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ENGROSSED SUBSTITUTE SENATE BILL 6166

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State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Rossi, Roach, Fairley, Goings, T. Sheldon, McCaslin, Strannigan, Zarelli, Long, Deccio, Oke, Rasmussen, Wood, Kline, Schow, Patterson, Swecker, Stevens, Haugen, McAuliffe, Kohl, Johnson and Benton)

Read first time 01/14/98.

1 AN ACT Relating to penalties for driving under the influence;  
2 amending RCW 46.61.5058, 46.61.520, 9.94A.360, 10.05.010, 10.05.100,  
3 10.05.120, 10.05.160, 46.01.260, 46.20.285, 46.20.308, 46.20.3101, and  
4 46.20.391; reenacting and amending RCW 46.61.5055 and 9.94A.310;  
5 adding a new section to chapter 46.61 RCW; creating a new section; and  
6 prescribing penalties.

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

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

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

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

17 (i) By imprisonment for not less than one day nor more than one  
18 year. Twenty-four consecutive hours of the imprisonment may not be  
19 suspended or deferred unless the court finds that the imposition of

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

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

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

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

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

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

33 (iii) By revocation of the offender's license or permit to drive,  
34 or suspension of any nonresident privilege to drive, for a period of  
35 one year. The period of license, permit, or privilege suspension may  
36 not be suspended. The court shall notify the department of licensing  
37 of the conviction, and upon receiving notification of the conviction  
38 the department shall suspend the offender's license, permit, or  
39 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,  
37 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the  
38 conviction is the result of a charge that was originally filed as a

1 violation of RCW 46.61.502 or 46.61.504, or an equivalent local  
2 ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

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

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

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

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

36 (a) A vehicle encumbered by a bona fide security interest may be  
37 transferred to the secured party or to a person designated by the  
38 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

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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

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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 9.94A.360 and 1997 c 338 s 5 are each amended to read  
17 as follows:

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

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

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

27 (2) Class A and sex prior felony convictions shall always be  
28 included in the offender score. Class B prior felony convictions other  
29 than sex offenses shall not be included in the offender score, if since  
30 the last date of release from confinement (including full-time  
31 residential treatment) pursuant to a felony conviction, if any, or  
32 entry of judgment and sentence, the offender had spent ten consecutive  
33 years in the community without committing any crime that subsequently  
34 results in a conviction. Class C prior felony convictions other than  
35 sex offenses shall not be included in the offender score if, since the  
36 last date of release from confinement (including full-time residential  
37 treatment) pursuant to a felony conviction, if any, or entry of  
38 judgment and sentence, the offender had spent five consecutive years in



1 the community without committing any crime that subsequently results in  
2 a conviction. Serious traffic convictions shall not be included in the  
3 offender score if, since the last date of release from confinement  
4 (including full-time residential treatment) pursuant to a felony  
5 conviction, if any, or entry of judgment and sentence, the offender  
6 spent five years in the community without committing any crime that  
7 subsequently results in a conviction. This subsection applies to both  
8 adult and juvenile prior convictions.

9 (3) Out-of-state convictions for offenses shall be classified  
10 according to the comparable offense definitions and sentences provided  
11 by Washington law. Federal convictions for offenses shall be  
12 classified according to the comparable offense definitions and  
13 sentences provided by Washington law. If there is no clearly  
14 comparable offense under Washington law or the offense is one that is  
15 usually considered subject to exclusive federal jurisdiction, the  
16 offense shall be scored as a class C felony equivalent if it was a  
17 felony under the relevant federal statute.

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

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

24 (i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to  
25 encompass the same criminal conduct, shall be counted as one offense,  
26 the offense that yields the highest offender score. The current  
27 sentencing court shall determine with respect to other prior adult  
28 offenses for which sentences were served concurrently or prior juvenile  
29 offenses for which sentences were served consecutively, whether those  
30 offenses shall be counted as one offense or as separate offenses using  
31 the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and  
32 if the court finds that they shall be counted as one offense, then the  
33 offense that yields the highest offender score shall be used. The  
34 current sentencing court may presume that such other prior offenses  
35 were not the same criminal conduct from sentences imposed on separate  
36 dates, or in separate counties or jurisdictions, or in separate  
37 complaints, indictments, or informations;

38 (ii) In the case of multiple prior convictions for offenses  
39 committed before July 1, 1986, for the purpose of computing the

1 offender score, count all adult convictions served concurrently as one  
2 offense, and count all juvenile convictions entered on the same date as  
3 one offense. Use the conviction for the offense that yields the  
4 highest offender score.

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

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

14 (7) If the present conviction is for a nonviolent offense and not  
15 covered by subsection (11) or (12) of this section, count one point for  
16 each adult prior felony conviction and one point for each juvenile  
17 prior violent felony conviction and 1/2 point for each juvenile prior  
18 nonviolent felony conviction.

