
SECOND SUBSTITUTE HOUSE BILL 3070

State of Washington 55th Legislature 1998 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives McCune and Mulliken)

Read first time 02/07/98. Referred to Committee on .

1 AN ACT Relating to penalties for driving under the influence;
2 amending RCW 46.61.5058, 46.61.520, 46.01.260, 46.20.285, 46.61.503,
3 46.20.308, 46.20.3101, and 46.20.391; reenacting and amending RCW
4 46.61.5055 and 9.94A.310; creating a new section; and prescribing
5 penalties.

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

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~~) ten years shall
11 be 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

1 offender's physical or mental well-being. Whenever the mandatory
2 minimum sentence is suspended or deferred, the court shall state in
3 writing the reason for granting the suspension or deferral and the
4 facts upon which the suspension or deferral is based; and

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

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

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

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

28 (ii) By a fine of not less than five hundred dollars nor more than
29 five thousand dollars. Five hundred 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 one year. The period of license, permit, or privilege suspension may
35 not be suspended. The court shall notify the department of licensing
36 of the conviction, and upon receiving notification of the conviction
37 the department shall suspend the offender's license, permit, or
38 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~~) ten years shall
3 be 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 days nor more than one
9 year. Thirty days of the imprisonment may not be suspended or deferred
10 unless the court finds that the imposition of this mandatory minimum
11 sentence would impose a substantial risk to the offender's physical or
12 mental well-being. Whenever the mandatory minimum sentence is
13 suspended or deferred, the court shall state in writing the reason for
14 granting the suspension or deferral and the facts upon which the
15 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 days nor more than
32 one year. Forty-five days of the imprisonment may not be suspended or
33 deferred unless the court finds that the imposition of this mandatory
34 minimum sentence would impose a substantial risk to the offender's
35 physical or mental well-being. Whenever the mandatory minimum sentence
36 is suspended or deferred, the court shall state in writing the reason
37 for granting the suspension or deferral and the facts upon which the
38 suspension or deferral is based; 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)) ten
14 years 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 days nor more than one
20 year. Ninety days of the imprisonment may not be suspended or deferred
21 unless the court finds that the imposition of this mandatory minimum
22 sentence would impose a substantial risk to the offender's physical or
23 mental well-being. Whenever the mandatory minimum sentence is
24 suspended or deferred, the court shall state in writing the reason for
25 granting the suspension or deferral and the facts upon which the
26 suspension or deferral is based; and

27 (ii) By a fine of not less than one thousand dollars nor more than
28 five thousand dollars. One thousand 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 three years. The period of license, permit, or privilege revocation
34 may not be suspended. The court shall notify the department of
35 licensing of the conviction, and upon receiving notification of the
36 conviction the department shall revoke the offender's license, permit,
37 or privilege; or

38 (b) In the case of a person whose alcohol concentration was at
39 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 one hundred twenty days nor
4 more than one year. One hundred twenty days of the imprisonment may
5 not be suspended or deferred unless the court finds that the imposition
6 of this mandatory minimum sentence would impose a substantial risk to
7 the offender's physical or mental well-being. Whenever the mandatory
8 minimum sentence is suspended or deferred, the court shall state in
9 writing the reason for granting the suspension or deferral and the
10 facts upon which the suspension or deferral is based; and

11 (ii) By a fine of not less than one thousand five hundred dollars
12 nor more than five thousand dollars. One thousand five hundred dollars
13 of the fine may not be suspended or deferred unless the court finds the
14 offender to be 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 four years. The period of license, permit, or privilege revocation 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 revoke the offender's license, permit, or
21 privilege.

