
HOUSE BILL 2885

State of Washington

55th Legislature

1998 Regular Session

By Representatives Mulliken, Sheahan, Costa, McDonald, Backlund, Mielke, Smith, Boldt and Thompson

Read first time 01/21/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to drunk driving; amending RCW 46.52.100,
2 46.52.130, 46.01.260, and 46.61.5058; reenacting and amending RCW
3 46.61.5055; and prescribing penalties.

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

5 **Sec. 1.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are
6 each reenacted and amended to read as follows:

7 (1) A person who is convicted of a violation of RCW 46.61.502 or
8 46.61.504 and who has no prior offense (~~((within five years))~~) shall be
9 punished as follows:

10 (a) In the case of a person whose alcohol concentration was less
11 than 0.15, or for whom for reasons other than the person's refusal to
12 take a 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 (~~((one day))~~) three days nor
15 more than one year. (~~((Twenty-four))~~) Three consecutive (~~((hours))~~) days
16 of the imprisonment may not be suspended or deferred unless the court
17 finds that the imposition of this mandatory minimum sentence would
18 impose a substantial risk to the offender's physical or mental well-
19 being. Whenever the mandatory minimum sentence is suspended or

1 deferred, the court shall state in writing the reason for granting the
2 suspension or deferral and the facts upon which the suspension or
3 deferral is based; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (3) A person who is convicted of a violation of RCW 46.61.502 or
13 46.61.504 and who has two or more prior offenses (~~within five years~~)
14 shall be punished as follows:

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

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

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

32 (iii) By revocation of the offender's license or permit to drive,
33 or suspension of any nonresident privilege to drive, for a period of
34 three years. The period of license, permit, or privilege revocation
35 may not be suspended. The court shall notify the department of
36 licensing of the conviction, and upon receiving notification of the
37 conviction the department shall revoke the offender's license, permit,
38 or privilege; 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))~~ two hundred
6 ~~((twenty))~~ forty days nor more than one year. ~~((One))~~ Two hundred
7 ~~((twenty))~~ forty days of the imprisonment may not be suspended or
8 deferred unless the court finds that the imposition of this mandatory
9 minimum sentence would impose a substantial risk to the offender's
10 physical or mental well-being. Whenever the mandatory minimum sentence
11 is suspended or deferred, the court shall state in writing the reason
12 for granting the suspension or deferral and the facts upon which the
13 suspension or deferral is based; and

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

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

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

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

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

35 (7)(a) In addition to any nonsuspendable and nondeferrable jail
36 sentence required by this section, whenever the court imposes less than
37 one year in jail, the court shall also suspend but shall not defer a
38 period of confinement for a period not exceeding two years. The court
39 shall impose conditions of probation that include: (i) Not driving a

1 motor vehicle within this state without a valid license to drive and
2 proof of financial responsibility for the future; (ii) not driving a
3 motor vehicle within this state while having an alcohol concentration
4 of 0.08 or more within two hours after driving; and (iii) not refusing
5 to submit to a test of his or her breath or blood to determine alcohol
6 concentration upon request of a law enforcement officer who has
7 reasonable grounds to believe the person was driving or was in actual
8 physical control of a motor vehicle within this state while under the
9 influence of intoxicating liquor. The court may impose conditions of
10 probation that include nonrepetition, installation of an ignition
11 interlock or other biological or technical device on the probationer's
12 motor vehicle, alcohol or drug treatment, supervised probation, or
13 other conditions that may be appropriate. The sentence may be imposed
14 in whole or in part upon violation of a condition of probation during
15 the suspension period.

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

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

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

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

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

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

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

1 (~~(v)~~) (e) A conviction for a violation of RCW 46.61.5249 or an
2 equivalent local ordinance, if the conviction is the result of a charge
3 that was originally filed as a violation of RCW 46.61.502 or 46.61.504,
4 or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

11 (~~(viii)~~) (h) A deferred prosecution under chapter 10.05 RCW
12 granted in a prosecution for a violation of RCW 46.61.5249, or an
13 equivalent local ordinance, if the charge under which the deferred
14 prosecution was granted was originally filed as a violation of RCW
15 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
16 46.61.520 or 46.61.522.

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

19 **Sec. 2.** RCW 46.52.100 and 1995 c 219 s 3 are each amended to read
20 as follows:

21 Every district court, municipal court, and clerk of superior court
22 shall keep or cause to be kept a record of every traffic complaint,
23 traffic citation, notice of infraction, or other legal form of traffic
24 charge deposited with or presented to the court or a traffic violations
25 bureau, and shall keep a record of every official action by the court
26 or its traffic violations bureau in reference thereto, including but
27 not limited to a record of every conviction, forfeiture of bail,
28 judgment of acquittal, finding that a traffic infraction has been
29 committed, dismissal of a notice of infraction, and the amount of fine,
30 forfeiture, or penalty resulting from every traffic complaint,
31 citation, or notice of infraction deposited with or presented to the
32 district court, municipal court, superior court, or traffic violations
33 bureau. In the case of a conviction for a "prior offense" as defined
34 in RCW 46.61.5055, the record shall be maintained for not less than
35 fifty years.

