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SENATE BILL 5254

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State of Washington

56th Legislature

1999 Regular Session

By Senators Rossi, Oke, Swecker and Zarelli

Read first time 01/18/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to driving while under the influence; amending RCW  
2 46.61.5058; reenacting and amending RCW 46.61.5055, 46.20.308,  
3 46.20.3101, and 46.20.391; creating a new section; and prescribing  
4 penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that drunk driving  
7 continues to be a problem in this state, and that all repeat offenders  
8 should be held accountable regardless of how much time has passed since  
9 any prior offense. The current practice of allowing an offender to  
10 effectively erase a conviction after seven years is an arbitrary  
11 practice that circumvents the imposition of a just sentence.  
12 Understanding that the department of licensing is only required to  
13 maintain records of convictions or adjudications of drunk driving  
14 offenses for fifteen years, it is the intent of the legislature that if  
15 any other convictions or adjudications are discovered, those  
16 convictions or adjudications should be used in the current sentencing  
17 of the drunk driving offender.

1       **Sec. 2.** RCW 46.61.5055 and 1998 c 215 s 1, 1998 c 214 s 1, 1998 c  
2 211 s 1, 1998 c 210 s 4, 1998 c 207 s 1, and 1998 c 206 s 1 are each  
3 reenacted and amended to read as follows:

4       (1) A person who is convicted of a violation of RCW 46.61.502 or  
5 46.61.504 and who has no prior offense (~~((within seven years))~~) shall be  
6 punished as follows:

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

11       (i) By imprisonment for not less than one day nor more than one  
12 year. Twenty-four consecutive hours of the imprisonment may not be  
13 suspended or deferred unless the court finds that the imposition of  
14 this mandatory minimum sentence would impose a substantial risk to the  
15 offender's physical or mental well-being. Whenever the mandatory  
16 minimum sentence is suspended or deferred, the court shall state in  
17 writing the reason for granting the suspension or deferral and the  
18 facts upon which the suspension or deferral is based. In lieu of the  
19 mandatory minimum term of imprisonment required under this subsection  
20 (1)(a)(i), the court may order not less than fifteen days of electronic  
21 home monitoring. The offender shall pay the cost of electronic home  
22 monitoring. The county or municipality in which the penalty is being  
23 imposed shall determine the cost. The court may also require the  
24 offender's electronic home monitoring device to include an alcohol  
25 detection breathalyzer, and the court may restrict the amount of  
26 alcohol the offender may consume during the time the offender is on  
27 electronic home monitoring; and

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

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

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

5 (i) By imprisonment for not less than two days nor more than one  
6 year. Two consecutive days of the imprisonment may not be suspended or  
7 deferred unless the court finds that the imposition of this mandatory  
8 minimum sentence would impose a substantial risk to the offender's  
9 physical or mental well-being. Whenever the mandatory minimum sentence  
10 is suspended or deferred, the court shall state in writing the reason  
11 for granting the suspension or deferral and the facts upon which the  
12 suspension or deferral is based. In lieu of the mandatory minimum term  
13 of imprisonment required under this subsection (1)(b)(i), the court may  
14 order not less than thirty days of electronic home monitoring. The  
15 offender shall pay the cost of electronic home monitoring. The county  
16 or municipality in which the penalty is being imposed shall determine  
17 the cost. The court may also require the offender's electronic home  
18 monitoring device to include an alcohol detection breathalyzer, and the  
19 court may restrict the amount of alcohol the offender may consume  
20 during the time the offender is on electronic home monitoring; and

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

25 (iii) By revocation of the offender's license or permit to drive,  
26 or suspension of any nonresident privilege to drive, for a period of  
27 one year. The period of license, permit, or privilege suspension may  
28 not be suspended. The court shall notify the department of licensing  
29 of the conviction, and upon receiving notification of the conviction  
30 the department shall suspend the offender's license, permit, or  
31 privilege; and

32 (iv) By a court-ordered restriction under RCW 46.20.720.