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

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

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

32 (7)(a) In addition to any nonsuspendable and nondeferrable jail
33 sentence required by this section, whenever the court imposes less than
34 one year in jail, the court shall also suspend but shall not defer a
35 period of confinement for a period not exceeding two years. The court
36 shall impose conditions of probation that include: (i) Not driving a
37 motor vehicle within this state without a valid license to drive and
38 proof of financial responsibility for the future; (ii) not driving a
39 motor vehicle within this state while having an alcohol concentration

1 of 0.08 or more within two hours after driving; and (iii) not refusing
2 to submit to a test of his or her breath or blood to determine alcohol
3 concentration upon request of a law enforcement officer who has
4 reasonable grounds to believe the person was driving or was in actual
5 physical control of a motor vehicle within this state while under the
6 influence of intoxicating liquor. The court may impose conditions of
7 probation that include nonrepetition, installation of an ignition
8 interlock or other biological or technical device on the probationer's
9 motor vehicle, alcohol or drug treatment, supervised probation, or
10 other conditions that may be appropriate. The sentence may be imposed
11 in whole or in part upon violation of a condition of probation during
12 the suspension period.

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

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

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

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

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

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

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

36 (v) A conviction for a violation of RCW 46.61.5249 or an equivalent
37 local ordinance, if the conviction is the result of a charge that was
38 originally filed as a violation of RCW 46.61.502 or 46.61.504, or an
39 equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

7 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
8 prosecution for a violation of RCW 46.61.5249, or an equivalent local
9 ordinance, if the charge under which the deferred prosecution was
10 granted was originally filed as a violation of RCW 46.61.502 or
11 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
12 46.61.522.

13 (b) "Within (~~five~~) ten years" means that the arrest for a prior
14 offense occurred within (~~five~~) ten years of the arrest for the
15 current offense.

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

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

34 (a) A vehicle encumbered by a bona fide security interest may be
35 transferred to the secured party or to a person designated by the
36 secured party;

1 (b) A leased or rented vehicle may be transferred to the lessor,
2 rental agency, or to a person designated by the lessor or rental
3 agency; and

4 (c) A vehicle may be transferred to a third party or a vehicle
5 dealer who is a bona fide purchaser or may be subject to a bona fide
6 security interest in the vehicle unless it is established that (i) in
7 the case of a purchase by a third party or vehicle dealer, such party
8 or dealer had actual notice that the vehicle was subject to the
9 prohibition prior to the purchase, or (ii) in the case of a security
10 interest, the holder of the security interest had actual notice that
11 the vehicle was subject to the prohibition prior to the encumbrance of
12 title.

13 (2) On conviction for a violation of either RCW 46.61.502 or
14 46.61.504 or any similar municipal ordinance where the person convicted
15 has a prior offense within ((five)) ten years as defined in RCW
16 46.61.5055, the motor vehicle the person was driving or over which the
17 person had actual physical control at the time of the offense, if the
18 person has a financial interest in the vehicle, is subject to seizure
19 and forfeiture pursuant to this section.

20 (3) A vehicle subject to forfeiture under this chapter may be
21 seized by a law enforcement officer of this state upon process issued
22 by a court of competent jurisdiction. Seizure of a vehicle may be made
23 without process if the vehicle subject to seizure has been the subject
24 of a prior judgment in favor of the state in a forfeiture proceeding
25 based upon this section.

26 (4) Seizure under subsection (3) of this section automatically
27 commences proceedings for forfeiture. The law enforcement agency under
28 whose authority the seizure was made shall cause notice of the seizure
29 and intended forfeiture of the seized vehicle to be served within
30 fifteen days after the seizure on the owner of the vehicle seized, on
31 the person in charge of the vehicle, and on any person having a known
32 right or interest in the vehicle, including a community property
33 interest. The notice of seizure may be served by any method authorized
34 by law or court rule, including but not limited to service by certified
35 mail with return receipt requested. Service by mail is complete upon
36 mailing within the fifteen-day period after the seizure. Notice of
37 seizure in the case of property subject to a security interest that has
38 been perfected on a certificate of title shall be made by service upon

1 the secured party or the secured party's assignee at the address shown
2 on the financing statement or the certificate of title.

