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HOUSE BILL 1743

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State of Washington                      62nd Legislature                      2011 Regular Session

By Representatives Hope, Klippert, Armstrong, Ahern, Orwall, and Johnson

Read first time 02/01/11. Referred to Committee on Judiciary.

1            AN ACT Relating to eliminating the seven year provision for prior  
2 offenses in driving or being in physical control of a vehicle while  
3 under the influence of intoxicating liquor or any drug statutes;  
4 amending RCW 46.61.5055 and 46.61.5058; and reenacting and amending RCW  
5 46.20.3101.

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

7            **Sec. 1.** RCW 46.61.5055 and 2010 c 269 s 4 are each amended to read  
8 as follows:

9            (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
10 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
11 and who has no prior offense (~~within seven years~~) shall be punished  
12 as follows:

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

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

1 this mandatory minimum sentence would impose a substantial risk to the  
2 offender's physical or mental well-being. Whenever the mandatory  
3 minimum sentence is suspended or deferred, the court shall state in  
4 writing the reason for granting the suspension or deferral and the  
5 facts upon which the suspension or deferral is based. In lieu of the  
6 mandatory minimum term of imprisonment required under this subsection  
7 (1)(a)(i), the court may order not less than fifteen days of electronic  
8 home monitoring. The offender shall pay the cost of electronic home  
9 monitoring. The county or municipality in which the penalty is being  
10 imposed shall determine the cost. The court may also require the  
11 offender's electronic home monitoring device to include an alcohol  
12 detection breathalyzer, and the court may restrict the amount of  
13 alcohol the offender may consume during the time the offender is on  
14 electronic home monitoring; and

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

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

23 (i) By imprisonment for not less than two days nor more than one  
24 year. Two consecutive days of the imprisonment may not be suspended  
25 or deferred unless the court finds that the imposition of this  
26 mandatory minimum sentence would impose a substantial risk to the  
27 offender's physical or mental well-being. Whenever the mandatory  
28 minimum sentence is suspended or deferred, the court shall state in  
29 writing the reason for granting the suspension or deferral and the  
30 facts upon which the suspension or deferral is based. In lieu of the  
31 mandatory minimum term of imprisonment required under this subsection  
32 (1)(b)(i), the court may order not less than thirty days of electronic  
33 home monitoring. The offender shall pay the cost of electronic home  
34 monitoring. The county or municipality in which the penalty is being  
35 imposed shall determine the cost. The court may also require the  
36 offender's electronic home monitoring device to include an alcohol  
37 detection breathalyzer, and the court may restrict the amount of

1 alcohol the offender may consume during the time the offender is on  
2 electronic home monitoring; and

3 (ii) By a fine of not less than five hundred dollars nor more than  
4 five thousand dollars. Five hundred dollars of the fine may not be  
5 suspended or deferred unless the court finds the offender to be  
6 indigent.

7 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
8 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
9 and who has one prior offense (~~within seven years~~) shall be punished  
10 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 thirty days nor more than one  
16 year and sixty days of electronic home monitoring. The offender shall  
17 pay for the cost of the electronic monitoring. The county or  
18 municipality where the penalty is being imposed shall determine the  
19 cost. The court may also require the offender's electronic home  
20 monitoring device include an alcohol detection breathalyzer, and may  
21 restrict the amount of alcohol the offender may consume during the time  
22 the offender is on electronic home monitoring. Thirty days of  
23 imprisonment and sixty days of electronic home monitoring may not be  
24 suspended or deferred unless the court finds that the imposition of  
25 this mandatory minimum sentence would impose a substantial risk to the  
26 offender's physical or mental well-being. Whenever the mandatory  
27 minimum sentence is suspended or deferred, the court shall state in  
28 writing the reason for granting the suspension or deferral and the  
29 facts upon which the suspension or deferral is based; and

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

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

1 (i) By imprisonment for not less than forty-five days nor more than  
2 one year and ninety days of electronic home monitoring. The offender  
3 shall 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. Forty-five days of  
9 imprisonment and ninety 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 seven hundred fifty dollars nor  
17 more than five thousand dollars. Seven hundred fifty dollars of the  
18 fine may not be suspended or deferred unless the court finds the  
19 offender to be indigent.