33 (2) A person who is convicted of a violation of RCW 46.61.502 or  
34 46.61.504 and who has one prior offense (~~within seven years~~) shall be  
35 punished as follows:

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

1 (i) By imprisonment for not less than thirty days nor more than one  
2 year and sixty days of electronic home monitoring. The offender shall  
3 pay for the cost of the electronic monitoring. The county or  
4 municipality where the penalty is being imposed shall determine the  
5 cost. The court may also require the offender's electronic home  
6 monitoring device include an alcohol detection breathalyzer, and may  
7 restrict the amount of alcohol the offender may consume during the time  
8 the offender is on electronic home monitoring. Thirty days of  
9 imprisonment and sixty days of electronic home monitoring may not be  
10 suspended or deferred unless the court finds that the imposition of  
11 this mandatory minimum sentence would impose a substantial risk to the  
12 offender's physical or mental well-being. Whenever the mandatory  
13 minimum sentence is suspended or deferred, the court shall state in  
14 writing the reason for granting the suspension or deferral and the  
15 facts upon which the suspension or deferral is based; and

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

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

27 (iv) By a court-ordered restriction under RCW 46.20.720; or

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

32 (i) By imprisonment for not less than forty-five days nor more than  
33 one year and ninety days of electronic home monitoring. The offender  
34 shall pay for the cost of the electronic monitoring. The county or  
35 municipality where the penalty is being imposed shall determine the  
36 cost. The court may also require the offender's electronic home  
37 monitoring device include an alcohol detection breathalyzer, and may  
38 restrict the amount of alcohol the offender may consume during the time  
39 the offender is on electronic home monitoring. Forty-five days of

1 imprisonment and ninety days of electronic home monitoring may not be  
2 suspended or deferred unless the court finds that the imposition of  
3 this mandatory minimum sentence would impose a substantial risk to the  
4 offender's physical or mental well-being. Whenever the mandatory  
5 minimum sentence is suspended or deferred, the court shall state in  
6 writing the reason for granting the suspension or deferral and the  
7 facts upon which the suspension or deferral is based; and

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

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

19 (iv) By a court-ordered restriction under RCW 46.20.720.

20 (3) A person who is convicted of a violation of RCW 46.61.502 or  
21 46.61.504 and who has two or more prior offenses (~~within seven years~~)  
22 shall be punished as follows:

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

27 (i) By imprisonment for not less than ninety days nor more than one  
28 year and one hundred twenty days of electronic home monitoring. The  
29 offender shall pay for the cost of the electronic monitoring. The  
30 county or municipality where the penalty is being imposed shall  
31 determine the cost. The court may also require the offender's  
32 electronic home monitoring device include an alcohol detection  
33 breathalyzer, and may restrict the amount of alcohol the offender may  
34 consume during the time the offender is on electronic home monitoring.  
35 Ninety days of imprisonment and one hundred twenty days of electronic  
36 home monitoring may not be suspended or deferred unless the court finds  
37 that the imposition of this mandatory minimum sentence would impose a  
38 substantial risk to the offender's physical or mental well-being.  
39 Whenever the mandatory minimum sentence is suspended or deferred, the

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

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

8 (iii) By revocation of the offender's license or permit to drive,  
9 or suspension of any nonresident privilege to drive, for a period of  
10 three years. The period of license, permit, or privilege revocation  
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 revoke the offender's license, permit,  
14 or privilege; and

