

SENATE BILL 5141

State of Washington 54th Legislature 1995 Regular Session

By Senators Smith, Rasmussen, Quigley, C. Anderson and Bauer

Read first time 01/12/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to offenses involving alcohol or drugs; amending
2 RCW 46.61.502, 46.61.504, 46.61.5051, 46.61.5056, 46.61.506,
3 46.61.5151, 46.61.5152, 46.20.285, 35.21.165, 36.32.127, 46.20.270,
4 46.20.365, 46.20.291, 46.20.308, 10.05.010, 10.05.020, 10.05.030,
5 10.05.040, 10.05.050, 10.05.060, 10.05.090, 10.05.100, 10.05.120,
6 10.05.140, 10.05.160, 10.05.170, 46.20.355, 46.20.311, 46.04.480,
7 46.04.015, 46.20.391, and 3.62.090; reenacting and amending RCW
8 46.63.020; adding new sections to chapter 46.20 RCW; creating new
9 sections; repealing RCW 46.20.309, 46.61.5052, 46.61.5053, and
10 46.61.5057; prescribing penalties; and providing an effective date.

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

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5 **PART I - DUI AND DUI PENALTIES**

6 **Sec. 1.** RCW 46.61.502 and 1994 c 275 s 2 are each amended to read
7 as follows:

8 (1) A person is guilty of driving while under the influence of
9 intoxicating liquor or any drug if the person drives a vehicle within
10 this state:

11 (a) And the person has, within two hours after driving, an alcohol
12 concentration of (~~(0.10 or higher)~~) 0.08 or more, or 0.02 or more if
13 the person is under the age of twenty-one years, as shown by analysis
14 of the person's breath or blood made under RCW 46.61.506; or

15 (b) While the person is under the influence of or affected by
16 intoxicating liquor or any drug; or

17 (c) While the person is under the combined influence of or affected
18 by intoxicating liquor and any drug.

19 (2) The fact that a person charged with a violation of this section
20 is or has been entitled to use a drug under the laws of this state
21 shall not constitute a defense against a charge of violating this
22 section.

23 (3) It is an affirmative defense to a violation of subsection
24 (1)(a) of this section which the defendant must prove by a
25 preponderance of the evidence that the defendant consumed a sufficient
26 quantity of alcohol after the time of driving and before the
27 administration of an analysis of the person's breath or blood to cause
28 the defendant's alcohol concentration to be (~~(0.10)~~) 0.08 or more, or
29 0.02 or more if the person is under the age of twenty-one years, within
30 two hours after driving. The court shall not admit evidence of this
31 defense unless the defendant notifies the prosecution prior to the
32 earlier of (a) seven days prior to trial or (b) the omnibus or pretrial

1 hearing in the case of the defendant's intent to assert the affirmative
2 defense.

3 (4) Analyses of blood or breath samples obtained more than two
4 hours after the alleged driving may be used as evidence that within two
5 hours of the alleged driving, a person had an alcohol concentration of
6 ~~((0.10))~~ 0.08 or more, or 0.02 or more if the person is under the age
7 of twenty-one years, in violation of subsection (1)(a) of this section,
8 and in any case in which the analysis shows an alcohol concentration
9 above 0.00 may be used as evidence that a person was under the
10 influence of or affected by intoxicating liquor or any drug in
11 violation of subsection (1) (b) or (c) of this section.

12 (5) A violation of this section is a gross misdemeanor.

13 **Sec. 2.** RCW 46.61.504 and 1994 c 275 s 3 are each amended to read
14 as follows:

15 (1) A person is guilty of being in actual physical control of a
16 motor vehicle while under the influence of intoxicating liquor or any
17 drug if the person has actual physical control of a vehicle within this
18 state:

19 (a) And the person has, within two hours after being in actual
20 physical control of the vehicle, an alcohol concentration of ~~((0.10 or~~
21 ~~higher))~~ 0.08 or more, or 0.02 or more if the person is under the age
22 of twenty-one years, as shown by analysis of the person's breath or
23 blood made under RCW 46.61.506; or

24 (b) While the person is under the influence of or affected by
25 intoxicating liquor or any drug; or

26 (c) While the person is under the combined influence of or affected
27 by intoxicating liquor and any drug.

28 (2) The fact that a person charged with a violation of this section
29 is or has been entitled to use a drug under the laws of this state does
30 not constitute a defense against any charge of violating this section.
31 No person may be convicted under this section if, prior to being
32 pursued by a law enforcement officer, the person has moved the vehicle
33 safely off the roadway.

