
HOUSE BILL 2608

State of Washington

55th Legislature

1998 Regular Session

By Representatives O'Brien, Ballasiotes, Radcliff, Benson, Scott, D. Sommers, Carlson, Costa and Dyer

Read first time 01/16/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to driving under the influence; amending RCW
2 10.05.010, 46.20.720, 46.20.740, 46.61.502, 46.61.504, 46.61.5056,
3 46.61.506, and 46.61.520; reenacting and amending RCW 46.61.5055; and
4 prescribing penalties.

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

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

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

17 A person charged with a traffic infraction, misdemeanor, or gross
18 misdemeanor under Title 46 RCW shall not be eligible for a deferred
19 prosecution program unless the court makes specific findings pursuant

1 to RCW 10.05.020. Such person (~~((shall not be))~~) is eligible for a
2 deferred prosecution program (~~((more than))~~) only once in any five-year
3 period, except that if the person had a previous deferred prosecution
4 at any time that was based on a charge that was originally filed as a
5 violation of RCW 46.61.502 or 46.61.504, or an equivalent local
6 ordinance, the person is permanently ineligible for deferred
7 prosecution under subsequent charges that are originally filed as
8 violations of those provisions. Separate offenses committed more than
9 seven days apart may not be consolidated in a single program.

10 **Sec. 2.** RCW 46.20.720 and 1997 c 229 s 8 are each amended to read
11 as follows:

12 The court may order that after a period of suspension, revocation,
13 or denial of driving privileges, (~~((and for up to as long as the court~~
14 ~~has jurisdiction,))~~) any person convicted of (~~((any offense involving the~~
15 ~~use, consumption, or possession of alcohol while operating a motor~~
16 ~~vehicle))~~) a violation of RCW 46.61.502 or 46.61.504, or an equivalent
17 local ordinance, may drive only a motor vehicle equipped with a
18 functioning ignition interlock or other biological or technical device.

19 The court shall establish a specific calibration setting at which
20 the ignition interlock or other biological or technical device will
21 prevent the motor vehicle from being started (~~((and))~~). The period of
22 time that the person shall be subject to the restriction will be as
23 specified by RCW 46.61.5055.

24 The court shall place the person under the supervision of the
25 department for the duration of the restriction. The department shall
26 monitor the device to ensure its proper operation and the compliance of
27 the offender. If the department detects any sign of tampering with the
28 device or determines that the person has violated the restriction, the
29 department shall immediately suspend the person's driver's license,
30 subject to the hearing procedures of this chapter. If, after the
31 hearing, the department determines that the device has been tampered
32 with or that the person has violated the restriction, the department
33 shall revoke the person's license or permit to drive, or suspend any
34 nonresident privilege to drive, for no less than the appropriate period
35 specified by RCW 46.61.5055.

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

1 **Sec. 3.** RCW 46.20.740 and 1997 c 229 s 10 are each amended to read
2 as follows:

3 (1) The department shall attach or imprint a notation on the
4 driver's license of any person restricted under RCW 46.20.720 or
5 46.61.5055 stating that the person may operate only a motor vehicle
6 equipped with an ignition interlock or other biological or technical
7 device.

8 (2) It is a misdemeanor for a person with such a notation on his or
9 her driver's license to operate a motor vehicle that is not so
10 equipped. A law enforcement officer issuing a citation for a violation
11 of this section shall notify the department of the citation within
12 twenty-four hours.

13 **Sec. 4.** RCW 46.61.502 and 1994 c 275 s 2 are each amended to read
14 as follows:

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

18 (a) And the person has, within two hours after driving, an alcohol
19 concentration of ((0.10)) 0.08 or higher as shown by analysis of the
20 person's breath or blood made under RCW 46.61.506; or

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

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

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

29 (3) It is an affirmative defense to a violation of subsection
30 (1)(a) of this section which the defendant must prove by a
31 preponderance of the evidence that the defendant consumed a sufficient
32 quantity of alcohol after the time of driving and before the
33 administration of an analysis of the person's breath or blood to cause
34 the defendant's alcohol concentration to be ((0.10)) 0.08 or more
35 within two hours after driving. The court shall not admit evidence of
36 this defense unless the defendant notifies the prosecution prior to the
37 omnibus or pretrial hearing in the case of the defendant's intent to
38 assert the affirmative defense.

1 (4) Analyses of blood or breath samples obtained more than two
2 hours after the alleged driving may be used as evidence that within two
3 hours of the alleged driving, a person had an alcohol concentration of
4 ((0.10)) 0.08 or more in violation of subsection (1)(a) of this
5 section, and in any case in which the analysis shows an alcohol
6 concentration above 0.00 may be used as evidence that a person was
7 under the influence of or affected by intoxicating liquor or any drug
8 in violation of subsection (1)(b) or (c) of this section.