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

7 (6) If a person notifies the seizing law enforcement agency in
8 writing of the person's claim of ownership or right to possession of
9 the seized vehicle within forty-five days of the seizure, the law
10 enforcement agency shall give the person or persons a reasonable
11 opportunity to be heard as to the claim or right. The hearing shall be
12 before the chief law enforcement officer of the seizing agency or the
13 chief law enforcement officer's designee, except where the seizing
14 agency is a state agency as defined in RCW 34.12.020, the hearing shall
15 be before the chief law enforcement officer of the seizing agency or an
16 administrative law judge appointed under chapter 34.12 RCW, except that
17 any person asserting a claim or right may remove the matter to a court
18 of competent jurisdiction. Removal may only be accomplished according
19 to the rules of civil procedure. The person seeking removal of the
20 matter must serve process against the state, county, political
21 subdivision, or municipality that operates the seizing agency, and any
22 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
23 within forty-five days after the person seeking removal has notified
24 the seizing law enforcement agency of the person's claim of ownership
25 or right to possession. The court to which the matter is to be removed
26 shall be the district court when the aggregate value of the vehicle is
27 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
28 before the seizing agency and any appeal therefrom shall be under Title
29 34 RCW. In a court hearing between two or more claimants to the
30 vehicle involved, the prevailing party shall be entitled to a judgment
31 for costs and reasonable attorneys' fees. The burden of producing
32 evidence shall be upon the person claiming to be the legal owner or the
33 person claiming to have the lawful right to possession of the vehicle.
34 The seizing law enforcement agency shall promptly return the vehicle to
35 the claimant upon a determination by the administrative law judge or
36 court that the claimant is the present legal owner under Title 46 RCW
37 or is lawfully entitled to possession of the vehicle.

38 (7) When a vehicle is forfeited under this chapter the seizing law
39 enforcement agency may sell the vehicle, retain it for official use, or

1 upon application by a law enforcement agency of this state release the
2 vehicle to that agency for the exclusive use of enforcing this title;
3 provided, however, that the agency shall first satisfy any bona fide
4 security interest to which the vehicle is subject under subsection (1)
5 (a) or (c) of this section.

6 (8) When a vehicle is forfeited, the seizing agency shall keep a
7 record indicating the identity of the prior owner, if known, a
8 description of the vehicle, the disposition of the vehicle, the value
9 of the vehicle at the time of seizure, and the amount of proceeds
10 realized from disposition of the vehicle.

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

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

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

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

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

31 (14) The value of a sold forfeited vehicle is the sale price. The
32 value of a retained forfeited vehicle is the fair market value of the
33 vehicle at the time of seizure, determined when possible by reference
34 to an applicable commonly used index, such as the index used by the
35 department of licensing. A seizing agency may, but need not, use an
36 independent qualified appraiser to determine the value of retained
37 vehicles. If an appraiser is used, the value of the vehicle appraised
38 is net of the cost of the appraisal.

1	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
2		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
3		102	114	125	136	147	158	194	211	245	280
4											
5	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
6		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
7		68	75	82	89	96	102	130	144	171	198
8											
9	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
10		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
11		41	48	54	61	68	75	102	116	144	171
12											
13	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
14		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
15		27	34	41	48	54	61	89	102	116	144
16											
17	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
18		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
19		20	27	34	41	48	54	75	89	102	116
20											
21	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
22		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
23		14	20	27	34	41	48	61	75	89	102
24											
25	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
26		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
27		12	14	17	20	29	43	54	68	82	96
28											
29	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
30		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
31		9	12	14	17	20	29	43	57	70	84
32											
33	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
34		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
35		3	8	12	12	16	22	29	43	57	68
36											
37	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
38		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
39		Days	6	9	12	14	18	22	29	43	57

1
2
3
4
5

I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
	Days	Days	5	6	8	12	14	18	22	29

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

10 (2) For persons convicted of the anticipatory offenses of criminal
11 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
12 presumptive sentence is determined by locating the sentencing grid
13 sentence range defined by the appropriate offender score and the
14 seriousness level of the completed crime, and multiplying the range by
15 75 percent.

16 (3) The following additional times shall be added to the
17 presumptive sentence for felony crimes committed after July 23, 1995,
18 if the offender or an accomplice was armed with a firearm as defined in
19 RCW 9.41.010 and the offender is being sentenced for one of the crimes
20 listed in this subsection as eligible for any firearm enhancements
21 based on the classification of the completed felony crime. If the
22 offender or an accomplice was armed with a firearm as defined in RCW
23 9.41.010 and the offender is being sentenced for an anticipatory
24 offense under chapter 9A.28 RCW to commit one of the crimes listed in
25 this subsection as eligible for any firearm enhancements, the following
26 additional times shall be added to the presumptive sentence determined
27 under subsection (2) of this section based on the felony crime of
28 conviction as classified under RCW 9A.28.020:

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

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

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

1 (d) If the offender is being sentenced for any firearm
2 enhancements under (a), (b), and/or (c) of this subsection and the
3 offender has previously been sentenced for any deadly weapon
4 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
5 subsection or subsection (4)(a), (b), and/or (c) of this section, or
6 both, any and all firearm enhancements under this subsection shall be
7 twice the amount of the enhancement listed.