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

24 (9) If the present conviction is for Murder 1 or 2, Assault 1,  
25 Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or Rape 1, count  
26 three points for prior adult and juvenile convictions for crimes in  
27 these categories, two points for each prior adult and juvenile violent  
28 conviction (not already counted), one point for each prior adult  
29 nonviolent felony conviction, and 1/2 point for each prior juvenile  
30 nonviolent felony conviction.

31 (10) If the present conviction is for Burglary 1, count prior  
32 convictions as in subsection (8) of this section; however count two  
33 points for each prior adult Burglary 2 or residential burglary  
34 conviction, and one point for each prior juvenile Burglary 2 or  
35 residential burglary conviction.

36 (11) If the present conviction is for a felony traffic offense  
37 count two points for each adult or juvenile prior conviction for  
38 Vehicular Homicide or Vehicular Assault; for each felony offense or  
39 serious traffic offense, count one point for each adult and 1/2 point

1 for each juvenile prior conviction. This subsection shall not apply  
2 when additional time is added to a sentence pursuant to RCW  
3 46.61.520(2).

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

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

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

19 (15) If the present conviction is for Burglary 2 or residential  
20 burglary, count priors as in subsection (7) of this section; however,  
21 count two points for each adult and juvenile prior Burglary 1  
22 conviction, two points for each adult prior Burglary 2 or residential  
23 burglary conviction, and one point for each juvenile prior Burglary 2  
24 or residential burglary conviction.

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

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

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

32 In a court of limited jurisdiction a person charged with a  
33 misdemeanor or gross misdemeanor may petition the court to be  
34 considered for a deferred prosecution program. The petition shall be  
35 filed with the court at least seven days before the date set for trial  
36 but, upon a written motion and affidavit establishing good cause for  
37 the delay and failure to comply with this section, the court may waive  
38 this requirement subject to the defendant's reimbursement to the court

1 of the witness fees and expenses due for subpoenaed witnesses who have  
2 appeared on the date set for trial.

3 A person charged with a traffic infraction, misdemeanor, or gross  
4 misdemeanor under Title 46 RCW shall not be eligible for a deferred  
5 prosecution program unless the court makes specific findings pursuant  
6 to RCW 10.05.020. Such person shall not be eligible for a deferred  
7 prosecution program more than once (~~in any five-year period~~).  
8 Separate offenses committed more than seven days apart may not be  
9 consolidated in a single program.

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

12 If a petitioner (~~is subsequently convicted of a similar offense~~  
13 ~~while in a deferred prosecution program~~), within five years after  
14 entry of an order of deferred prosecution, engages in conduct which  
15 results in conviction of an offense listed in RCW 46.61.5055(8), upon  
16 notice the court shall remove the petitioner's docket from the deferred  
17 prosecution file and the court shall enter judgment pursuant to RCW  
18 10.05.020.

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

21 (~~Upon~~) Three years after receiving proof of successful  
22 completion of the two-year treatment program, but not before five years  
23 following entry of the order of deferred prosecution, the court and  
24 prosecutor shall review and verify the defendant's criminal history and  
25 driving record as provided in section 9 of this act. If the petitioner  
26 has not been arrested for or convicted of an offense listed in RCW  
27 46.61.5055(8) since entry of the order of deferred prosecution, the  
28 court shall dismiss the charges pending against the petitioner. If the  
29 defendant has been arrested for an offense listed in RCW 46.61.5055(8)  
30 since entry of the order of deferred prosecution, and there has been no  
31 disposition of the charge or charges, the court shall maintain the case  
32 in deferred prosecution status until a disposition has occurred.  
33 Unless the disposition was a conviction of an offense listed in RCW  
34 46.61.5055(8), the court shall dismiss the charges pending against the  
35 petitioner.

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

3            (1) Immediately before the court defers prosecution under RCW  
4 10.05.020, dismisses a charge, or orders a sentence for any offense  
5 listed in subsection (2) of this section, the court and prosecutor  
6 shall verify the defendant's criminal history and driving record. The  
7 order shall include specific findings as to the criminal history and  
8 driving record. For purposes of this section, the criminal history  
9 shall include all previous convictions and orders of deferred  
10 prosecution, as reported through the judicial information system or  
11 otherwise available to the court or prosecutor, current to within the  
12 period specified in subsection (3) of this section before the date of  
13 the order. For purposes of this section, the driving record shall  
14 include all information reported to the court by the department of  
15 licensing.