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

10 **Sec. 5.** RCW 46.61.504 and 1994 c 275 s 3 are each amended to read
11 as follows:

12 (1) A person is guilty of being in actual physical control of a
13 motor vehicle while under the influence of intoxicating liquor or any
14 drug if the person has actual physical control of a vehicle within this
15 state:

16 (a) And the person has, within two hours after being in actual
17 physical control of the vehicle, an alcohol concentration of ((0.10))
18 0.08 or higher as shown by analysis of the person's breath or blood
19 made under RCW 46.61.506; or

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

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

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

30 (3) It is an affirmative defense to a violation of subsection
31 (1)(a) of this section which the defendant must prove by a
32 preponderance of the evidence that the defendant consumed a sufficient
33 quantity of alcohol after the time of being in actual physical control
34 of the vehicle and before the administration of an analysis of the
35 person's breath or blood to cause the defendant's alcohol concentration
36 to be ((0.10)) 0.08 or more within two hours after being in such
37 control. The court shall not admit evidence of this defense unless the
38 defendant notifies the prosecution prior to the omnibus or pretrial

1 hearing in the case of the defendant's intent to assert the affirmative
2 defense.

3 (4) Analyses of blood or breath samples obtained more than two
4 hours after the alleged being in actual physical control of a vehicle
5 may be used as evidence that within two hours of the alleged being in
6 such control, a person had an alcohol concentration of (~~0.10~~) 0.08 or
7 more in violation of subsection (1)(a) of this section, and in any case
8 in which the analysis shows an alcohol concentration above 0.00 may be
9 used as evidence that a person was under the influence of or affected
10 by intoxicating liquor or any drug in violation of subsection (1)(b) or
11 (c) of this section.

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

13 **Sec. 6.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are
14 each reenacted and amended to read as follows:

15 (1) A person who is convicted of a violation of RCW 46.61.502 or
16 46.61.504 and who has no prior offense within five years shall be
17 punished as follows:

18 (a) In the case of a person whose alcohol concentration was at
19 least 0.08, but less than 0.15, or for whom for reasons other than the
20 person's refusal to take a test offered pursuant to RCW 46.20.308 there
21 is no test result indicating the person's alcohol concentration:

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

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

34 (iii) By suspension of the offender's license or permit to drive,
35 or suspension of any nonresident privilege to drive, for a period of
36 ninety days. The period of license, permit, or privilege suspension
37 may not be suspended. The court shall notify the department of
38 licensing of the conviction, and upon receiving notification of the

1 conviction the department shall suspend the offender's license, permit,
2 or privilege; or

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

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

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

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

26 (2) A person who is convicted of a violation of RCW 46.61.502 or
27 46.61.504 and who has one prior offense within five years shall be
28 punished as follows:

29 (a) In the case of a person whose alcohol concentration was at
30 least 0.08, but less than 0.15, or for whom for reasons other than the
31 person's refusal to take a test offered pursuant to RCW 46.20.308 there
32 is no test result indicating the person's alcohol concentration:

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

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

3 (ii) By a fine of not less than (~~five hundred~~) one thousand
4 dollars nor more than five thousand dollars. (~~Five hundred~~) One
5 thousand dollars of the fine may not be suspended or deferred unless
6 the court finds the offender to be indigent; and

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

14 (iv) By a court-ordered restriction under RCW 46.20.720 to driving
15 only a motor vehicle equipped with a functioning ignition interlock or
16 other biological or technical device for a period of not less than five
17 years; or

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

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

31 (ii) By a fine of not less than (~~seven hundred fifty~~) one
32 thousand five hundred dollars nor more than five thousand dollars.
33 (~~Seven hundred fifty~~) One thousand five hundred dollars of the fine
34 may not be suspended or deferred unless the court finds the offender to
35 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 (~~nine hundred days~~) five years. The period of license, permit, or
39 privilege revocation may not be suspended. The court shall notify the

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

4 (iv) By a court-ordered restriction under RCW 46.20.720 to driving
5 only a motor vehicle equipped with a functioning ignition interlock or
6 other biological or technical device for a period of not less than five
7 years.

