
HOUSE BILL 3070

State of Washington

55th Legislature

1998 Regular Session

By Representatives McCune and Mulliken

Read first time 01/28/98. Referred to Committee on Law & Justice.

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, 46.20.3101,
3 and 46.20.391; reenacting and amending RCW 46.61.5055 and 9.94A.310;
4 and prescribing penalties.

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

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

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

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

15 (i) By imprisonment for not less than one day nor more than one
16 year. Twenty-four consecutive hours of the imprisonment may not be
17 suspended or deferred unless the court finds that the imposition of
18 this mandatory minimum sentence would impose a substantial risk to the
19 offender's physical or mental well-being. Whenever the mandatory

1 minimum sentence is suspended or deferred, the court shall state in
2 writing the reason for granting the suspension or deferral and the
3 facts upon which the suspension or 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 days nor more than one
20 year. Two consecutive days of the imprisonment may not be suspended or
21 deferred unless the court finds that the imposition of this mandatory
22 minimum sentence would impose a substantial risk to the offender's
23 physical or mental well-being. Whenever the mandatory minimum sentence
24 is suspended or deferred, the court shall state in writing the reason
25 for 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 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 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 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 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) A conviction for a violation of RCW 46.61.502 or an
29 equivalent local ordinance;

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

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

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

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

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

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

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

14 (~~(b) "Within five years" means that the arrest for a prior offense~~
15 ~~occurred within five years of the arrest for the 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 years)~~) as defined in RCW 46.61.5055, and
23 where the person has been provided written notice that any transfer,
24 sale, or encumbrance of such person's interest in the vehicle over
25 which that person was actually driving or had physical control when the
26 violation occurred, is unlawful pending either acquittal, dismissal,
27 sixty days after conviction, or other termination of the charge, such
28 person shall be prohibited from encumbering, selling, or transferring
29 his or her interest in such vehicle, except as otherwise provided in
30 (a), (b), and (c) of this subsection, until either acquittal,
31 dismissal, sixty days after conviction, or other termination of the
32 charge. The prohibition against transfer of title shall not be stayed
33 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 years))~~) as defined in RCW 46.61.5055,
16 the motor vehicle the person was driving or over which the person had
17 actual physical control at the time of the offense, if the person has
18 a financial interest in the vehicle, is subject to seizure and
19 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 46.61.502, 46.61.504, 46.61.520, and 46.61.522 and
29 shall maintain such records permanently on file.

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

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

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

1 or 46.61.5249 or any other violation that was originally charged as one
2 of the offenses designated in (a) (~~(or (b)(i))~~) of this subsection; or
3 (~~(iii)~~) (ii) 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 46.20.3101 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 years))~~), where there has not
8 been a previous incident (~~((within five 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 years))~~), or
12 for a first refusal where there has been one or more previous incidents
13 (~~((within five years))~~) that have resulted in administrative action under
14 this section, revocation or denial for two years or until the person
15 reaches age twenty-one, whichever is longer. A revocation imposed
16 under this subsection (1)(b) shall run consecutively to the period of
17 any suspension, revocation, or denial imposed pursuant to a criminal
18 conviction arising out of the same incident.

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

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

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

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

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

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

37 **Sec. 8.** RCW 46.20.391 and 1995 c 332 s 12 are each amended to
38 read as follows:

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

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

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

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

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

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

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

--- END ---