20 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
21 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
22 and who has two or three prior offenses (~~(within seven years)~~) shall  
23 be punished as follows:

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

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

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

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

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

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

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

34 (4) A person who is convicted of a violation of RCW 46.61.502 or  
35 46.61.504 shall be punished under chapter 9.94A RCW if: (a) The person  
36 has four or more prior offenses within ten years; or (b) the person has  
37 ever previously been convicted of: (i) A violation of RCW 46.61.520  
38 committed while under the influence of intoxicating liquor or any drug;

1 (ii) a violation of RCW 46.61.522 committed while under the influence  
2 of intoxicating liquor or any drug; or (iii) an out-of-state offense  
3 comparable to the offense specified in (b)(i) or (ii) of this  
4 subsection.

5 (5)(a) The court shall require any person convicted of a violation  
6 of RCW 46.61.502 or 46.61.504 or an equivalent local ordinance to apply  
7 for an ignition interlock driver's license from the department and to  
8 have a functioning ignition interlock device installed on all motor  
9 vehicles operated by the person.

10 (b) The installation of an ignition interlock device is not  
11 necessary on vehicles owned, leased, or rented by a person's employer  
12 and on those vehicles whose care and/or maintenance is the temporary  
13 responsibility of the employer, and driven at the direction of a  
14 person's employer as a requirement of employment during working hours.  
15 The person must provide the department with a declaration pursuant to  
16 RCW 9A.72.085 from his or her employer stating that the person's  
17 employment requires the person to operate a vehicle owned by the  
18 employer or other persons during working hours.

19 (c) An ignition interlock device imposed under this section shall  
20 be calibrated to prevent a motor vehicle from being started when the  
21 breath sample provided has an alcohol concentration of 0.025 or more.

22 (d) The court may waive the requirement that a person apply for an  
23 ignition interlock driver's license if the court makes a specific  
24 finding in writing that:

25 (i) The person lives out-of-state and the devices are not  
26 reasonably available in the person's local area;

27 (ii) The person does not operate a vehicle; or

28 (iii) The person is not eligible to receive an ignition interlock  
29 driver's license under RCW 46.20.385 because the person is not a  
30 resident of Washington, is a habitual traffic offender, has already  
31 applied for or is already in possession of an ignition interlock  
32 driver's license, has never had a driver's license, has been certified  
33 under chapter 74.20A RCW as noncompliant with a child support order,  
34 or is subject to any other condition or circumstance that makes the  
35 person ineligible to obtain an ignition interlock driver's license.

36 (e) If a court finds that a person is not eligible to receive an  
37 ignition interlock driver's license under this section, the court is

1 not required to make any further subsequent inquiry or determination  
2 as to the person's eligibility.

3 (f) If the court orders that a person refrain from consuming any  
4 alcohol and requires the person to apply for an ignition interlock  
5 driver's license, and the person states that he or she does not operate  
6 a motor vehicle or the person is ineligible to obtain an ignition  
7 interlock driver's license, the court shall order the person to submit  
8 to alcohol monitoring through an alcohol detection breathalyzer device,  
9 transdermal sensor device, or other technology designed to detect  
10 alcohol in a person's system. The person shall pay for the cost of the  
11 monitoring. The county or municipality where the penalty is being  
12 imposed shall determine the cost.

13 (g) The period of time for which ignition interlock use or alcohol  
14 monitoring is required will be as follows:

15 (i) For a person who has not previously been restricted under this  
16 section, a period of one year;

17 (ii) For a person who has previously been restricted under (g)(i)  
18 of this subsection, a period of five years;

19 (iii) For a person who has previously been restricted under (g)(ii)  
20 of this subsection, a period of ten years.

21 (6) If a person who is convicted of a violation of RCW 46.61.502  
22 or 46.61.504 committed the offense while a passenger under the age of  
23 sixteen was in the vehicle, the court shall:

24 (a) In any case in which the installation and use of an interlock  
25 or other device is not mandatory under RCW 46.20.720 or other law,  
26 order the use of such a device for not less than sixty days following  
27 the restoration of the person's license, permit, or nonresident driving  
28 privileges; and

29 (b) In any case in which the installation and use of such a device  
30 is otherwise mandatory, order the use of such a device for an  
31 additional sixty days.

32 (7) In exercising its discretion in setting penalties within the  
33 limits allowed by this section, the court shall particularly consider  
34 the following:

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

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

1 (8) An offender punishable under this section is subject to the  
2 alcohol assessment and treatment provisions of RCW 46.61.5056.

