
SENATE BILL 6166

State of Washington

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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 01/12/98. 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, 10.05.010, 10.05.160, 46.01.260,
3 46.20.285, 46.20.308, 46.20.3101, and 46.20.391; reenacting and
4 amending RCW 46.61.5055; 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 **Sec. 3.** RCW 46.61.520 and 1996 c 199 s 7 are each amended to read
2 as follows:

3 (1) When the death of any person ensues within three years as a
4 proximate result of injury proximately caused by the driving of any
5 vehicle by any person, the driver is guilty of vehicular homicide if
6 the driver was operating a motor vehicle:

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

9 (b) In a reckless manner; or

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

11 (2) Vehicular homicide is a class A felony punishable under chapter
12 9A.20 RCW, except that an additional two years must be added to the
13 sentence for each prior offense as defined in RCW 46.61.5055.

14 **Sec. 4.** RCW 10.05.010 and 1985 c 352 s 4 are each amended to read
15 as follows:

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

25 A person charged with a traffic infraction, misdemeanor, or gross
26 misdemeanor under Title 46 RCW shall not be eligible for a deferred
27 prosecution program unless the court makes specific findings pursuant
28 to RCW 10.05.020. Such person shall not be eligible for a deferred
29 prosecution program more than once (~~in any five year period~~).
30 Separate offenses committed more than seven days apart may not be
31 consolidated in a single program.

32 **Sec. 5.** RCW 10.05.160 and 1985 c 352 s 18 are each amended to read
33 as follows:

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

36 (1) Prior deferred prosecution has been granted to the defendant
37 (~~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. 6.** RCW 46.01.260 and 1997 c 66 s 11 are each amended to read
11 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 offenses
30 designated in (a) ~~((or (b)(i)))~~ of this subsection, convictions or
31 adjudications of the following offenses: RCW 46.61.500 or 46.61.5249
32 or any other violation that was originally charged as one of the
33 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. 7.** RCW 46.20.285 and 1996 c 199 s 5 are each amended to read
2 as follows:

3 The department shall forthwith revoke the license of any driver for
4 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. 8.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read
33 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 shall
36 be of the breath only. If an individual is unconscious or is under
37 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
38 or vehicular assault as provided in RCW 46.61.522, or if an individual
39 is under arrest for the crime of driving while under the influence of

1 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
2 results from an accident in which there has been serious bodily injury
3 to another person, a breath or blood test may be administered without
4 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 to
6 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 arrested
10 person had been driving or was in actual physical control of a motor
11 vehicle within this state while under the influence of intoxicating
12 liquor or drugs, or both, or was under the age of twenty-one years and
13 had been driving or was in actual physical control of a motor vehicle
14 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 report
23 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 this
34 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. 9.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to read
2 as follows:

3 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
4 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 not
23 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. 10.** 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 upon
33 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.

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