licenses, certificates of  
2 title and registration or other documents, records or supporting papers  
3 on file in his or her office which have been microfilmed or  
4 photographed or are more than five years old. If the applications for  
5 vehicle licenses are renewal applications, the director may destroy  
6 such applications when the computer record thereof has been updated.

7 (2)(a) The director shall not destroy records of convictions or  
8 adjudications of RCW 46.61.502, 46.61.504, 46.61.520, and 46.61.522 and  
9 shall maintain such records permanently on file.

10 (b) The director shall not, within ten years from the date of  
11 conviction, adjudication, or entry of deferred prosecution, destroy  
12 records of the following:

13 (i) ~~((Convictions or adjudications of the following offenses: RCW  
14 46.61.502 or 46.61.504;~~

15 ~~((ii)))~~ If the offense was originally charged as one of the  
16 offenses designated in (a) ~~((or (b)(i)))~~ of this subsection,  
17 convictions or adjudications of the following offenses: RCW 46.61.500  
18 or 46.61.5249 or any other violation that was originally charged as one  
19 of the offenses designated in (a) ~~((or (b)(i)))~~ of this subsection; or

20 ~~((iii)))~~ (ii) Deferred prosecutions granted under RCW 10.05.120.

21 (c) For purposes of RCW 46.52.100 and 46.52.130, offenses subject  
22 to this subsection shall be considered "alcohol-related" offenses.

23 **Sec. 12.** RCW 46.20.285 and 1996 c 199 s 5 are each amended to  
24 read as follows:

25 The department shall forthwith revoke the license of any driver  
26 for the period of one calendar year unless otherwise provided in this  
27 section, upon receiving a record of the driver's conviction of any of  
28 the following offenses, when the conviction has become final:

29 (1) For vehicular homicide the period of revocation shall be two  
30 years. The revocation period shall be tolled during any period of  
31 total confinement for the offense;

32 (2) Vehicular assault. The revocation period shall be tolled  
33 during any period of total confinement for the offense;

34 (3) Driving a motor vehicle while under the influence of  
35 intoxicating liquor or a narcotic drug, or under the influence of any  
36 other drug to a degree which renders the driver incapable of safely  
37 driving a motor vehicle, ~~((upon a showing by the department's records  
38 that the conviction is the second such conviction for the driver within~~

1 a period of five years. Upon a showing that the conviction is the  
2 third such conviction for the driver within a period of five years, the  
3 period of revocation shall be two years)) for the period prescribed in  
4 RCW 46.61.5055;

5 (4) Any felony in the commission of which a motor vehicle is used;

6 (5) Failure to stop and give information or render aid as required  
7 under the laws of this state in the event of a motor vehicle accident  
8 resulting in the death or personal injury of another or resulting in  
9 damage to a vehicle that is driven or attended by another;

10 (6) Perjury or the making of a false affidavit or statement under  
11 oath to the department under Title 46 RCW or under any other law  
12 relating to the ownership or operation of motor vehicles;

13 (7) Reckless driving upon a showing by the department's records  
14 that the conviction is the third such conviction for the driver within  
15 a period of two years.

16 **Sec. 13.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to  
17 read as follows:

18 (1) Any person who operates a motor vehicle within this state is  
19 deemed to have given consent, subject to the provisions of RCW  
20 46.61.506, to a test or tests of his or her breath or blood for the  
21 purpose of determining the alcohol concentration or presence of any  
22 drug in his or her breath or blood if arrested for any offense where,  
23 at the time of the arrest, the arresting officer has reasonable grounds  
24 to believe the person had been driving or was in actual physical  
25 control of a motor vehicle while under the influence of intoxicating  
26 liquor or any drug or was in violation of RCW 46.61.503.