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

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

17 (g) If the presumptive sentence under this section exceeds the
18 statutory maximum for the offense, the statutory maximum sentence shall
19 be the presumptive sentence unless the offender is a persistent
20 offender as defined in RCW 9.94A.030.

21 (4) The following additional times shall be added to the
22 presumptive sentence for felony crimes committed after July 23, 1995,
23 if the offender or an accomplice was armed with a deadly weapon as
24 defined in this chapter other than a firearm as defined in RCW 9.41.010
25 and the offender is being sentenced for one of the crimes listed in
26 this subsection as eligible for any deadly weapon enhancements based on
27 the classification of the completed felony crime. If the offender or
28 an accomplice was armed with a deadly weapon other than a firearm as
29 defined in RCW 9.41.010 and the offender is being sentenced for an
30 anticipatory offense under chapter 9A.28 RCW to commit one of the
31 crimes listed in this subsection as eligible for any deadly weapon
32 enhancements, the following additional times shall be added to the
33 presumptive sentence determined under subsection (2) of this section
34 based on the felony crime of conviction as classified under RCW
35 9A.28.020:

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

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

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

7 (d) If the offender is being sentenced under (a), (b), and/or (c)
8 of this subsection for any deadly weapon enhancements and the offender
9 has previously been sentenced for any deadly weapon enhancements after
10 July 23, 1995, under (a), (b), and/or (c) of this subsection or
11 subsection (3)(a), (b), and/or (c) of this section, or both, any and
12 all deadly weapon enhancements under this subsection shall be twice the
13 amount of the enhancement listed.

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

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

23 (g) If the presumptive sentence under this section exceeds the
24 statutory maximum for the offense, the statutory maximum sentence shall
25 be the presumptive sentence unless the offender is a persistent
26 offender as defined in RCW 9.94A.030.

27 (5) The following additional times shall be added to the
28 presumptive sentence if the offender or an accomplice committed the
29 offense while in a county jail or state correctional facility as that
30 term is defined in this chapter and the offender is being sentenced for
31 one of the crimes listed in this subsection. If the offender or an
32 accomplice committed one of the crimes listed in this subsection while
33 in a county jail or state correctional facility as that term is defined
34 in this chapter, and the offender is being sentenced for an
35 anticipatory offense under chapter 9A.28 RCW to commit one of the
36 crimes listed in this subsection, the following additional times shall
37 be added to the presumptive sentence determined under subsection (2) of
38 this section:

1 (a) Eighteen months for offenses committed under RCW
2 69.50.401(a)(1) (i) or (ii) or 69.50.410;

3 (b) Fifteen months for offenses committed under RCW
4 69.50.401(a)(1) (iii), (iv), and (v);

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

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

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

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

16 **Sec. 5.** RCW 46.01.260 and 1997 c 66 s 11 are each amended to read
17 as follows:

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

27 (2)(a) The director shall not destroy records of convictions or
28 adjudications of RCW 46.61.520 and 46.61.522 or records of deferred
29 prosecutions granted under RCW 10.05.120 and shall maintain such
30 records permanently on file.

31 (b) The director shall not, within (~~ten~~) fifteen years from the
32 date of conviction(~~(7)~~) or adjudication(~~(7—or—entry—of—deferred~~
33 ~~prosecution)~~), destroy records of the following:

34 (i) Convictions or adjudications of the following offenses: RCW
35 46.61.502 or 46.61.504; or

36 (ii) If the offense was originally charged as one of the offenses
37 designated in (a) or (b)(i) of this subsection, convictions or
38 adjudications of the following offenses: RCW 46.61.500 or 46.61.5249

1 or any other violation that was originally charged as one of the
2 offenses designated in (a) or (b)(i) of this subsection(~~(i) or~~
3 ~~(iii) Deferred prosecutions granted under RCW 10.05.120~~)).
4 (c) For purposes of RCW 46.52.100 and 46.52.130, offenses subject
5 to this subsection shall be considered "alcohol-related" offenses.