34 (3) It is an affirmative defense to a violation of subsection
35 (1)(a) of this section which the defendant must prove by a
36 preponderance of the evidence that the defendant consumed a sufficient
37 quantity of alcohol after the time of being in actual physical control
38 of the vehicle and before the administration of an analysis of the

1 person's breath or blood to cause the defendant's alcohol concentration
2 to be ~~((0.10))~~ 0.08 or more, or 0.02 or more if the person is under the
3 age of twenty-one years, within two hours after being in such control.
4 The court shall not admit evidence of this defense unless the defendant
5 notifies the prosecution prior to the earlier of (a) seven days prior
6 to trial or (b) the omnibus or pretrial hearing in the case of the
7 defendant's intent to assert the affirmative defense.

8 (4) Analyses of blood or breath samples obtained more than two
9 hours after the alleged being in actual physical control of a vehicle
10 may be used as evidence that within two hours of the alleged being in
11 such control, a person had an alcohol concentration of ~~((0.10))~~ 0.08 or
12 more, or 0.02 or more if the person is under the age of twenty-one
13 years, in violation of subsection (1)(a) of this section, and in any
14 case in which the analysis shows an alcohol concentration above 0.00
15 may be used as evidence that a person was under the influence of or
16 affected by intoxicating liquor or any drug in violation of subsection
17 (1) (b) or (c) of this section.

18 (5) A violation of this section is a gross misdemeanor.

19 **Sec. 3.** RCW 46.61.5051 and 1994 c 275 s 4 are each amended to read
20 as follows:

21 ~~(1) A person ((whose driver's license is not in a probationary,~~
22 ~~suspended, or revoked status, and who has not been)) convicted of a~~
23 ~~violation of RCW 46.61.502 or 46.61.504 ((that was committed within~~
24 ~~five years before the commission of the current violation, and who~~
25 ~~violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an alcohol~~
26 ~~concentration of at least 0.10 but less than 0.15, or a person who~~
27 ~~violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c) and for~~
28 ~~any reason other than the person's refusal to take a test offered~~
29 ~~pursuant to RCW 46.20.308 the person's alcohol concentration is not~~
30 ~~proved, is guilty of a gross misdemeanor and)) shall be punished ((as~~
31 ~~follows:~~

32 ~~(a))~~ by imprisonment for not less than one day nor more than one
33 year~~((—Twenty four consecutive hours of the imprisonment may not be~~
34 ~~suspended or deferred unless the court finds that the imposition of~~
35 ~~this mandatory minimum sentence would impose a substantial risk to the~~
36 ~~offender's physical or mental well being.—Whenever the mandatory~~
37 ~~minimum sentence is suspended or deferred, the court shall state in~~

1 ~~writing the reason for granting the suspension or deferral and the~~
2 ~~facts upon which the suspension or deferral is based; and~~

3 ~~(b) By)), a fine of not less than three hundred fifty dollars nor~~
4 ~~more than five thousand dollars((. Three hundred fifty dollars of the~~
5 ~~fine may not be suspended or deferred unless the court finds the~~
6 ~~offender to be indigent; and~~

7 ~~(c) By)), and suspension or denial by the department of the~~
8 ~~offender's license ((or)), permit ((to drive)), or ((suspension of any~~
9 ~~nonresident)) privilege to drive((,)) for a period of ninety days or,~~

10 if the person is under the age of twenty-one years, for ninety days or
11 the period specified in RCW 46.20.265 upon receipt of a first notice,
12 whichever is longer. ~~((The court may suspend all or part of the~~
13 ~~ninety-day period of suspension upon a plea agreement executed by the~~
14 ~~defendant and the prosecutor. The court shall notify the department of~~
15 ~~licensing of the conviction and of any period of suspension and shall~~
16 ~~notify the department of the person's completion of any period of~~
17 ~~suspension. Upon receiving notification of the conviction, or if~~
18 ~~applicable, upon receiving notification of the completion of any period~~
19 ~~of suspension, the department shall issue the offender a probationary~~
20 ~~license in accordance with RCW 46.20.355.))~~

21 (2) A person ~~((whose driver's license is not in a probationary,~~
22 ~~suspended, or revoked status, and who has not been convicted of a~~
23 ~~violation of RCW 46.61.502 or 46.61.504 that was committed within five~~
24 ~~years before the commission of the current violation, and who either:~~