3 (9) The license, permit, or nonresident privilege of a person  
4 convicted of driving or being in physical control of a motor vehicle  
5 while under the influence of intoxicating liquor or drugs must:

6 (a) If the person's alcohol concentration was less than 0.15, or  
7 if for reasons other than the person's refusal to take a test offered  
8 under RCW 46.20.308 there is no test result indicating the person's  
9 alcohol concentration:

10 (i) Where there has been no prior offense (~~within seven years~~),  
11 be suspended or denied by the department for ninety days;

12 (ii) Where there has been one prior offense (~~within seven years~~),  
13 be revoked or denied by the department for two years; or

14 (iii) Where there have been two or more prior offenses (~~within  
15 seven years~~), be revoked or denied by the department for three years;

16 (b) If the person's alcohol concentration was at least 0.15:

17 (i) Where there has been no prior offense (~~within seven years~~),  
18 be revoked or denied by the department for one year;

19 (ii) Where there has been one prior offense (~~within seven years~~),  
20 be revoked or denied by the department for nine hundred days; or

21 (iii) Where there have been two or more prior offenses (~~within  
22 seven years~~), be revoked or denied by the department for four years;  
23 or

24 (c) If by reason of the person's refusal to take a test offered  
25 under RCW 46.20.308, there is no test result indicating the person's  
26 alcohol concentration:

27 (i) Where there have been no prior offenses (~~within seven years~~),  
28 be revoked or denied by the department for two years;

29 (ii) Where there has been one prior offense (~~within seven years~~),  
30 be revoked or denied by the department for three years; or

31 (iii) Where there have been two or more previous offenses (~~within  
32 seven years~~), be revoked or denied by the department for four years.

33 The department shall grant credit on a day-for-day basis for any  
34 portion of a suspension, revocation, or denial already served under  
35 this subsection for a suspension, revocation, or denial imposed under  
36 RCW 46.20.3101 arising out of the same incident.

37 For purposes of this subsection (9), the department shall refer to



1 the driver's record maintained under RCW 46.52.120 when determining the  
2 existence of prior offenses.

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

7 (11)(a) In addition to any nonsuspendable and nondeferrable jail  
8 sentence required by this section, whenever the court imposes less than  
9 one year in jail, the court shall also suspend but shall not defer a  
10 period of confinement for a period not exceeding five years. The court  
11 shall impose conditions of probation that include: (i) Not driving a  
12 motor vehicle within this state without a valid license to drive and  
13 proof of financial responsibility for the future; (ii) not driving a  
14 motor vehicle within this state while having an alcohol concentration  
15 of 0.08 or more within two hours after driving; and (iii) not refusing  
16 to submit to a test of his or her breath or blood to determine alcohol  
17 concentration upon request of a law enforcement officer who has  
18 reasonable grounds to believe the person was driving or was in actual  
19 physical control of a motor vehicle within this state while under the  
20 influence of intoxicating liquor. The court may impose conditions of  
21 probation that include nonrepetition, installation of an ignition  
22 interlock device on the probationer's motor vehicle, alcohol or drug  
23 treatment, supervised probation, or other conditions that may be  
24 appropriate. The sentence may be imposed in whole or in part upon  
25 violation of a condition of probation during the suspension period.

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

30 (c) For each incident involving a violation of a mandatory  
31 condition of probation imposed under this subsection, the license,  
32 permit, or privilege to drive of the person shall be suspended by the  
33 court for thirty days or, if such license, permit, or privilege to  
34 drive already is suspended, revoked, or denied at the time the finding  
35 of probation violation is made, the suspension, revocation, or denial  
36 then in effect shall be extended by thirty days. The court shall  
37 notify the department of any suspension, revocation, or denial or any

1 extension of a suspension, revocation, or denial imposed under this  
2 subsection.

3 (12) A court may waive the electronic home monitoring requirements  
4 of this chapter when:

5 (a) The offender does not have a dwelling, telephone service, or  
6 any other necessity to operate an electronic home monitoring system;

7 (b) The offender does not reside in the state of Washington; or

8 (c) The court determines that there is reason to believe that the  
9 offender would violate the conditions of the electronic home monitoring  
10 penalty.

11 Whenever the mandatory minimum term of electronic home monitoring  
12 is waived, the court shall state in writing the reason for granting the  
13 waiver and the facts upon which the waiver is based, and shall impose  
14 an alternative sentence with similar punitive consequences. The  
15 alternative sentence may include, but is not limited to, additional  
16 jail time, work crew, or work camp.

17 Whenever the combination of jail time and electronic home  
18 monitoring or alternative sentence would exceed three hundred sixty-  
19 five days, the offender shall serve the jail portion of the sentence  
20 first, and the electronic home monitoring or alternative portion of the  
21 sentence shall be reduced so that the combination does not exceed three  
22 hundred sixty-five days.