6 **Sec. 6.** RCW 46.20.285 and 1996 c 199 s 5 are each amended to read
7 as follows:

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

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

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

17 (3) Driving a motor vehicle while under the influence of
18 intoxicating liquor or a narcotic drug, or under the influence of any
19 other drug to a degree which renders the driver incapable of safely
20 driving a motor vehicle, (~~upon a showing by the department's records~~
21 ~~that the conviction is the second such conviction for the driver within~~
22 ~~a period of five years. Upon a showing that the conviction is the~~
23 ~~third such conviction for the driver within a period of five years, the~~
24 ~~period of revocation shall be two years~~) for the period prescribed in
25 RCW 46.61.5055;

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

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

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

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

1 **Sec. 7.** RCW 46.61.503 and 1995 c 332 s 2 are each amended to read
2 as follows:

3 (1) Notwithstanding any other provision of this title, a person is
4 guilty of driving a motor vehicle after consuming alcohol if the person
5 operates a motor vehicle within this state and the person:

6 (a) Is under the age of twenty-one;

7 (b) Has, within two hours after operating the motor vehicle, an
8 alcohol concentration of ~~((0.02 or more))~~ at least 0.02 but less than
9 the concentration specified in RCW 46.61.502, as shown by analysis of
10 the person's breath or blood made under RCW 46.61.506.

11 (2) It is an affirmative defense to a violation of subsection (1)
12 of this section which the defendant must prove by a preponderance of
13 the evidence that the defendant consumed a sufficient quantity of
14 alcohol after the time of driving and before the administration of an
15 analysis of the person's breath or blood to cause the defendant's
16 alcohol concentration to be ~~((0.02 or more))~~ in violation of subsection
17 (1) of this section within two hours after driving. The court shall
18 not admit evidence of this defense unless the defendant notifies the
19 prosecution prior to the earlier of: (a) Seven days prior to trial; or
20 (b) the omnibus or pretrial hearing in the case of the defendant's
21 intent to assert the affirmative defense.

22 (3) Analyses of blood or breath samples obtained more than two
23 hours after the alleged driving may be used as evidence that within two
24 hours of the alleged driving, a person had an alcohol concentration
25 ~~((of 0.02 or more))~~ in violation of subsection (1) of this section.

26 (4) A violation of this section is a misdemeanor.

27 **Sec. 8.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read
28 as follows:

29 (1) Any person who operates a motor vehicle within this state is
30 deemed to have given consent, subject to the provisions of RCW
31 46.61.506, to a test or tests of his or her breath or blood for the
32 purpose of determining the alcohol concentration or presence of any
33 drug in his or her breath or blood if arrested for any offense where,
34 at the time of the arrest, the arresting officer has reasonable grounds
35 to believe the person had been driving or was in actual physical
36 control of a motor vehicle while under the influence of intoxicating
37 liquor or any drug or was in violation of RCW 46.61.503.

1 (2) The test or tests of breath shall be administered at the
2 direction of a law enforcement officer having reasonable grounds to
3 believe the person to have been driving or in actual physical control
4 of a motor vehicle within this state while under the influence of
5 intoxicating liquor or the person to have been driving or in actual
6 physical control of a motor vehicle while having alcohol in a
7 concentration (~~(of 0.02 or more)~~) in violation of RCW 46.61.503 in his
8 or her system and being under the age of twenty-one. However, in those
9 instances where the person is incapable due to physical injury,
10 physical incapacity, or other physical limitation, of providing a
11 breath sample or where the person is being treated in a hospital,
12 clinic, doctor's office, emergency medical vehicle, ambulance, or other
13 similar facility in which a breath testing instrument is not present or
14 where the officer has reasonable grounds to believe that the person is
15 under the influence of a drug, a blood test shall be administered by a
16 qualified person as provided in RCW 46.61.506(4). The officer shall
17 inform the person of his or her right to refuse the breath or blood
18 test, and of his or her right to have additional tests administered by
19 any qualified person of his or her choosing as provided in RCW
20 46.61.506. The officer shall warn the driver that:

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

23 (b) His or her license, permit, or privilege to drive will be
24 suspended, revoked, denied, or placed in probationary status if the
25 test is administered and the test indicates the alcohol concentration
26 of the person's breath or blood is 0.10 or more, in the case of a
27 person age twenty-one or over, or (~~(0.02 or more)~~) in violation of RCW
28 46.61.503 in the case of a person under age twenty-one; and

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

31 (3) Except as provided in this section, the test administered
32 shall be of the breath only. If an individual is unconscious or is
33 under arrest for the crime of vehicular homicide as provided in RCW
34 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an
35 individual is under arrest for the crime of driving while under the
36 influence of intoxicating liquor or drugs as provided in RCW 46.61.502,
37 which arrest results from an accident in which there has been serious
38 bodily injury to another person, a breath or blood test may be
39 administered without the consent of the individual so arrested.

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

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

12 (6) If, after arrest and after the other applicable conditions and
13 requirements of this section have been satisfied, a test or tests of
14 the person's blood or breath is administered and the test results
15 indicate that the alcohol concentration of the person's breath or blood
16 is 0.10 or more if the person is age twenty-one or over, or is (~~0.02~~
17 ~~or more~~) in violation of RCW 46.61.503 if the person is under the age
18 of twenty-one, or the person refuses to submit to a test, the arresting
19 officer or other law enforcement officer at whose direction any test
20 has been given, or the department, where applicable, if the arrest
21 results in a test of the person's blood, shall:

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

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

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

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

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

5 (i) That the officer had reasonable grounds to believe the
6 arrested person had been driving or was in actual physical control of
7 a motor vehicle within this state while under the influence of
8 intoxicating liquor or drugs, or both, or was under the age of twenty-
9 one years and had been driving or was in actual physical control of a
10 motor vehicle while having an alcohol concentration (~~of 0.02 or more~~)
11 in violation of RCW 46.61.503;

12 (ii) That after receipt of the warnings required by subsection (2)
13 of this section the person refused to submit to a test of his or her
14 blood or breath, or a test was administered and the results indicated
15 that the alcohol concentration of the person's breath or blood was 0.10
16 or more if the person is age twenty-one or over, or was (~~0.02 or~~
17 ~~more~~) in violation of RCW 46.61.503 if the person is under the age of
18 twenty-one; and

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

20 (7) The department of licensing, upon the receipt of a sworn
21 report or report under a declaration authorized by RCW 9A.72.085 under
22 subsection (6)(e) of this section, shall suspend, revoke, deny, or
23 place in probationary status the person's license, permit, or privilege
24 to drive or any nonresident operating privilege, as provided in RCW
25 46.20.3101, such suspension, revocation, denial, or placement in
26 probationary status to be effective beginning sixty days from the date
27 of arrest or from the date notice has been given in the event notice is
28 given by the department following a blood test, or when sustained at a
29 hearing pursuant to subsection (8) of this section, whichever occurs
30 first.

31 (8) A person receiving notification under subsection (6)(b) of
32 this section may, within thirty days after the notice has been given,
33 request in writing a formal hearing before the department. The person
34 shall pay a fee of one hundred dollars as part of the request. If the
35 request is mailed, it must be postmarked within thirty days after
36 receipt of the notification. Upon timely receipt of such a request for
37 a formal hearing, including receipt of the required one hundred dollar
38 fee, the department shall afford the person an opportunity for a
39 hearing. Except as otherwise provided in this section, the hearing is