15 (iv) By a court-ordered restriction under RCW 46.20.720; or

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

20 (i) By imprisonment for not less than one hundred twenty days nor  
21 more than one year and one hundred fifty days of electronic home  
22 monitoring. The offender shall pay for the cost of the electronic  
23 monitoring. The county or municipality where the penalty is being  
24 imposed shall determine the cost. The court may also require the  
25 offender's electronic home monitoring device include an alcohol  
26 detection breathalyzer, and may restrict the amount of alcohol the  
27 offender may consume during the time the offender is on electronic home  
28 monitoring. One hundred twenty days of imprisonment and one hundred  
29 fifty days of electronic home monitoring may not be suspended or  
30 deferred unless the court finds that the imposition of this mandatory  
31 minimum sentence would impose a substantial risk to the offender's  
32 physical or mental well-being. Whenever the mandatory minimum sentence  
33 is suspended or deferred, the court shall state in writing the reason  
34 for granting the suspension or deferral and the facts upon which the  
35 suspension or deferral is based; and

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

1 (iii) By revocation of the offender's license or permit to drive,  
2 or suspension of any nonresident privilege to drive, for a period of  
3 four years. The period of license, permit, or privilege revocation may  
4 not be suspended. The court shall notify the department of licensing  
5 of the conviction, and upon receiving notification of the conviction  
6 the department shall revoke the offender's license, permit, or  
7 privilege; and

8 (iv) By a court-ordered restriction under RCW 46.20.720.

9 (4) In exercising its discretion in setting penalties within the  
10 limits allowed by this section, the court shall particularly consider  
11 the following:

12 (a) Whether the person's driving at the time of the offense was  
13 responsible for injury or damage to another or another's property; and

14 (b) Whether the person was driving or in physical control of a  
15 vehicle with one or more passengers at the time of the offense.

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

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

22 (7)(a) In addition to any nonsuspendable and nondeferrable jail  
23 sentence required by this section, whenever the court imposes less than  
24 one year in jail, the court shall also suspend but shall not defer a  
25 period of confinement for a period not exceeding five years. The court  
26 shall impose conditions of probation that include: (i) Not driving a  
27 motor vehicle within this state without a valid license to drive and  
28 proof of financial responsibility for the future; (ii) not driving a  
29 motor vehicle within this state while having an alcohol concentration  
30 of 0.08 or more within two hours after driving; and (iii) not refusing  
31 to submit to a test of his or her breath or blood to determine alcohol  
32 concentration upon request of a law enforcement officer who has  
33 reasonable grounds to believe the person was driving or was in actual  
34 physical control of a motor vehicle within this state while under the  
35 influence of intoxicating liquor. The court may impose conditions of  
36 probation that include nonrepetition, installation of an ignition  
37 interlock or other biological or technical device on the probationer's  
38 motor vehicle, alcohol or drug treatment, supervised probation, or  
39 other conditions that may be appropriate. The sentence may be imposed

1 in whole or in part upon violation of a condition of probation during  
2 the suspension period.

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

7 (c) For each incident involving a violation of a mandatory  
8 condition of probation imposed under this subsection, the license,  
9 permit, or privilege to drive of the person shall be suspended by the  
10 court for thirty days or, if such license, permit, or privilege to  
11 drive already is suspended, revoked, or denied at the time the finding  
12 of probation violation is made, the suspension, revocation, or denial  
13 then in effect shall be extended by thirty days. The court shall  
14 notify the department of any suspension, revocation, or denial or any  
15 extension of a suspension, revocation, or denial imposed under this  
16 subsection.

17 (8) For purposes of this section:

18 (a) "Electronic home monitoring" shall not be considered  
19 confinement as defined in RCW 9.94A.030; and

20 (b) A "prior offense" means any of the following:

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

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

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

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

29 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
30 9A.36.050 or an equivalent local ordinance, if the conviction is the  
31 result of a charge that was originally filed as a violation of RCW  
32 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
33 46.61.520 or 46.61.522;

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

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



1 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
2 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
3 ordinance, if the charge under which the deferred prosecution was  
4 granted was originally filed as a violation of RCW 46.61.502 or  
5 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
6 46.61.522(~~and~~

7 ~~(c) "Within seven years" means that the arrest for a prior offense~~  
8 ~~occurred within seven years of the arrest for the current offense)).~~

9 **Sec. 3.** RCW 46.61.5058 and 1998 c 207 s 2 are each amended to read  
10 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **Sec. 4.** RCW 46.20.308 and 1998 c 213 s 1, 1998 c 209 s 1, 1998 c  
30 207 s 7, and 1998 c 41 s 4 are each reenacted and amended to read as  
31 follows:

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

1 control of a motor vehicle while under the influence of intoxicating  
2 liquor or any drug or was in violation of RCW 46.61.503.