25 (a) ~~Violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an~~
26 ~~alcohol concentration of 0.15 or more; or~~

27 (b) ~~Violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c)~~
28 ~~and, because of the person's refusal to take a test offered pursuant to~~
29 ~~RCW 46.20.308, there is no test result indicating the person's alcohol~~
30 ~~concentration, is guilty of a gross misdemeanor and)) convicted of a~~

31 violation of RCW 46.61.502 or 46.61.504 who has one prior conviction
32 shall be punished ((as follows:

33 (i)) by imprisonment for not less than ((two)) thirty days nor
34 more than one year((. Forty-eight consecutive hours of the
35 imprisonment may not be suspended or deferred unless the court finds
36 that the imposition of this mandatory minimum sentence would impose a
37 substantial risk to the offender's physical or mental well-being.
38 Whenever the mandatory minimum sentence is suspended or deferred, the
39 court shall state in writing the reason for granting the suspension or

1 ~~deferral and the facts upon which the suspension or deferral is based;~~
2 ~~and~~

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

7 ~~(iii) By suspension)), and revocation or denial by the department~~
8 ~~of the offender's license ((or)), permit ((to drive)), or ((suspension~~
9 ~~of any nonresident)) privilege to drive((,)) for a period of one~~
10 ~~((hundred twenty days. The court shall notify the department of the~~
11 ~~conviction, and upon receiving notification of the conviction the~~
12 ~~department shall suspend the offender's license and shall issue the~~
13 ~~offender a probationary license in accordance with RCW 46.20.355)) year~~
14 ~~or, if the person is under the age of twenty-one years, for one year or~~
15 ~~the period specified in RCW 46.20.265 upon receipt of a second or~~
16 ~~subsequent notice, whichever is longer.~~

17 (3) A person convicted of a violation of RCW 46.61.502 or 46.61.504
18 who has at least two prior convictions shall be punished by
19 imprisonment for not less than ninety days nor more than one year, a
20 fine of not less than seven hundred fifty dollars nor more than five
21 thousand dollars, and revocation or denial by the department of the
22 offender's license, permit, or privilege to drive for a period of two
23 years or, if the person is under the age of twenty-one years, for two
24 years or the period specified in RCW 46.20.265 upon receipt of a second
25 or subsequent notice, whichever is longer.

26 (4) For purposes of sentencing under this section, "prior
27 conviction" means a conviction under RCW 46.61.502, 46.61.504, section
28 15 of this act, or a municipal ordinance similar to any of these
29 statutes or a deferred prosecution for a violation of RCW 46.61.502 or
30 46.61.504 or similar municipal ordinance based on an incident within
31 five years before the commission of the current violation. For
32 purposes of sentencing under this section, the court shall determine,
33 based on a preponderance of the evidence, whether the offender has been
34 convicted under RCW 46.61.502, 46.61.504, section 15 of this act, or a
35 municipal ordinance similar to any of these statutes or has been
36 granted a deferred prosecution for a violation of RCW 46.61.502 or
37 46.61.504 or similar municipal ordinance based on an incident within
38 five years before the commission of the current violation. The
39 prosecutor or the court may obtain an abstract of the offender's

1 driving record, which shall be prima facie evidence of the offender's
2 prior convictions.

3 (5) In exercising its discretion in setting penalties within the
4 limits allowed by this section, the court shall particularly consider
5 as an aggravating factor whether:

6 (a) The ((person's)) offender's driving at the time of the offense
7 was responsible for injury or damage to another or another's
8 property((-

9 ~~(4) Upon conviction under this section, the offender's driver's~~
10 ~~license is deemed to be in a probationary status for five years from~~
11 ~~the date of the issuance of a probationary license under RCW 46.20.355.~~
12 ~~Being on probationary status does not authorize a person to drive~~
13 ~~during any period of license suspension imposed as a penalty for the~~
14 ~~infraction.~~

15 ~~(5))i~~

16 (b) The offender's alcohol concentration was 0.15 or more;

17 (c) The offender refused to take a test offered pursuant to RCW
18 46.20.308;

19 (d) The offender's license, permit, or privilege to drive was
20 suspended, revoked, denied, or in probationary status at the time of
21 the violation; and

22 (e) The offender did not have proof of financial responsibility for
23 the future, as defined by RCW 46.29.260, at the time of the violation.