1 subject to and shall be scheduled and conducted in accordance with RCW
2 46.20.329 and 46.20.332. The hearing shall be conducted in the county
3 of the arrest, except that all or part of the hearing may, at the
4 discretion of the department, be conducted by telephone or other
5 electronic means. The hearing shall be held within sixty days
6 following the arrest or following the date notice has been given in the
7 event notice is given by the department following a blood test, unless
8 otherwise agreed to by the department and the person, in which case the
9 action by the department shall be stayed, and any valid temporary
10 license marked under subsection (6)(c) of this section extended, if the
11 person is otherwise eligible for licensing. For the purposes of this
12 section, the scope of the hearing shall cover the issues of whether a
13 law enforcement officer had reasonable grounds to believe the person
14 had been driving or was in actual physical control of a motor vehicle
15 within this state while under the influence of intoxicating liquor or
16 any drug or had been driving or was in actual physical control of a
17 motor vehicle within this state while having alcohol in his or her
18 system in a concentration (~~(of 0.02 or more)~~) in violation of RCW
19 46.61.503 and was under the age of twenty-one, whether the person was
20 placed under arrest, and (a) whether the person refused to submit to
21 the test or tests upon request of the officer after having been
22 informed that such refusal would result in the revocation of the
23 person's license, permit, or privilege to drive, or (b) if a test or
24 tests were administered, whether the applicable requirements of this
25 section were satisfied before the administration of the test or tests,
26 whether the person submitted to the test or tests, or whether a test
27 was administered without express consent as permitted under this
28 section, and whether the test or tests indicated that the alcohol
29 concentration of the person's breath or blood was 0.10 or more if the
30 person was age twenty-one or over at the time of the arrest, or was
31 (~~(0.02 or more)~~) in violation of RCW 46.61.503 if the person was under
32 the age of twenty-one at the time of the arrest. The sworn report or
33 report under a declaration authorized by RCW 9A.72.085 submitted by a
34 law enforcement officer is prima facie evidence that the officer had
35 reasonable grounds to believe the person had been driving or was in
36 actual physical control of a motor vehicle within this state while
37 under the influence of intoxicating liquor or drugs, or both, or the
38 person had been driving or was in actual physical control of a motor
39 vehicle within this state while having alcohol in his or her system in

1 a concentration ((~~of 0.02 or more~~)) in violation of RCW 46.61.503 and
2 was under the age of twenty-one and that the officer complied with the
3 requirements of this section.

4 A hearing officer shall conduct the hearing, may issue subpoenas
5 for the attendance of witnesses and the production of documents, and
6 shall administer oaths to witnesses. The hearing officer shall not
7 issue a subpoena for the attendance of a witness at the request of the
8 person unless the request is accompanied by the fee required by RCW
9 5.56.010 for a witness in district court. The sworn report or report
10 under a declaration authorized by RCW 9A.72.085 of the law enforcement
11 officer and any other evidence accompanying the report shall be
12 admissible without further evidentiary foundation and the
13 certifications authorized by the criminal rules for courts of limited
14 jurisdiction shall be admissible without further evidentiary
15 foundation. The person may be represented by counsel, may question
16 witnesses, may present evidence, and may testify. The department shall
17 order that the suspension, revocation, denial, or placement in
18 probationary status either be rescinded or sustained.

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

1 (10) If a person whose driver's license, permit, or privilege to
2 drive has been or will be suspended, revoked, denied, or placed in
3 probationary status under subsection (7) of this section, other than as
4 a result of a breath test refusal, and who has not committed an offense
5 within the last five years for which he or she was granted a deferred
6 prosecution under chapter 10.05 RCW, petitions a court for a deferred
7 prosecution on criminal charges arising out of the arrest for which
8 action has been or will be taken under subsection (7) of this section,
9 the court may direct the department to stay any actual or proposed
10 suspension, revocation, denial, or placement in probationary status for
11 at least forty-five days but not more than ninety days. If the court
12 stays the suspension, revocation, denial, or placement in probationary
13 status, it may impose conditions on such stay. If the person is
14 otherwise eligible for licensing, the department shall issue a
15 temporary license, or extend any valid temporary license marked under
16 subsection (6) of this section, for the period of the stay. If a
17 deferred prosecution treatment plan is not recommended in the report
18 made under RCW 10.05.050, or if treatment is rejected by the court, or
19 if the person declines to accept an offered treatment plan, or if the
20 person violates any condition imposed by the court, then the court
21 shall immediately direct the department to cancel the stay and any
22 temporary marked license or extension of a temporary license issued
23 under this subsection.