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

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

25 (b) His or her license, permit, or privilege to drive will be  
26 suspended, revoked, or denied if the test is administered and the test  
27 indicates the alcohol concentration of the person's breath or blood is  
28 0.08 or more, in the case of a person age twenty-one or over, or in  
29 violation of RCW 46.61.502, 46.61.503, or 46.61.504 in the case of a  
30 person under age twenty-one; and

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

33 (3) Except as provided in this section, the test administered shall  
34 be of the breath only. If an individual is unconscious or is under  
35 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
36 or vehicular assault as provided in RCW 46.61.522, or if an individual  
37 is under arrest for the crime of driving while under the influence of  
38 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
39 results from an accident in which there has been serious bodily injury

1 to another person, a breath or blood test may be administered without  
2 the consent of the individual so arrested.

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

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

14 (6) If, after arrest and after the other applicable conditions and  
15 requirements of this section have been satisfied, a test or tests of  
16 the person's blood or breath is administered and the test results  
17 indicate that the alcohol concentration of the person's breath or blood  
18 is 0.08 or more if the person is age twenty-one or over, or is in  
19 violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the person is  
20 under the age of twenty-one, or the person refuses to submit to a test,  
21 the arresting officer or other law enforcement officer at whose  
22 direction any test has been given, or the department, where applicable,  
23 if the arrest results in a test of the person's blood, shall:

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

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

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

34 (d) Serve notice in writing that the marked license or permit, if  
35 any, is a temporary license that is valid for sixty days from the date  
36 of arrest or from the date notice has been given in the event notice is  
37 given by the department following a blood test, or until the  
38 suspension, revocation, or denial of the person's license, permit, or  
39 privilege to drive is sustained at a hearing pursuant to subsection (8)

1 of this section, whichever occurs first. No temporary license is valid  
2 to any greater degree than the license or permit that it replaces; and

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

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

13 (ii) That after receipt of the warnings required by subsection (2)  
14 of this section the person refused to submit to a test of his or her  
15 blood or breath, or a test was administered and the results indicated  
16 that the alcohol concentration of the person's breath or blood was 0.08  
17 or more if the person is age twenty-one or over, or was in violation of  
18 RCW 46.61.502, 46.61.503, or 46.61.504 if the person is under the age  
19 of twenty-one; and