27 (2) The test or tests of breath shall be administered at the  
28 direction of a law enforcement officer having reasonable grounds to  
29 believe the person to have been driving or in actual physical control  
30 of a motor vehicle within this state while under the influence of  
31 intoxicating liquor or the person to have been driving or in actual  
32 physical control of a motor vehicle while having alcohol in a  
33 concentration of 0.02 or more in his or her system and being under the  
34 age of twenty-one. However, in those instances where the person is  
35 incapable due to physical injury, physical incapacity, or other  
36 physical limitation, of providing a breath sample or where the person  
37 is being treated in a hospital, clinic, doctor's office, emergency  
38 medical vehicle, ambulance, or other similar facility in which a breath

1 testing instrument is not present or where the officer has reasonable  
2 grounds to believe that the person is under the influence of a drug, a  
3 blood test shall be administered by a qualified person as provided in  
4 RCW 46.61.506(4). The officer shall inform the person of his or her  
5 right to refuse the breath or blood test, and of his or her right to  
6 have additional tests administered by any qualified person of his or  
7 her choosing as provided in RCW 46.61.506. The officer shall warn the  
8 driver that:

9 (a) His or her license, permit, or privilege to drive will be  
10 revoked or denied if he or she refuses to submit to the test;

11 (b) His or her license, permit, or privilege to drive will be  
12 suspended, revoked, denied, or placed in probationary status if the  
13 test is administered and the test indicates the alcohol concentration  
14 of the person's breath or blood is 0.10 or more, in the case of a  
15 person age twenty-one or over, or 0.02 or more in the case of a person  
16 under age twenty-one; and

17 (c) His or her refusal to take the test may be used in a criminal  
18 trial.

19 (3) Except as provided in this section, the test administered  
20 shall be of the breath only. If an individual is unconscious or is  
21 under arrest for the crime of vehicular homicide as provided in RCW  
22 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an  
23 individual is under arrest for the crime of driving while under the  
24 influence of intoxicating liquor or drugs as provided in RCW 46.61.502,  
25 which arrest results from an accident in which there has been serious  
26 bodily injury to another person, a breath or blood test may be  
27 administered without the consent of the individual so arrested.

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

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



1 (6) If, after arrest and after the other applicable conditions and  
2 requirements of this section have been satisfied, a test or tests of  
3 the person's blood or breath is administered and the test results  
4 indicate that the alcohol concentration of the person's breath or blood  
5 is 0.10 or more if the person is age twenty-one or over, or is 0.02 or  
6 more if the person is under the age of twenty-one, or the person  
7 refuses to submit to a test, the arresting officer or other law  
8 enforcement officer at whose direction any test has been given, or the  
9 department, where applicable, if the arrest results in a test of the  
10 person's blood, shall:

11 (a) Serve notice in writing on the person on behalf of the  
12 department of its intention to suspend, revoke, deny, or place in  
13 probationary status the person's license, permit, or privilege to drive  
14 as required by subsection (7) of this section;

15 (b) Serve notice in writing on the person on behalf of the  
16 department of his or her right to a hearing, specifying the steps he or  
17 she must take to obtain a hearing as provided by subsection (8) of this  
18 section;

19 (c) Mark the person's Washington state driver's license or permit  
20 to drive, if any, in a manner authorized by the department;

21 (d) Serve notice in writing that the marked license or permit, if  
22 any, is a temporary license that is valid for sixty days from the date  
23 of arrest or from the date notice has been given in the event notice is  
24 given by the department following a blood test, or until the  
25 suspension, revocation, or denial of the person's license, permit, or  
26 privilege to drive is sustained at a hearing pursuant to subsection (8)  
27 of this section, whichever occurs first. No temporary license is valid  
28 to any greater degree than the license or permit that it replaces; and

29 (e) Immediately notify the department of the arrest and transmit  
30 to the department within seventy-two hours, except as delayed as the  
31 result of a blood test, a sworn report or report under a declaration  
32 authorized by RCW 9A.72.085 that states:

33 (i) That the officer had reasonable grounds to believe the  
34 arrested person had been driving or was in actual physical control of  
35 a motor vehicle within this state while under the influence of  
36 intoxicating liquor or drugs, or both, or was under the age of twenty-  
37 one years and had been driving or was in actual physical control of a  
38 motor vehicle while having an alcohol concentration of 0.02 or more;

1 (ii) That after receipt of the warnings required by subsection (2)  
2 of this section the person refused to submit to a test of his or her  
3 blood or breath, or a test was administered and the results indicated  
4 that the alcohol concentration of the person's breath or blood was 0.10  
5 or more if the person is age twenty-one or over, or was 0.02 or more if  
6 the person is under the age of twenty-one; and

7 (iii) Any other information that the director may require by rule.