8 (3) A person who is convicted of a violation of RCW 46.61.502 or
9 46.61.504 and who has two or more prior offenses within five years
10 shall be punished as follows:

11 (a) In the case of a person whose alcohol concentration was at
12 least 0.08, but less than 0.15, or for whom for reasons other than the
13 person's refusal to take a test offered pursuant to RCW 46.20.308 there
14 is no test result indicating the person's alcohol concentration:

15 (i) By imprisonment for not less than ~~((ninety days))~~ six months
16 nor more than one year. ~~((Ninety days))~~ Six months of the imprisonment
17 may not be suspended or deferred unless the court finds that the
18 imposition of this mandatory minimum sentence would impose a
19 substantial risk to the offender's physical or mental well-being.
20 Whenever the mandatory minimum sentence is suspended or deferred, the
21 court shall state in writing the reason for granting the suspension or
22 deferral and the facts upon which the suspension or deferral is based.
23 The court may suspend any part of the sentence above the mandatory
24 minimum for up to two years, contingent upon the defendant's successful
25 participation in active probation supervision; and

26 (ii) By a fine of not less than ~~((one))~~ five thousand dollars nor
27 more than ~~((five))~~ ten thousand dollars. ~~((One))~~ Five thousand dollars
28 of the fine may not be suspended or deferred unless the court finds the
29 offender to be indigent; and

30 (iii) By a permanent revocation of the offender's license or permit
31 to drive, or a permanent suspension of any nonresident privilege to
32 drive~~((, for a period of three years))~~. The ~~((period of))~~ permanent
33 license, permit, or privilege revocation may not be suspended. The
34 court shall notify the department of licensing of the conviction, and
35 upon receiving notification of the conviction the department shall
36 permanently revoke the offender's license, permit, or privilege; and

37 (iv) By a court-ordered permanent, lifetime restriction under RCW
38 46.20.720 to driving only a motor vehicle equipped with a functioning
39 ignition interlock or other biological or technical device; or

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

5 (i) By imprisonment for not less than (~~one hundred twenty days~~)
6 six months nor more than one year. (~~One hundred twenty days~~) Six
7 months of the imprisonment may not be suspended or deferred unless the
8 court finds that the imposition of this mandatory minimum sentence
9 would impose a substantial risk to the offender's physical or mental
10 well-being. Whenever the mandatory minimum sentence is suspended or
11 deferred, the court shall state in writing the reason for granting the
12 suspension or deferral and the facts upon which the suspension or
13 deferral is based. The court may suspend any part of the sentence
14 above the mandatory minimum for up to two years, contingent upon the
15 defendant's successful participation in active probation supervision;
16 and

17 (ii) By a fine of not less than (~~one~~) five thousand (~~five~~
18 ~~hundred~~) dollars nor more than (~~five~~) ten thousand dollars. (~~One~~)
19 Five thousand (~~five hundred~~) dollars of the fine may not be suspended
20 or deferred unless the court finds the offender to be indigent; and

21 (iii) By a permanent revocation of the offender's license or permit
22 to drive, or a permanent suspension of any nonresident privilege to
23 drive(~~, for a period of four years~~). The (~~period of~~) permanent
24 license, permit, or privilege revocation may not be suspended. The
25 court shall notify the department of licensing of the conviction, and
26 upon receiving notification of the conviction the department shall
27 permanently revoke the offender's license, permit, or privilege; and

28 (iv) By a court-ordered permanent, lifetime restriction under RCW
29 46.20.720 to driving only a motor vehicle equipped with a functioning
30 ignition interlock or other biological or technical device.

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

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

37 (6) After expiration of any period of suspension or revocation of
38 the offender's license, permit, or privilege to drive required by this

1 section, the department shall place the offender's driving privilege in
2 probationary status pursuant to RCW 46.20.355.

3 (7)(a) In addition to any nonsuspendable and nondeferrable jail
4 sentence required by this section, whenever the court imposes less than
5 one year in jail, the court shall also suspend but shall not defer a
6 period of confinement for a period not exceeding two years. The court
7 shall impose conditions of probation that include: (i) Not driving a
8 motor vehicle within this state without a valid license to drive and
9 proof of financial responsibility for the future; (ii) not driving a
10 motor vehicle within this state while having an alcohol concentration
11 of ~~((0-08))~~ 0.04 or more within two hours after driving; and (iii) not
12 refusing to submit to a test of his or her breath or blood to determine
13 alcohol concentration upon request of a law enforcement officer who has
14 reasonable grounds to believe the person was driving or was in actual
15 physical control of a motor vehicle within this state while under the
16 influence of intoxicating liquor. The court may impose conditions of
17 probation that include nonrepetition, installation of an ignition
18 interlock or other biological or technical device on the probationer's
19 motor vehicle, alcohol or drug treatment, supervised probation, or
20 other conditions that may be appropriate. The sentence may be imposed
21 in whole or in part upon violation of a condition of probation during
22 the suspension period.