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

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

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

1 subject to and shall be scheduled and conducted in accordance with RCW  
2 46.20.329 and 46.20.332. The hearing shall be conducted in the county  
3 of the arrest, except that all or part of the hearing may, at the  
4 discretion of the department, be conducted by telephone or other  
5 electronic means. The hearing shall be held within sixty days  
6 following the arrest or following the date notice has been given in the  
7 event notice is given by the department following a blood test, unless  
8 otherwise agreed to by the department and the person, in which case the  
9 action by the department shall be stayed, and any valid temporary  
10 license marked under subsection (6)(c) of this section extended, if the  
11 person is otherwise eligible for licensing. For the purposes of this  
12 section, the scope of the hearing shall cover the issues of whether a  
13 law enforcement officer had reasonable grounds to believe the person  
14 had been driving or was in actual physical control of a motor vehicle  
15 within this state while under the influence of intoxicating liquor or  
16 any drug or had been driving or was in actual physical control of a  
17 motor vehicle within this state while having alcohol in his or her  
18 system in a concentration in violation of RCW 46.61.503 and was under  
19 the age of twenty-one, whether the person was placed under arrest, and  
20 (a) whether the person refused to submit to the test or tests upon  
21 request of the officer after having been informed that such refusal  
22 would result in the revocation of the person's license, permit, or  
23 privilege to drive, or (b) if a test or tests were administered,  
24 whether the applicable requirements of this section were satisfied  
25 before the administration of the test or tests, whether the person  
26 submitted to the test or tests, or whether a test was administered  
27 without express consent as permitted under this section, and whether  
28 the test or tests indicated that the alcohol concentration of the  
29 person's breath or blood was 0.08 or more if the person was age twenty-  
30 one or over at the time of the arrest, or was in violation of RCW  
31 46.61.502, 46.61.503, or 46.61.504 if the person was under the age of  
32 twenty-one at the time of the arrest. The sworn report or report under  
33 a declaration authorized by RCW 9A.72.085 submitted by a law  
34 enforcement officer is prima facie evidence that the officer had  
35 reasonable grounds to believe the person had been driving or was in  
36 actual physical control of a motor vehicle within this state while  
37 under the influence of intoxicating liquor or drugs, or both, or the  
38 person had been driving or was in actual physical control of a motor  
39 vehicle within this state while having alcohol in his or her system in



1 a concentration in violation of RCW 46.61.503 and was under the age of  
2 twenty-one and that the officer complied with the requirements of this  
3 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, or denial either be rescinded or  
18 sustained.

19 (9) If the suspension, revocation, or denial is sustained after  
20 such a hearing, the person whose license, privilege, or permit is  
21 suspended, revoked, or denied has the right to file a petition in the  
22 superior court of the county of arrest to review the final order of  
23 revocation by the department in the same manner as an appeal from a  
24 decision of a court of limited jurisdiction. Notice of appeal must be  
25 filed within thirty days after the date the final order is served or  
26 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ  
27 1.1, or other statutes or rules referencing de novo review, the appeal  
28 shall be limited to a review of the record of the administrative  
29 hearing. The appellant must pay the costs associated with obtaining  
30 the record of the hearing before the hearing officer. The filing of  
31 the appeal does not stay the effective date of the suspension,  
32 revocation, or denial. A petition filed under this subsection must  
33 include the petitioner's grounds for requesting review. Upon granting  
34 petitioner's request for review, the court shall review the  
35 department's final order of suspension, revocation, or denial as  
36 expeditiously as possible. The review must be limited to a  
37 determination of whether the department has committed any errors of  
38 law. The superior court shall accept those factual determinations  
39 supported by substantial evidence in the record: (a) That were

1 expressly made by the department; or (b) that may reasonably be  
2 inferred from the final order of the department. The superior court  
3 may reverse, affirm, or modify the decision of the department or remand  
4 the case back to the department for further proceedings. The decision  
5 of the superior court must be in writing and filed in the clerk's  
6 office with the other papers in the case. The court shall state the  
7 reasons for the decision. If judicial relief is sought for a stay or  
8 other temporary remedy from the department's action, the court shall  
9 not grant such relief unless the court finds that the appellant is  
10 likely to prevail in the appeal and that without a stay the appellant  
11 will suffer irreparable injury. If the court stays the suspension,  
12 revocation, or denial it may impose conditions on such stay.

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

35 A suspension, revocation, or denial imposed under this section,  
36 other than as a result of a breath or blood test refusal, shall be  
37 stayed if the person is accepted for deferred prosecution as provided  
38 in chapter 10.05 RCW for the incident upon which the suspension,  
39 revocation, or denial is based. If the deferred prosecution is

1 terminated, the stay shall be lifted and the suspension, revocation, or  
2 denial reinstated. If the deferred prosecution is completed, the stay  
3 shall be lifted and the suspension, revocation, or denial canceled.