24 (6) The court shall not defer the minimum term of imprisonment or
25 minimum fine. The court shall not suspend the minimum term of
26 imprisonment or minimum fine unless it finds, considering the purposes
27 of Title 46 RCW and any aggravating or mitigating factors, that the
28 minimum term or minimum fine would be clearly excessive and that there
29 are substantial and compelling reasons justifying a lesser term of
30 imprisonment or fine. Whenever the minimum term of imprisonment or
31 minimum fine is suspended, the court shall set forth the reasons for
32 its decision in written findings of fact and conclusions of law. A
33 sentence suspending the minimum term of imprisonment or minimum fine is
34 subject to appeal by the prosecution. To reverse a sentence suspending
35 the minimum term of imprisonment or minimum fine, the reviewing court
36 must find that the reasons supplied by the sentencing judge are not
37 supported by the record that was before the judge, those reasons do not
38 justify such a sentence, or the sentence imposed was clearly too
39 lenient.

1 (7) Upon sentencing an offender under this section, the court shall
2 notify the department of licensing, which shall suspend, revoke, or
3 deny the offender's license, permit, or privilege to drive. The period
4 of suspension, revocation, or denial imposed under this section shall
5 be reduced by the length of the period of suspension, revocation, or
6 denial imposed under RCW 46.20.365 based on the same incident. After
7 expiration of the period of suspension, revocation, or denial, the
8 department shall place the offender's driving privilege in probationary
9 status pursuant to RCW 46.20.355.

10 (8) An offender (~~(punishable)~~) sentenced under this section is
11 subject to the alcohol assessment and treatment provisions of RCW
12 46.61.5056. An offender sentenced under subsection (2) or (3) of this
13 section is not eligible for an occupational license under RCW 46.20.391
14 and is subject to vehicle seizure and forfeiture using the procedures
15 of RCW 46.61.5058.

16 ~~((+6+))~~ (9)(a) In addition to any nonsuspendable and nondeferrable
17 jail sentence required by this section, whenever the court imposes less
18 than one year in jail, the court shall also suspend but shall not defer
19 a period of confinement for a period not exceeding two years. The
20 court shall impose conditions of probation that include: (i) Not
21 driving a motor vehicle within this state without a valid license to
22 drive and proof of financial responsibility for the future as defined
23 by RCW 46.29.260; (ii) not driving a motor vehicle within this state
24 while having an alcohol concentration of (~~(0.08)~~) 0.04 or more within
25 two hours after driving; and (iii) not refusing to submit to a test of
26 his or her breath or blood to determine alcohol concentration upon
27 request of a law enforcement officer who has reasonable grounds to
28 believe the person was driving or was in actual physical control of a
29 motor vehicle within this state while under the influence of
30 intoxicating liquor. The court may impose conditions of probation that
31 include nonrepetition, alcohol or drug treatment, supervised probation,
32 or other conditions that may be appropriate. The sentence may be
33 imposed in whole or in part upon violation of a condition of probation
34 during the suspension period.

35 (b) For each violation of mandatory conditions of probation under
36 (a) (i) and (ii) or (a) (i) and (iii) of this subsection, the court
37 shall order the (~~(convicted person)~~) offender to be confined for thirty
38 days, which shall not be suspended or deferred.

1 (c) For each (~~incident involving a~~) violation of a mandatory
2 condition of probation imposed under this subsection, the court shall
3 notify the department, which shall suspend or deny the offender's
4 license, permit, or privilege to drive (~~of the person shall be~~
5 ~~suspended by the court~~) for thirty days or, if such license, permit,
6 or privilege to drive already is suspended, revoked, or denied at the
7 time the finding of probation violation is made, the suspension,
8 revocation, or denial then in effect shall be extended by thirty days.
9 (~~The court shall notify the department of any suspension, revocation,~~
10 ~~or denial or any extension of a suspension, revocation, or denial~~
11 ~~imposed under this subsection.~~)

12 **Sec. 4.** RCW 46.61.5056 and 1994 c 275 s 9 are each amended to read
13 as follows:

14 (1) A person subject to alcohol assessment and treatment under RCW
15 46.61.5051(~~, 46.61.5052, or 46.61.5053~~) shall be required by the
16 court to complete a course in an alcohol information school approved by
17 the department of social and health services or to complete more
18 intensive treatment (~~in a~~) by an approved treatment program
19 (~~approved by the department of social and health services~~), as
20 defined by RCW 70.96A.020, as determined by either the court or the
21 court's probation department. The court shall notify the department of
22 licensing whenever it orders a person to complete (~~a course or~~)
23 treatment (~~program~~) under this section.