36 The Monday following the conviction, forfeiture of bail, or finding
37 that a traffic infraction was committed for violation of any provisions
38 of this chapter or other law regulating the operating of vehicles on

1 highways, every magistrate of the court or clerk of the court of record
2 in which such conviction was had, bail was forfeited, or the finding
3 made shall prepare and immediately forward to the director of licensing
4 at Olympia an abstract of the record of the court covering the case,
5 which abstract must be certified by the person so required to prepare
6 the same to be true and correct. Report need not be made of any
7 finding involving the illegal parking or standing of a vehicle.

8 The abstract must be made upon a form or forms furnished by the
9 director and shall include the name and address of the party charged,
10 the number, if any, of the party's driver's or chauffeur's license, the
11 registration number of the vehicle involved if required by the
12 director, the nature of the offense, the date of hearing, the plea, the
13 judgment, whether the offense was an alcohol-related offense as defined
14 in RCW 46.01.260(2), whether bail forfeited, whether the determination
15 that a traffic infraction was committed was contested, and the amount
16 of the fine, forfeiture, or penalty as the case may be.

17 Every court of record shall also forward a like report to the
18 director upon the conviction of any person of a felony in the
19 commission of which a vehicle was used.

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

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

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

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

36 **Sec. 3.** RCW 46.52.130 and 1997 c 66 s 12 are each amended to read
37 as follows:

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

1 agencies shall also indicate whether a recorded violation is an
2 alcohol-related offense as defined in RCW 46.01.260(2) that was
3 originally charged as one of the alcohol-related offenses designated in
4 RCW 46.01.260(2)(b)(i).

5 The abstract provided to the insurance company shall exclude any
6 information, except that related to the commission of misdemeanors or
7 felonies by the individual, pertaining to law enforcement officers or
8 fire fighters as defined in RCW 41.26.030, or any officer of the
9 Washington state patrol, while driving official vehicles in the
10 performance of occupational duty. The abstract provided to the
11 insurance company shall include convictions for RCW 46.61.5249 and
12 46.61.525 except that the abstract shall report them only as negligent
13 driving without reference to whether they are for first or second
14 degree negligent driving. The abstract provided to the insurance
15 company shall exclude any deferred prosecution under RCW 10.05.060,
16 except that if a person is removed from a deferred prosecution under
17 RCW 10.05.090, the abstract shall show the deferred prosecution as well
18 as the removal.

19 The director shall collect for each abstract the sum of four
20 dollars and fifty cents which shall be deposited in the highway safety
21 fund.

22 Any insurance company or its agent receiving the certified abstract
23 shall use it exclusively for its own underwriting purposes and shall
24 not divulge any of the information contained in it to a third party.
25 No policy of insurance may be canceled, nonrenewed, denied, or have the
26 rate increased on the basis of such information unless the policyholder
27 was determined to be at fault. No insurance company or its agent for
28 underwriting purposes relating to the operation of commercial motor
29 vehicles may use any information contained in the abstract relative to
30 any person's operation of motor vehicles while not engaged in such
31 employment, nor may any insurance company or its agent for underwriting
32 purposes relating to the operation of noncommercial motor vehicles use
33 any information contained in the abstract relative to any person's
34 operation of commercial motor vehicles.

35 Any employer or prospective employer or an agent acting on behalf
36 of an employer or prospective employer receiving the certified abstract
37 shall use it exclusively for his or her own purpose to determine
38 whether the licensee should be permitted to operate a commercial

1 vehicle or school bus upon the public highways of this state and shall
2 not divulge any information contained in it to a third party.

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

9 Release of a certified abstract of the driving record of an
10 employee or prospective employee requires a statement signed by: (1)
11 The employee or prospective employee that authorizes the release of the
12 record, and (2) the employer attesting that the information is
13 necessary to determine whether the licensee should be employed to
14 operate a commercial vehicle or school bus upon the public highways of
15 this state. If the employer or prospective employer authorizes an
16 agent to obtain this information on their behalf, this must be noted in
17 the statement.

18 Any violation of this section is a gross misdemeanor.

19 **Sec. 4.** RCW 46.01.260 and 1997 c 66 s 11 are each amended to read
20 as follows:

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

30 (2)(a) The director shall not destroy records of convictions or
31 adjudications of RCW 46.61.520 and 46.61.522 and shall maintain such
32 records permanently on file.