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

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

37 (8)(a) A "prior offense" means any of the following:

38 (i) A conviction for a violation of RCW 46.61.502 or an equivalent
39 local ordinance;

1 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent
2 local ordinance;

3 (iii) A conviction for a violation of RCW 46.61.520 committed while
4 under the influence of intoxicating liquor or any drug;

5 (iv) A conviction for a violation of RCW 46.61.522 committed while
6 under the influence of intoxicating liquor or any drug;

7 (v) A conviction for a violation of RCW 9A.36.050, 46.61.5249, or
8 an equivalent local ordinance, if the conviction is the result of a
9 charge that was originally filed as a violation of RCW 46.61.502 or
10 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
11 46.61.522;

12 (vi) An out-of-state conviction for a violation that would have
13 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this
14 subsection if committed in this state;

15 (vii) A deferred prosecution under chapter 10.05 RCW granted in a
16 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
17 equivalent local ordinance; or

18 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
19 prosecution for a violation of RCW 9A.36.050, 46.61.5249, or an
20 equivalent local ordinance, if the charge under which the deferred
21 prosecution was granted was originally filed as a violation of RCW
22 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
23 46.61.520 or 46.61.522.

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

26 **Sec. 7.** RCW 46.61.5056 and 1995 c 332 s 14 are each amended to
27 read as follows:

28 (1) A person subject to alcohol assessment and treatment under RCW
29 46.61.5055 shall be required by the court to complete a course in an
30 alcohol information school approved by the department of social and
31 health services or to complete more intensive treatment in a program
32 approved by the department of social and health services, as determined
33 by the court. The court shall notify the department of licensing
34 whenever it orders a person to complete a course or treatment program
35 under this section.

36 (2) A diagnostic evaluation and treatment recommendation shall be
37 prepared under the direction of the court by an alcoholism agency
38 approved by the department of social and health services or a qualified

1 probation department approved by the department of social and health
2 services. A copy of the report shall be forwarded to the department of
3 licensing. Based on the diagnostic evaluation, the court shall
4 determine whether the person shall be required to complete a course in
5 an alcohol information school approved by the department of social and
6 health services or more intensive treatment in a program approved by
7 the department of social and health services. A person convicted of an
8 alcohol related offense under RCW 46.61.5055 who is not referred to
9 outpatient or inpatient treatment must attend and complete an alcohol
10 information course that is approved by the department of social and
11 health services.

12 (3) Standards for approval for alcohol treatment programs shall be
13 prescribed by the department of social and health services. The
14 department of social and health services shall periodically review the
15 costs of alcohol information schools and treatment programs.

16 (4) Any agency that provides treatment ordered under RCW
17 46.61.5055, shall immediately report to the appropriate probation
18 department where applicable, otherwise to the court, and to the
19 department of licensing any noncompliance by a person with the
20 conditions of his or her ordered treatment. The court shall notify the
21 department of licensing and the department of social and health
22 services of any failure by an agency to so report noncompliance. Any
23 agency with knowledge of noncompliance that fails to so report shall be
24 fined two hundred fifty dollars by the department of social and health
25 services. Upon three such failures by an agency within one year, the
26 department of social and health services shall revoke the agency's
27 approval under this section.

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

31 **Sec. 8.** RCW 46.61.506 and 1995 c 332 s 18 are each amended to read
32 as follows:

33 (1) Upon the trial of any civil or criminal action or proceeding
34 arising out of acts alleged to have been committed by any person while
35 driving or in actual physical control of a vehicle while under the
36 influence of intoxicating liquor or any drug, if the person's alcohol
37 concentration is less than ((0.10)) 0.08, it is evidence that may be

1 considered with other competent evidence in determining whether the
2 person was under the influence of intoxicating liquor or any drug.

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

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

18 (4) When a blood test is administered under the provisions of RCW
19 46.20.308, the withdrawal of blood for the purpose of determining its
20 alcoholic or drug content may be performed only by a physician, a
21 registered nurse, or a qualified technician. This limitation shall not
22 apply to the taking of breath specimens.

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

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

34 **Sec. 9.** RCW 46.61.520 and 1996 c 199 s 7 are each amended to read
35 as follows:

36 (1) When the death of any person ensues within three years as a
37 proximate result of injury proximately caused by the driving of any

1 vehicle by any person, the driver is guilty of vehicular homicide if
2 the driver was operating a motor vehicle:

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

5 (b) In a reckless manner; or

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

7 (2) Vehicular homicide is a class A felony punishable under chapter
8 9A.20 RCW.

9 (3) A person convicted of vehicular homicide under subsection
10 (1)(a) of this section must be sentenced to a term of at least five
11 years in a state correctional institution.

--- END ---