24 (2) A written diagnostic evaluation and recommended treatment
25 (~~recommendation~~) shall be prepared under the direction of the court
26 by an (~~alcoholism agency approved by the department of social and~~
27 ~~health services~~) approved treatment program or a qualified probation
28 department approved by the department of social and health services.
29 A copy of the report shall be forwarded to the department of licensing.
30 Based on the written diagnostic evaluation and recommended treatment,
31 the court or the court's probation department shall determine whether
32 the person shall be required to complete a course in an alcohol
33 information school approved by the department of social and health
34 services or more intensive treatment (~~in a~~) by an approved treatment
35 program (~~approved by the department of social and health services~~).

36 (3) Standards for approval for alcohol (~~treatment programs~~)
37 information schools shall be prescribed by the department of social and
38 health services. The department of social and health services shall

1 periodically review the costs of alcohol information schools and
2 treatment by approved treatment programs.

3 (4) Any ((agency)) approved treatment program that provides
4 treatment ordered under RCW 46.61.5051(~~(, 46.61.5052, or 46.61.5053,)~~)
5 shall immediately report to the appropriate probation department where
6 applicable, otherwise to the court, and to the department of licensing
7 any noncompliance by ((a person)) an offender with the conditions of
8 his or her ordered treatment. The court shall notify the department of
9 licensing and the department of social and health services of any
10 failure by an ((agency)) approved treatment program to so report
11 noncompliance. Any ((agency)) approved treatment program with
12 knowledge of noncompliance that fails to so report shall be fined two
13 hundred fifty dollars by the department of social and health services.
14 Upon three such failures by an ((agency)) approved treatment program
15 within one year, the department of social and health services shall
16 revoke the ((agency's approval)) approved treatment program's license
17 or certification under this section. Upon receipt of a report of an
18 offender's noncompliance under this subsection, the department of
19 licensing shall suspend the offender's license or permit to drive under
20 RCW 46.20.291(4) or deny the offender's privilege to drive under RCW
21 46.20.031(3).

22 (5) The department of licensing and the department of social and
23 health services may adopt such rules as are necessary to carry out this
24 section.

25 **Sec. 5.** RCW 46.61.506 and 1994 c 275 s 26 are each amended to read
26 as follows:

27 (1) Upon the trial of any civil or criminal action or proceeding
28 arising out of acts alleged to have been committed by any person while
29 driving or in actual physical control of a vehicle while under the
30 influence of intoxicating liquor or any drug, if the person's alcohol
31 concentration is less than ((0.10)) 0.08, or less than 0.02 if the
32 person is under the age of twenty-one years, it is evidence that may be
33 considered with other competent evidence in determining whether the
34 person was under the influence of intoxicating liquor or any drug.

35 (2) ((The breath analysis shall be based upon grams of alcohol per
36 two hundred ten liters of breath.)) The foregoing provisions of this
37 section shall not be construed as limiting the introduction of any

1 other competent evidence bearing upon the question whether the person
2 was under the influence of intoxicating liquor or any drug.

3 (3) Analysis of the person's blood or breath to be considered valid
4 under the provisions of this section or RCW 46.61.502 or 46.61.504
5 shall have been performed according to methods approved by the state
6 toxicologist and by an individual possessing a valid permit issued by
7 the state toxicologist for this purpose. The state toxicologist is
8 directed to approve satisfactory techniques or methods, to supervise
9 the examination of individuals to ascertain their qualifications and
10 competence to conduct such analyses, and to issue permits which shall
11 be subject to termination or revocation at the discretion of the state
12 toxicologist.

13 (4) When a blood test is administered under the provisions of RCW
14 46.20.308, the withdrawal of blood for the purpose of determining its
15 (~~alcoholic content~~) alcohol concentration may be performed only by a
16 physician, a registered nurse, or a qualified technician. This
17 limitation shall not apply to the taking of breath specimens.

18 (5) The person tested may have a physician, or a qualified
19 technician, chemist, registered nurse, or other qualified person of his
20 or her own choosing administer one or more tests in addition to any
21 administered at the direction of a law enforcement officer. The
22 failure or inability to obtain an additional test by a person shall not
23 preclude the admission of evidence relating to the test or tests taken
24 at the direction of a law enforcement officer.