16            (2) The offenses to which this section applies are violations of:  
17 (a) RCW 46.61.502 or an equivalent local ordinance; (b) RCW 46.61.504  
18 or an equivalent local ordinance; (c) RCW 46.61.520 committed while  
19 under the influence of intoxicating liquor or any drug; (d) RCW  
20 46.61.522 committed while under the influence of intoxicating liquor or  
21 any drug; and (e) RCW 46.61.5249, 46.61.500, or 9A.36.050, or an  
22 equivalent local ordinance, if the conviction is the result of a charge  
23 that was originally filed as a violation of RCW 46.61.502 or 46.61.504  
24 or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

25            (3) The periods applicable to previous convictions and orders of  
26 deferred prosecution are: (a) One working day, in the case of previous  
27 actions of courts that fully participate in the state judicial  
28 information system; and (b) seven calendar days, in the case of  
29 previous actions of courts that do not fully participate in the  
30 judicial information system. For purposes of this subsection, "fully  
31 participate" means regularly providing records to and receiving records  
32 from the system by electronic means on a daily basis.

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

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

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

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

3 (3) Failure of the court to comply with the requirements of RCW  
4 10.05.100;

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

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

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

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

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

27 (i) ~~((Convictions or adjudications of the following offenses: RCW  
28 46.61.502 or 46.61.504;~~

29 ~~((ii)))~~ If the offense was originally charged as one of the  
30 offenses designated in (a) ~~((or (b)(i)))~~ of this subsection,  
31 convictions or adjudications of the following offenses: RCW 46.61.500  
32 or 46.61.5249 or any other violation that was originally charged as one  
33 of the offenses designated in (a) ~~((or (b)(i)))~~ of this subsection; or

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

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

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

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

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

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

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

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

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

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

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

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

34           (1) Any person who operates a motor vehicle within this state is  
35 deemed to have given consent, subject to the provisions of RCW  
36 46.61.506, to a test or tests of his or her breath or blood for the  
37 purpose of determining the alcohol concentration or presence of any  
38 drug in his or her breath or blood if arrested for any offense where,

1 at the time of the arrest, the arresting officer has reasonable grounds  
2 to believe the person had been driving or was in actual physical  
3 control of a motor vehicle while under the influence of intoxicating  
4 liquor or any drug or was in violation of RCW 46.61.503.

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

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

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

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

35 (3) Except as provided in this section, the test administered  
36 shall be of the breath only. If an individual is unconscious or is  
37 under arrest for the crime of vehicular homicide as provided in RCW  
38 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an  
39 individual is under arrest for the crime of driving while under the



1 influence of intoxicating liquor or drugs as provided in RCW 46.61.502,  
2 which arrest results from an accident in which there has been serious  
3 bodily injury to another person, a breath or blood test may be  
4 administered without the consent of the individual so arrested.

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

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

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

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

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

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

36 (d) Serve notice in writing that the marked license or permit, if  
37 any, is a temporary license that is valid for sixty days from the date  
38 of arrest or from the date notice has been given in the event notice is  
39 given by the department following a blood test, or until the

1 suspension, revocation, or denial of the person's license, permit, or  
2 privilege to drive is sustained at a hearing pursuant to subsection (8)  
3 of this section, whichever occurs first. No temporary license is valid  
4 to any greater degree than the license or permit that it replaces; and

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

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

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

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

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

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

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

1 this state while having alcohol in his or her system in a concentration  
2 of 0.02 or more and was under the age of twenty-one and that the  
3 officer complied with the 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))~~ any  
5 prior offense ~~((within the last five years))~~ for which he or she was  
6 granted a deferred prosecution under chapter 10.05 RCW, petitions a  
7 court for a deferred prosecution on criminal charges arising out of the  
8 arrest for which action has been or will be taken under subsection (7)  
9 of this section, the court may direct the department to stay any actual  
10 or proposed suspension, revocation, denial, or placement in  
11 probationary status for at least forty-five days but not more than  
12 ninety days. If the court stays the suspension, revocation, denial, or  
13 placement in probationary status, it may impose conditions on such  
14 stay. If the person is otherwise eligible for licensing, the  
15 department shall issue a temporary license, or extend any valid  
16 temporary license marked under subsection (6) of this section, for the  
17 period of the stay. If a deferred prosecution treatment plan is not  
18 recommended in the report made under RCW 10.05.050, or if treatment is  
19 rejected by the court, or if the person declines to accept an offered  
20 treatment plan, or if the person violates any condition imposed by the  
21 court, then the court shall immediately direct the department to cancel  
22 the stay and any temporary marked license or extension of a temporary  
23 license issued 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. 14.** 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. 15.** 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  
37 effective as of the date of the conviction, and continues with the same  
38 force and effect as any suspension or revocation under this title.

1           NEW SECTION.   **Sec. 16.**  If this act mandates an increased level of  
2  service by local governments, the local government may, under RCW  
3  43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the  
4  legislature.  The claims shall be subject to verification by the office  
5  of financial management.

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