8 (7) The department of licensing, upon the receipt of a sworn  
9 report or report under a declaration authorized by RCW 9A.72.085 under  
10 subsection (6)(e) of this section, shall suspend, revoke, deny, or  
11 place in probationary status the person's license, permit, or privilege  
12 to drive or any nonresident operating privilege, as provided in RCW  
13 46.20.3101, such suspension, revocation, denial, or placement in  
14 probationary status to be effective beginning sixty days from the date  
15 of arrest or from the date notice has been given in the event notice is  
16 given by the department following a blood test, or when sustained at a  
17 hearing pursuant to subsection (8) of this section, whichever occurs  
18 first.

19 (8) A person receiving notification under subsection (6)(b) of  
20 this section may, within thirty days after the notice has been given,  
21 request in writing a formal hearing before the department. The person  
22 shall pay a fee of one hundred dollars as part of the request. If the  
23 request is mailed, it must be postmarked within thirty days after  
24 receipt of the notification. Upon timely receipt of such a request for  
25 a formal hearing, including receipt of the required one hundred dollar  
26 fee, the department shall afford the person an opportunity for a  
27 hearing. Except as otherwise provided in this section, the hearing is  
28 subject to and shall be scheduled and conducted in accordance with RCW  
29 46.20.329 and 46.20.332. The hearing shall be conducted in the county  
30 of the arrest, except that all or part of the hearing may, at the  
31 discretion of the department, be conducted by telephone or other  
32 electronic means. The hearing shall be held within sixty days  
33 following the arrest or following the date notice has been given in the  
34 event notice is given by the department following a blood test, unless  
35 otherwise agreed to by the department and the person, in which case the  
36 action by the department shall be stayed, and any valid temporary  
37 license marked under subsection (6)(c) of this section extended, if the  
38 person is otherwise eligible for licensing. For the purposes of this  
39 section, the scope of the hearing shall cover the issues of whether a

1 law enforcement officer had reasonable grounds to believe the person  
2 had been driving or was in actual physical control of a motor vehicle  
3 within this state while under the influence of intoxicating liquor or  
4 any drug or had been driving or was in actual physical control of a  
5 motor vehicle within this state while having alcohol in his or her  
6 system in a concentration of 0.02 or more and was under the age of  
7 twenty-one, whether the person was placed under arrest, and (a) whether  
8 the person refused to submit to the test or tests upon request of the  
9 officer after having been informed that such refusal would result in  
10 the revocation of the person's license, permit, or privilege to drive,  
11 or (b) if a test or tests were administered, whether the applicable  
12 requirements of this section were satisfied before the administration  
13 of the test or tests, whether the person submitted to the test or  
14 tests, or whether a test was administered without express consent as  
15 permitted under this section, and whether the test or tests indicated  
16 that the alcohol concentration of the person's breath or blood was 0.10  
17 or more if the person was age twenty-one or over at the time of the  
18 arrest, or was 0.02 or more if the person was under the age of twenty-  
19 one at the time of the arrest. The sworn report or report under a  
20 declaration authorized by RCW 9A.72.085 submitted by a law enforcement  
21 officer is prima facie evidence that the officer had reasonable grounds  
22 to believe the person had been driving or was in actual physical  
23 control of a motor vehicle within this state while under the influence  
24 of intoxicating liquor or drugs, or both, or the person had been  
25 driving or was in actual physical control of a motor vehicle within  
26 this state while having alcohol in his or her system in a concentration  
27 of 0.02 or more and was under the age of twenty-one and that the  
28 officer complied with the requirements of this section.