25 (6) Upon the request of the person who shall submit to a test or
26 tests at the request of a law enforcement officer, full information
27 concerning the test or tests shall be made available to him or her or
28 his or her attorney.

29 **Sec. 6.** RCW 46.61.5151 and 1994 c 275 s 39 are each amended to
30 read as follows:

31 A sentencing court may allow persons convicted of violating RCW
32 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in
33 RCW 46.61.5051(~~(, 46.61.5052, or 46.61.5053)~~) in nonconsecutive or
34 intermittent time periods. However, any mandatory minimum sentence
35 under RCW 46.61.5051(~~(, 46.61.5052, or 46.61.5053)~~) shall be served
36 consecutively unless suspended (~~or deferred~~) as otherwise provided by
37 law.

1 **Sec. 7.** RCW 46.61.5152 and 1994 c 275 s 40 are each amended to
2 read as follows:

3 In addition to penalties that may be imposed under RCW 46.61.5051,
4 (~~46.61.5052, or 46.61.5053,~~) the court may require a person who is
5 convicted of a violation of RCW 46.61.502 or 46.61.504 or who enters a
6 deferred prosecution program under RCW 10.05.020 based on a violation
7 of RCW 46.61.502 or 46.61.504, to attend an educational program
8 focusing on the emotional, physical, and financial suffering of victims
9 who were injured by persons convicted of driving while under the
10 influence of intoxicants.

11 **Sec. 8.** RCW 46.20.285 and 1990 c 250 s 43 are each amended to read
12 as follows:

13 The department shall (~~forthwith~~) immediately revoke the license
14 of any driver for the period of one calendar year unless otherwise
15 provided in this section, upon receiving a record of the driver's
16 conviction of any of the following offenses, when the conviction has
17 become final:

18 (1) For vehicular homicide the period of revocation (~~shall be~~) is
19 two years;

20 (2) Vehicular assault;

21 (3) For driving a motor vehicle while under the influence of
22 intoxicating liquor or ((a narcotic)) any drug, ((or under the
23 influence of any other drug to a degree which renders the driver
24 incapable of safely driving a motor vehicle,)) upon a showing by the
25 department's records that the conviction is the second such conviction
26 for the driver within a period of five years, the period of revocation
27 is one year or, if the driver is under the age of twenty-one years, one
28 year or the period specified in RCW 46.20.265 upon receipt of a second
29 or subsequent notice, whichever is longer. Upon a showing that the
30 conviction is the third or subsequent such conviction for the driver
31 within a period of five years, the period of revocation (~~shall be~~) is
32 two years or, if the driver is under the age of twenty-one years, two
33 years or the period specified in RCW 46.20.265 upon receipt of a second
34 or subsequent notice, whichever is longer;

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

36 (5) Failure to stop and give information or render aid as required
37 under the laws of this state in the event of a motor vehicle accident

1 resulting in the death or personal injury of another or resulting in
2 damage to a vehicle that is driven or attended by another;

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

6 (7) Reckless driving upon a showing by the department's records
7 that the conviction is the third such conviction for the driver within
8 a period of two years;

9 (8) For refusal to submit to a breath alcohol test, upon a showing
10 by the department's records that the conviction is the second such
11 conviction for the driver within a period of five years, the period of
12 revocation is one year or, if the driver is under the age of twenty-one
13 years, one year or the period specified in RCW 46.20.265 upon receipt
14 of a second or subsequent notice, whichever is longer. Upon a showing
15 that the conviction is the third or subsequent such conviction for the
16 driver within a period of five years from the first conviction, the
17 period of revocation is two years or until the driver reaches the age
18 of eighteen years, whichever is longer.

19 **Sec. 9.** RCW 35.21.165 and 1994 c 275 s 36 are each amended to read
20 as follows:

21 Except as limited by the maximum penalties authorized by law, no
22 city or town may establish a penalty for an act that constitutes the
23 crime of driving while under the influence of intoxicating liquor or
24 any drug, as provided in RCW 46.61.502, or the crime of being in actual
25 physical control of a motor vehicle while under the influence of
26 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is
27 less than the penalties prescribed for those crimes in RCW
28 46.61.5051(~~(, 46.61.5052, and 46.61.5053)~~).