23 (13) An offender serving a sentence under this section, whether or  
24 not a mandatory minimum term has expired, may be granted an  
25 extraordinary medical placement by the jail administrator subject to  
26 the standards and limitations set forth in RCW 9.94A.728(3).

27 (14) For purposes of this section and RCW 46.61.502 and 46.61.504:

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

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

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

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

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

37 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
38 9A.36.050 or an equivalent local ordinance, if the conviction is the

1 result of a charge that was originally filed as a violation of RCW  
2 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
3 46.61.520 or 46.61.522;

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

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

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

16 If a deferred prosecution is revoked based on a subsequent  
17 conviction for an offense listed in this subsection (14)(a), the  
18 subsequent conviction shall not be treated as a prior offense of the  
19 revoked deferred prosecution for the purposes of sentencing; and

20 (b) (~~"Within seven years" means that the arrest for a prior~~  
21 ~~offense occurred within seven years before or after the arrest for the~~  
22 ~~current offense; and~~

23 ~~(e)~~) "Within ten years" means that the arrest for a prior offense  
24 occurred within ten years before or after the arrest for the current  
25 offense.

26 **Sec. 2.** RCW 46.61.5058 and 2009 c 479 s 38 are each amended to  
27 read as follows:

28 (1) Upon the arrest of a person or upon the filing of a complaint,  
29 citation, or information in a court of competent jurisdiction, based  
30 upon probable cause to believe that a person has violated RCW 46.61.502  
31 or 46.61.504 or any similar municipal ordinance, if such person has a  
32 prior offense (~~(within seven years as defined in RCW 46.61.5055)~~), and  
33 where the person has been provided written notice that any transfer,  
34 sale, or encumbrance of such person's interest in the vehicle over  
35 which that person was actually driving or had physical control when the  
36 violation occurred, is unlawful pending either acquittal, dismissal,  
37 sixty days after conviction, or other termination of the charge, such

1 person shall be prohibited from encumbering, selling, or transferring  
2 his or her interest in such vehicle, except as otherwise provided in  
3 (a), (b), and (c) of this subsection, until either acquittal,  
4 dismissal, sixty days after conviction, or other termination of the  
5 charge. The prohibition against transfer of title shall not be stayed  
6 pending the determination of an appeal from the conviction.

7 (a) A vehicle encumbered by a bona fide security interest may be  
8 transferred to the secured party or to a person designated by the  
9 secured party;

10 (b) A leased or rented vehicle may be transferred to the lessor,  
11 rental agency, or to a person designated by the lessor or rental  
12 agency; and

13 (c) A vehicle may be transferred to a third party or a vehicle  
14 dealer who is a bona fide purchaser or may be subject to a bona fide  
15 security interest in the vehicle unless it is established that (i) in  
16 the case of a purchase by a third party or vehicle dealer, such party  
17 or dealer had actual notice that the vehicle was subject to the  
18 prohibition prior to the purchase, or (ii) in the case of a security  
19 interest, the holder of the security interest had actual notice that  
20 the vehicle was subject to the prohibition prior to the encumbrance of  
21 title.

22 (2) On conviction for a violation of either RCW 46.61.502 or  
23 46.61.504 or any similar municipal ordinance where the person convicted  
24 has a prior offense (~~(within seven years as defined in RCW~~  
25 ~~46.61.5055)),~~ the motor vehicle the person was driving or over which  
26 the person had actual physical control at the time of the offense, if  
27 the person has a financial interest in the vehicle, is subject to  
28 seizure and forfeiture pursuant to this section.

29 (3) A vehicle subject to forfeiture under this chapter may be  
30 seized by a law enforcement officer of this state upon process issued  
31 by a court of competent jurisdiction. Seizure of a vehicle may be made  
32 without process if the vehicle subject to seizure has been the subject  
33 of a prior judgment in favor of the state in a forfeiture proceeding  
34 based upon this section.

35 (4) Seizure under subsection (3) of this section automatically  
36 commences proceedings for forfeiture. The law enforcement agency under  
37 whose authority the seizure was made shall cause notice of the seizure  
38 and intended forfeiture of the seized vehicle to be served within

1 fifteen days after the seizure on the owner of the vehicle seized, on  
2 the person in charge of the vehicle, and on any person having a known  
3 right or interest in the vehicle, including a community property  
4 interest. The notice of seizure may be served by any method authorized  
5 by law or court rule, including but not limited to service by certified  
6 mail with return receipt requested. Service by mail is complete upon  
7 mailing within the fifteen-day period after the seizure. Notice of  
8 seizure in the case of property subject to a security interest that has  
9 been perfected on a certificate of title shall be made by service upon  
10 the secured party or the secured party's assignee at the address shown  
11 on the financing statement or the certificate of title.