29 A hearing officer shall conduct the hearing, may issue subpoenas  
30 for the attendance of witnesses and the production of documents, and  
31 shall administer oaths to witnesses. The hearing officer shall not  
32 issue a subpoena for the attendance of a witness at the request of the  
33 person unless the request is accompanied by the fee required by RCW  
34 5.56.010 for a witness in district court. The sworn report or report  
35 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
36 officer and any other evidence accompanying the report shall be  
37 admissible without further evidentiary foundation and the  
38 certifications authorized by the criminal rules for courts of limited  
39 jurisdiction shall be admissible without further evidentiary

1 foundation. The person may be represented by counsel, may question  
2 witnesses, may present evidence, and may testify. The department shall  
3 order that the suspension, revocation, denial, or placement in  
4 probationary status either be rescinded or sustained.

5 (9) If the suspension, revocation, denial, or placement in  
6 probationary status is sustained after such a hearing, the person whose  
7 license, privilege, or permit is suspended, revoked, denied, or placed  
8 in probationary status has the right to file a petition in the superior  
9 court of the county of arrest to review the final order of revocation  
10 by the department in the same manner as an appeal from a decision of a  
11 court of limited jurisdiction. The appellant must pay the costs  
12 associated with obtaining the record of the hearing before the hearing  
13 officer. The filing of the appeal does not stay the effective date of  
14 the suspension, revocation, denial, or placement in probationary  
15 status. A petition filed under this subsection must include the  
16 petitioner's grounds for requesting review. Upon granting petitioner's  
17 request for review, the court shall review the department's final order  
18 of suspension, revocation, denial, or placement in probationary status  
19 as expeditiously as possible. If judicial relief is sought for a stay  
20 or other temporary remedy from the department's action, the court shall  
21 not grant such relief unless the court finds that the appellant is  
22 likely to prevail in the appeal and that without a stay the appellant  
23 will suffer irreparable injury. If the court stays the suspension,  
24 revocation, denial, or placement in probationary status it may impose  
25 conditions on such stay.

26 (10) If a person whose driver's license, permit, or privilege to  
27 drive has been or will be suspended, revoked, denied, or placed in  
28 probationary status under subsection (7) of this section, other than as  
29 a result of a breath test refusal, and who has not committed ((an)) any  
30 prior offense ((within the last five years)) for which he or she was  
31 granted a deferred prosecution under chapter 10.05 RCW, petitions a  
32 court for a deferred prosecution on criminal charges arising out of the  
33 arrest for which action has been or will be taken under subsection (7)  
34 of this section, the court may direct the department to stay any actual  
35 or proposed suspension, revocation, denial, or placement in  
36 probationary status for at least forty-five days but not more than  
37 ninety days. If the court stays the suspension, revocation, denial, or  
38 placement in probationary status, it may impose conditions on such  
39 stay. If the person is otherwise eligible for licensing, the

1 department shall issue a temporary license, or extend any valid  
2 temporary license marked under subsection (6) of this section, for the  
3 period of the stay. If a deferred prosecution treatment plan is not  
4 recommended in the report made under RCW 10.05.050, or if treatment is  
5 rejected by the court, or if the person declines to accept an offered  
6 treatment plan, or if the person violates any condition imposed by the  
7 court, then the court shall immediately direct the department to cancel  
8 the stay and any temporary marked license or extension of a temporary  
9 license issued under this subsection.

10 A suspension, revocation, or denial imposed under this section,  
11 other than as a result of a breath test refusal, shall be stayed if the  
12 person is accepted for deferred prosecution as provided in chapter  
13 10.05 RCW for the incident upon which the suspension, revocation, or  
14 denial is based. If the deferred prosecution is terminated, the stay  
15 shall be lifted and the suspension, revocation, or denial reinstated.  
16 If the deferred prosecution is completed, the stay shall be lifted and  
17 the suspension, revocation, or denial canceled.