33 (b) The director shall not(~~(, within ten years from the date of~~
34 ~~conviction, adjudication, or entry of deferred prosecution,))~~ destroy
35 records of the following and shall maintain such records permanently on
36 file:

37 (i) Convictions or adjudications of the following offenses: RCW
38 46.61.502 or 46.61.504;

1 (ii) If the offense was originally charged as one of the offenses
2 designated in (a) or (b)(i) of this subsection, convictions or
3 adjudications of the following offenses: RCW 46.61.500 or 46.61.5249
4 or any other violation that was originally charged as one of the
5 offenses designated in (a) or (b)(i) of this subsection; or

6 (iii) Deferred prosecutions granted under RCW 10.05.120.

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

9 **Sec. 5.** RCW 46.61.5058 and 1995 c 332 s 6 are each amended to read
10 as follows:

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

27 (a) A vehicle encumbered by a bona fide security interest may be
28 transferred to the secured party or to a person designated by the
29 secured party;

30 (b) A leased or rented vehicle may be transferred to the lessor,
31 rental agency, or to a person designated by the lessor or rental
32 agency; and

33 (c) A vehicle may be transferred to a third party or a vehicle
34 dealer who is a bona fide purchaser or may be subject to a bona fide
35 security interest in the vehicle unless it is established that (i) in
36 the case of a purchase by a third party or vehicle dealer, such party
37 or dealer had actual notice that the vehicle was subject to the
38 prohibition prior to the purchase, or (ii) in the case of a security

1 interest, the holder of the security interest had actual notice that
2 the vehicle was subject to the prohibition prior to the encumbrance of
3 title.

4 (2) On conviction for a violation of either RCW 46.61.502 or
5 46.61.504 or any similar municipal ordinance where the person convicted
6 has a prior offense (~~((within five years))~~) as defined in RCW 46.61.5055,
7 the motor vehicle the person was driving or over which the person had
8 actual physical control at the time of the offense, if the person has
9 a financial interest in the vehicle, is subject to seizure and
10 forfeiture pursuant to this section.

11 (3) A vehicle subject to forfeiture under this chapter may be
12 seized by a law enforcement officer of this state upon process issued
13 by a court of competent jurisdiction. Seizure of a vehicle may be made
14 without process if the vehicle subject to seizure has been the subject
15 of a prior judgment in favor of the state in a forfeiture proceeding
16 based upon this section.

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

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

36 (6) If a person notifies the seizing law enforcement agency in
37 writing of the person's claim of ownership or right to possession of
38 the seized vehicle within forty-five days of the seizure, the law
39 enforcement agency shall give the person or persons a reasonable

1 opportunity to be heard as to the claim or right. The hearing shall be
2 before the chief law enforcement officer of the seizing agency or the
3 chief law enforcement officer's designee, except where the seizing
4 agency is a state agency as defined in RCW 34.12.020, the hearing shall
5 be before the chief law enforcement officer of the seizing agency or an
6 administrative law judge appointed under chapter 34.12 RCW, except that
7 any person asserting a claim or right may remove the matter to a court
8 of competent jurisdiction. Removal may only be accomplished according
9 to the rules of civil procedure. The person seeking removal of the
10 matter must serve process against the state, county, political
11 subdivision, or municipality that operates the seizing agency, and any
12 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
13 within forty-five days after the person seeking removal has notified
14 the seizing law enforcement agency of the person's claim of ownership
15 or right to possession. The court to which the matter is to be removed
16 shall be the district court when the aggregate value of the vehicle is
17 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
18 before the seizing agency and any appeal therefrom shall be under Title
19 34 RCW. In a court hearing between two or more claimants to the
20 vehicle involved, the prevailing party shall be entitled to a judgment
21 for costs and reasonable attorneys' fees. The burden of producing
22 evidence shall be upon the person claiming to be the legal owner or the
23 person claiming to have the lawful right to possession of the vehicle.
24 The seizing law enforcement agency shall promptly return the vehicle to
25 the claimant upon a determination by the administrative law judge or
26 court that the claimant is the present legal owner under Title 46 RCW
27 or is lawfully entitled to possession of the vehicle.

28 (7) When a vehicle is forfeited under this chapter the seizing law
29 enforcement agency may sell the vehicle, retain it for official use, or
30 upon application by a law enforcement agency of this state release the
31 vehicle to that agency for the exclusive use of enforcing this title;
32 provided, however, that the agency shall first satisfy any bona fide
33 security interest to which the vehicle is subject under subsection (1)
34 (a) or (c) of this section.

35 (8) When a vehicle is forfeited, the seizing agency shall keep a
36 record indicating the identity of the prior owner, if known, a
37 description of the vehicle, the disposition of the vehicle, the value
38 of the vehicle at the time of seizure, and the amount of proceeds
39 realized from disposition of the vehicle.

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

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

6 (11) The quarterly report need not include a record of a forfeited
7 vehicle that is still being held for use as evidence during the
8 investigation or prosecution of a case or during the appeal from a
9 conviction.

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

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

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

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