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

16 (6) If a person notifies the seizing law enforcement agency in  
17 writing of the person's claim of ownership or right to possession of  
18 the seized vehicle within forty-five days of the seizure, the law  
19 enforcement agency shall give the person or persons a reasonable  
20 opportunity to be heard as to the claim or right. The hearing shall  
21 be before the chief law enforcement officer of the seizing agency or  
22 the chief law enforcement officer's designee, except where the seizing  
23 agency is a state agency as defined in RCW 34.12.020, the hearing shall  
24 be before the chief law enforcement officer of the seizing agency or  
25 an administrative law judge appointed under chapter 34.12 RCW, except  
26 that any person asserting a claim or right may remove the matter to a  
27 court of competent jurisdiction. Removal may only be accomplished  
28 according to the rules of civil procedure. The person seeking removal  
29 of the matter must serve process against the state, county, political  
30 subdivision, or municipality that operates the seizing agency, and any  
31 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,  
32 within forty-five days after the person seeking removal has notified  
33 the seizing law enforcement agency of the person's claim of ownership  
34 or right to possession. The court to which the matter is to be removed  
35 shall be the district court when the aggregate value of the vehicle is  
36 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
37 before the seizing agency and any appeal therefrom shall be under Title  
38 34 RCW. In a court hearing between two or more claimants to the

1 vehicle involved, the prevailing party shall be entitled to a judgment  
2 for costs and reasonable attorneys' fees. The burden of producing  
3 evidence shall be upon the person claiming to be the legal owner or the  
4 person claiming to have the lawful right to possession of the vehicle.  
5 The seizing law enforcement agency shall promptly return the vehicle  
6 to the claimant upon a determination by the administrative law judge  
7 or court that the claimant is the present legal owner under this title  
8 ((46-RCW)) or is lawfully entitled to possession of the vehicle.

9 (7) When a vehicle is forfeited under this chapter the seizing law  
10 enforcement agency may sell the vehicle, retain it for official use,  
11 or upon application by a law enforcement agency of this state release  
12 the vehicle to that agency for the exclusive use of enforcing this  
13 title; provided, however, that the agency shall first satisfy any bona  
14 fide security interest to which the vehicle is subject under subsection  
15 (1)(a) or (c) of this section.

16 (8) When a vehicle is forfeited, the seizing agency shall keep a  
17 record indicating the identity of the prior owner, if known, a  
18 description of the vehicle, the disposition of the vehicle, the value  
19 of the vehicle at the time of seizure, and the amount of proceeds  
20 realized from disposition of the vehicle.

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

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

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

30 (12) By January 31st of each year, each seizing agency shall remit  
31 to the state treasurer an amount equal to ten percent of the net  
32 proceeds of vehicles forfeited during the preceding calendar year.  
33 Money remitted shall be deposited in the state general fund.

34 (13) The net proceeds of a forfeited vehicle is the value of the  
35 forfeitable interest in the vehicle after deducting the cost of  
36 satisfying a bona fide security interest to which the vehicle is  
37 subject at the time of seizure; and in the case of a sold vehicle,

1 after deducting the cost of sale, including reasonable fees or  
2 commissions paid to independent selling agents.

3 (14) The value of a sold forfeited vehicle is the sale price. The  
4 value of a retained forfeited vehicle is the fair market value of the  
5 vehicle at the time of seizure, determined when possible by reference  
6 to an applicable commonly used index, such as the index used by the  
7 department of licensing. A seizing agency may, but need not, use an  
8 independent qualified appraiser to determine the value of retained  
9 vehicles. If an appraiser is used, the value of the vehicle appraised  
10 is net of the cost of the appraisal.

11 **Sec. 3.** RCW 46.20.3101 and 2004 c 95 s 4 and 2004 c 68 s 3 are  
12 each reenacted and amended to read as follows:

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

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

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

21 (b) For a second or subsequent refusal (~~((within seven years))~~), or  
22 for a first refusal where there has been one or more previous incidents  
23 (~~((within seven years))~~) that have resulted in administrative action  
24 under this section, revocation or denial for two years or until the  
25 person reaches age twenty-one, whichever is longer.

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

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

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

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

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

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

6       (4) The department shall grant credit on a day-for-day basis for  
7 any portion of a suspension, revocation, or denial already served under  
8 this section for a suspension, revocation, or denial imposed under RCW  
9 46.61.5055 arising out of the same incident.

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