29 **Sec. 10.** RCW 36.32.127 and 1994 c 275 s 37 are each amended to
30 read as follows:

31 No county may establish a penalty for an act that constitutes the
32 crime of driving while under the influence of intoxicating liquor or
33 any drug, as provided for in RCW 46.61.502, or the crime of being in
34 actual physical control of a motor vehicle while under the influence of
35 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is
36 less than the penalties prescribed for those crimes in RCW
37 46.61.5051(~~(, 46.61.5052, and 46.61.5053)~~).

1 **Sec. 11.** RCW 46.20.270 and 1990 2nd ex.s. c 1 s 402 are each
2 amended to read as follows:

3 (1) Whenever any person is convicted of any offense for which this
4 title makes mandatory the suspension or revocation of the driver's
5 license of such person by the department, the privilege of the person
6 to operate a vehicle is suspended until the department takes the action
7 required by this chapter, and the court in which such conviction is had
8 shall forthwith secure the immediate forfeiture of the driver's license
9 of such convicted person and immediately forward such driver's license
10 to the department, and on failure of such convicted person to deliver
11 such driver's license the judge (~~(shall)~~) may cause such person to be
12 confined for the period of such suspension or revocation or until such
13 driver's license is delivered to such judge(~~(:— PROVIDED, That if the~~
14 ~~convicted person testifies that he or she does not and at the time of~~
15 ~~the offense did not have a current and valid vehicle driver's license,~~
16 ~~the judge shall cause such person to be charged with the operation of~~
17 ~~a motor vehicle without a current and valid driver's license and on~~
18 ~~conviction punished as by law provided, and the department may not~~
19 ~~issue a driver's license to such persons during the period of~~
20 ~~suspension or revocation:— PROVIDED, ALSO, That)) or may take other~~
21 appropriate action to secure the forfeiture of such driver's license.
22 If the driver's license of such convicted person has been lost or
23 destroyed and such convicted person makes an affidavit to that effect,
24 sworn to before the judge, the convicted person may not be so confined,
25 but the department may not issue or reissue a driver's license for such
26 convicted person during the period of such suspension or revocation:
27 PROVIDED, That perfection of notice of appeal shall stay the execution
28 of sentence including the suspension and/or revocation of the driver's
29 license.

30 (2) Every court having jurisdiction over offenses committed under
31 this chapter, or any other act of this state or municipal ordinance
32 adopted by a local authority regulating the operation of motor vehicles
33 on highways, or any federal authority having jurisdiction over offenses
34 substantially the same as those set forth in Title 46 RCW which occur
35 on federal installations within this state, shall forward to the
36 department within ten days of a forfeiture of bail or collateral
37 deposited to secure the defendant's appearance in court, a payment of
38 a fine or penalty, a plea of guilty or a finding of guilt, or a finding
39 that any person has committed a traffic infraction an abstract of the

1 court record in the form prescribed by rule of the supreme court,
2 showing the conviction of any person or the finding that any person has
3 committed a traffic infraction in said court for a violation of any
4 said laws other than regulations governing standing, stopping, parking,
5 and pedestrian offenses.

6 (3) Every municipality having jurisdiction over offenses committed
7 under this chapter, or under any other act of this state or municipal
8 ordinance adopted by a local authority regulating the operation of
9 motor vehicles on highways, may forward to the department within ten
10 days of failure to respond, failure to pay a penalty, failure to appear
11 at a hearing to contest the determination that a violation of any
12 statute, ordinance, or regulation relating to standing, stopping, or
13 parking has been committed, or failure to appear at a hearing to
14 explain mitigating circumstances, an abstract of the citation record in
15 the form prescribed by rule of the department, showing the finding by
16 such municipality that two or more violations of laws governing
17 standing, stopping, and parking have been committed and indicating the
18 nature of the defendant's failure to act. Such violations may not have
19 occurred while the vehicle is stolen from the registered owner or is
20 leased or rented under a bona fide commercial vehicle lease or rental
21 agreement between a lessor engaged in the business of leasing vehicles
22 and a lessee who is not the vehicle's registered owner. The department
23 may enter into agreements of reciprocity with the duly authorized
24 representatives of the states for reporting to each other violations of
25 laws governing standing, stopping, and parking.