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

10 **Sec. 5.** RCW 46.20.3101 and 1998 c 213 s 2, 1998 c 209 s 2, and  
11 1998 c 207 s 8 are each reenacted and amended to read as follows:

12 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or  
13 deny the arrested person's license, permit, or privilege to drive as  
14 follows:

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

16 (a) For a first refusal (~~((within seven years))~~), where there has not  
17 been a previous incident (~~((within seven years))~~) that resulted in  
18 administrative action under this section, revocation or denial for one  
19 year;

20 (b) For a second or subsequent refusal (~~((within seven years))~~), or  
21 for a first refusal where there has been one or more previous incidents  
22 (~~((within seven years))~~) that have resulted in administrative action  
23 under this section, revocation or denial for two years or until the  
24 person reaches age twenty-one, whichever is longer. A revocation  
25 imposed under this subsection (1)(b) shall run consecutively to the  
26 period of any suspension, revocation, or denial imposed pursuant to a  
27 criminal conviction arising out of the same incident.

28 (2) In the case of an incident where a person has submitted to or  
29 been administered a test or tests indicating that the alcohol  
30 concentration of the person's breath or blood was 0.08 or more:

31 (a) For a first incident (~~((within seven years))~~), where there has  
32 not been a previous incident (~~((within seven years))~~) that resulted in  
33 administrative action under this section, suspension for ninety days;

34 (b) For a second or subsequent incident (~~((within seven years))~~),  
35 revocation or denial for two years.

36 (3) In the case of an incident where a person under age twenty-one  
37 has submitted to or been administered a test or tests indicating that

1 the alcohol concentration of the person's breath or blood was in  
2 violation of RCW 46.61.502, 46.61.503, or 46.61.504:

3 (a) For a first incident (~~((within seven years))~~), suspension or  
4 denial for ninety days;

5 (b) For a second or subsequent incident (~~((within seven years))~~),  
6 revocation or denial for one year or until the person reaches age  
7 twenty-one, whichever is longer.

8 **Sec. 6.** RCW 46.20.391 and 1998 c 209 s 4 and 1998 c 207 s 9 are  
9 each reenacted and amended to read as follows:

10 (1) Any person licensed under this chapter who is convicted of an  
11 offense relating to motor vehicles for which suspension or revocation  
12 of the driver's license is mandatory, other than vehicular homicide or  
13 vehicular assault, or who has had his or her license suspended under  
14 RCW 46.20.3101 (2)(a) or (3)(a), may submit to the department an  
15 application for an occupational driver's license. The department, upon  
16 receipt of the prescribed fee and upon determining that the petitioner  
17 is engaged in an occupation or trade that makes it essential that the  
18 petitioner operate a motor vehicle, may issue an occupational driver's  
19 license and may set definite restrictions as provided in RCW 46.20.394.  
20 No person may petition for, and the department shall not issue, an  
21 occupational driver's license that is effective during the first thirty  
22 days of any suspension or revocation imposed for a violation of RCW  
23 46.61.502 or 46.61.504 or pursuant to RCW 46.20.3101 (2)(a) or (3)(a).  
24 A person aggrieved by the decision of the department on the application  
25 for an occupational driver's license may request a hearing as provided  
26 by rule of the department.

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

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

33 (b) (~~((Within seven years immediately preceding))~~) Prior to the date  
34 of the offense that gave rise to the present conviction or incident,  
35 the applicant has not committed any of the following offenses: (i)  
36 Driving or being in actual physical control of a motor vehicle while  
37 under the influence of intoxicating liquor; (ii) vehicular homicide

1 under RCW 46.61.520; or (iii) vehicular assault under RCW 46.61.522;  
2 and

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

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

7 (3) The director shall cancel an occupational driver's license upon  
8 receipt of notice that the holder thereof has been convicted of  
9 operating a motor vehicle in violation of its restrictions, or of an  
10 offense that pursuant to chapter 46.20 RCW would warrant suspension or  
11 revocation of a regular driver's license. The cancellation is  
12 effective as of the date of the conviction, and continues with the same  
13 force and effect as any suspension or revocation under this title.

--- END ---