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

24 **Sec. 14.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to  
25 read as follows:

26 Pursuant to RCW 46.20.308, the department shall suspend, revoke,  
27 or deny the arrested person's license, permit, or privilege to drive as  
28 follows:

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

30 (a) For a first refusal (~~within five years~~), where there has not  
31 been a previous incident (~~within five years~~) that resulted in  
32 administrative action under this section, revocation or denial for one  
33 year;

34 (b) For a second or subsequent refusal (~~within five years~~), or  
35 for a first refusal where there has been one or more previous incidents  
36 (~~within five years~~) that have resulted in administrative action under  
37 this section, revocation or denial for two years or until the person  
38 reaches age twenty-one, whichever is longer. A revocation imposed

1 under this subsection (1)(b) shall run consecutively to the period of  
2 any suspension, revocation, or denial imposed pursuant to a criminal  
3 conviction arising out of the same incident.

4 (2) In the case of an incident where a person has submitted to or  
5 been administered a test or tests indicating that the alcohol  
6 concentration of the person's breath or blood was 0.10 or more:

7 (a) For a first incident (~~((within five years))~~), where there has  
8 not been a previous incident (~~((within five years))~~) that resulted in  
9 administrative action under this section, placement in probationary  
10 status as provided in RCW 46.20.355;

11 (b) For a second or subsequent incident (~~((within five years))~~),  
12 revocation or denial for two years.

13 (3) In the case of an incident where a person under age twenty-one  
14 has submitted to or been administered a test or tests indicating that  
15 the alcohol concentration of the person's breath or blood was 0.02 or  
16 more:

17 (a) For a first incident (~~((within five years))~~), suspension or  
18 denial for ninety days;

19 (b) For a second or subsequent incident (~~((within five years))~~),  
20 revocation or denial for one year or until the person reaches age  
21 twenty-one, whichever is longer.

22 **Sec. 15.** RCW 46.20.391 and 1995 c 332 s 12 are each amended to  
23 read as follows:

24 (1) Any person licensed under this chapter who is convicted of an  
25 offense relating to motor vehicles for which suspension or revocation  
26 of the driver's license is mandatory, other than vehicular homicide or  
27 vehicular assault, may submit to the department an application for an  
28 occupational driver's license. The department, upon receipt of the  
29 prescribed fee and upon determining that the petitioner is engaged in  
30 an occupation or trade that makes it essential that the petitioner  
31 operate a motor vehicle, may issue an occupational driver's license and  
32 may set definite restrictions as provided in RCW 46.20.394. No person  
33 may petition for, and the department shall not issue, an occupational  
34 driver's license that is effective during the first thirty days of any  
35 suspension or revocation imposed for a violation of RCW 46.61.502 or  
36 46.61.504. A person aggrieved by the decision of the department on the  
37 application for an occupational driver's license may request a hearing  
38 as provided by rule of the department.

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

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

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

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

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

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

24 **SSB 6166** - S AMD - 632

25 By Senators Rossi, Roach, Fairley and Kline

26 ADOPTED 2/12/98

27 On page 1, line 1 of the title, after "influence;" strike the  
28 remainder of the title and insert "amending RCW 46.61.5058, 46.61.520,  
29 9.94A.360, 10.05.010, 10.05.100, 10.05.120, 10.05.160, 46.01.260,  
30 46.20.285, 46.20.308, 46.20.3101, and 46.20.391; reenacting and  
31 amending RCW 46.61.5055 and 9.94A.310; adding a new section to chapter  
32 46.61 RCW; and prescribing penalties."

--- END ---

EFFECT: (1) A conviction for reckless endangerment II or reckless driving will count as a "prior offense" for the purposes of sentencing for subsequent DUI's when the individual was originally charged with a

DUI. (2) The period of a deferred prosecution is extended from 2 to 5 years, and the underlying DUI charge may not be dismissed until five years have passed without the commission of another DUI or related offense. (3) The court is required to verify current criminal history and driving record when sentencing for a DUI or related offense. (4) Vehicular homicide is exempted from the scoring rules related to felony traffic offenses because of the sentencing enhancement in the underlying bill.