24 A suspension, revocation, or denial imposed under this section,
25 other than as a result of a breath test refusal, shall be stayed if the
26 person is accepted for deferred prosecution as provided in chapter
27 10.05 RCW for the incident upon which the suspension, revocation, or
28 denial is based. If the deferred prosecution is terminated, the stay
29 shall be lifted and the suspension, revocation, or denial reinstated.
30 If the deferred prosecution is completed, the stay shall be lifted and
31 the suspension, revocation, or denial canceled.

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

1 **Sec. 9.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to
2 read as follows:

3 Pursuant to RCW 46.20.308, the department shall suspend, revoke,
4 or deny the arrested person's license, permit, or privilege to drive as
5 follows:

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

7 (a) For a first refusal within ((five)) ten years, where there has
8 not been a previous incident within ((five)) ten years that resulted in
9 administrative action under this section, revocation or denial for one
10 year;

11 (b) For a second or subsequent refusal within ((five)) ten years,
12 or for a first refusal where there has been one or more previous
13 incidents within ((five)) ten years that have resulted in
14 administrative action under this section, revocation or denial for two
15 years or until the person reaches age twenty-one, whichever is longer.
16 A revocation imposed under this subsection (1)(b) shall run
17 consecutively to the period of any suspension, revocation, or denial
18 imposed pursuant to a criminal conviction arising out of the same
19 incident.

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

23 (a) For a first incident within ((five)) ten years, where there
24 has not been a previous incident within ((five)) ten years that
25 resulted in administrative action under this section, placement in
26 probationary status as provided in RCW 46.20.355;

27 (b) For a second or subsequent incident within ((five)) ten years,
28 revocation or denial for two years.

29 (3) In the case of an incident where a person under age twenty-one
30 has submitted to or been administered a test or tests indicating that
31 the alcohol concentration of the person's breath or blood was ((~~0.02 or~~
32 ~~more~~)) in violation of RCW 46.61.503:

33 (a) For a first incident within ((five)) ten years, suspension or
34 denial for ninety days;

35 (b) For a second or subsequent incident within ((five)) ten years,
36 revocation or denial for one year or until the person reaches age
37 twenty-one, whichever is longer.

1 **Sec. 10.** RCW 46.20.391 and 1995 c 332 s 12 are each amended to
2 read as follows:

3 (1) Any person licensed under this chapter who is convicted of an
4 offense relating to motor vehicles for which suspension or revocation
5 of the driver's license is mandatory, other than vehicular homicide or
6 vehicular assault, may submit to the department an application for an
7 occupational driver's license. The department, upon receipt of the
8 prescribed fee and upon determining that the petitioner is engaged in
9 an occupation or trade that makes it essential that the petitioner
10 operate a motor vehicle, may issue an occupational driver's license and
11 may set definite restrictions as provided in RCW 46.20.394. No person
12 may petition for, and the department shall not issue, an occupational
13 driver's license that is effective during the first thirty days of any
14 suspension or revocation imposed for a violation of RCW 46.61.502 or
15 46.61.504. A person aggrieved by the decision of the department on the
16 application for an occupational driver's license may request a hearing
17 as provided by rule of the department.

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

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

24 (b) Within ((five)) ten years immediately preceding the date of
25 the offense that gave rise to the present conviction, the applicant has
26 not committed any of the following offenses: (i) Driving or being in
27 actual physical control of a motor vehicle while under the influence of
28 intoxicating liquor; (ii) vehicular homicide under RCW 46.61.520; or
29 (iii) vehicular assault under RCW 46.61.522; and

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

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

34 (3) The director shall cancel an occupational driver's license
35 upon receipt of notice that the holder thereof has been convicted of
36 operating a motor vehicle in violation of its restrictions, or of an
37 offense that pursuant to chapter 46.20 RCW would warrant suspension or
38 revocation of a regular driver's license. The cancellation is

1 effective as of the date of the conviction, and continues with the same
2 force and effect as any suspension or revocation under this title.

3 NEW SECTION. **Sec. 11.** If specific funding for the purposes of
4 this act, referencing this act by bill or chapter number, is not
5 provided by June 30, 1998, in the omnibus appropriations act, this act
6 is null and void.

--- END ---