26 (4) For the purposes of Title 46 RCW the term "conviction" means a
27 final conviction in a state or municipal court or by any federal
28 authority having jurisdiction over offenses substantially the same as
29 those set forth in Title 46 RCW which occur on federal installations in
30 this state, an unvacated forfeiture of bail or collateral deposited to
31 secure a defendant's appearance in court, the payment of a fine, a plea
32 of guilty, or a finding of guilt on a traffic law violation charge,
33 regardless of whether the imposition of sentence or sanctions are
34 deferred or the penalty is suspended, but not including entry into a
35 deferred prosecution agreement under chapter 10.05 RCW. A deferred
36 prosecution for a violation of RCW 46.61.502 or 46.61.504 shall be
37 considered a conviction under RCW 46.61.502 or 46.61.504 for purposes
38 of imposing a mandatory minimum sentence under RCW 46.61.5051 for
39 subsequent offenses within a five-year period.

1 (5) For the purposes of Title 46 RCW the term "finding that a
2 traffic infraction has been committed" means a failure to respond to a
3 notice of infraction or a determination made by a court pursuant to
4 this chapter. Payment of a monetary penalty made pursuant to RCW
5 46.63.070(2) is deemed equivalent to such a finding.

6 **PART II - ADMINISTRATIVE LICENSE SUSPENSION/REVOICATION**

7 **Sec. 12.** RCW 46.20.365 and 1994 c 275 s 12 are each amended to
8 read as follows:

9 (1) This section applies to any person arrested for a violation of
10 RCW 46.61.502 or 46.61.504 who ~~((has))~~ either (a) submitted to a test
11 administered pursuant to RCW 46.20.308 and the result of each test
12 showed an alcohol concentration of ~~((0.10 or higher as shown by a test~~
13 administered under)) 0.08 or more, or 0.02 or more if the person is
14 under the age of twenty-one years, or (b) refused to submit to a test
15 offered pursuant to RCW 46.20.308.

16 (2) The arresting officer or other law enforcement officer at whose
17 direction the test was given or offered, or the department of licensing
18 if the arrest was the result of a blood test, shall:

19 (a) Serve the person notice in writing on behalf of the department
20 of licensing of its intention to suspend, revoke, or deny the person's
21 license, permit, or privilege to drive ~~((or to issue a probationary~~
22 ~~license));~~

23 (b) Serve the person notice in writing on behalf of the department
24 of the person's right to a hearing, specifying the steps required to
25 obtain a hearing;

26 (c) Confiscate the person's Washington state license or permit to
27 drive, if any, and issue a temporary license to replace any confiscated
28 license or permit. The temporary license becomes effective twelve
29 hours after the time of arrest and shall be valid for thirty-seven days
30 from the date of arrest, or from the date the department gives notice
31 in the event of a blood test, or until the suspension ~~((or)),~~
32 revocation, or denial of the person's license ~~((or)),~~ permit, or ~~((the~~
33 issuance of a probationary license,)) privilege to drive is sustained
34 at a hearing pursuant to subsection (5) of this section, whichever
35 occurs first. ~~((If the person has not within the previous five years~~
36 ~~committed an offense for which he or she was granted a deferred~~
37 ~~prosecution under chapter 10.05 RCW, and within thirty days of the~~

1 ~~arrest the person petitions a court for a deferred prosecution on~~
2 ~~criminal charges arising out of the arrest, the court shall direct the~~
3 ~~department to extend the period of the temporary license by at least an~~
4 ~~additional thirty days but not more than an additional sixty days. If~~
5 ~~a deferred prosecution treatment plan is not recommended in the report~~
6 ~~made under RCW 10.05.050, or if treatment is rejected by the court, or~~
7 ~~if the person declines to accept an offered treatment plan, then the~~
8 ~~court shall immediately direct the department to cancel any period of~~
9 ~~extension of the temporary license.)) No temporary license is valid to~~
10 ~~any greater degree than the license or permit it replaces;~~

11 (d) Notify the department of the arrest, and transmit to the
12 department any confiscated license or permit and a sworn report or
13 report under a declaration authorized by RCW 9A.72.085, and a copy of
14 the information showing the results of any test administered under RCW
15 46.20.308, stating:

16 (i) That the officer had reasonable grounds to believe the arrested
17 person was driving or in actual physical control of a motor vehicle
18 within this state while under the influence of intoxicating liquor or
19 drug, or both;

20 (ii)(A) That pursuant to RCW 46.20.308 a test of the person's
21 ~~((alcohol concentration))~~ breath or blood was administered and the
22 result of each test showed an alcohol concentration of 0.08 or more, or
23 0.02 or more if the person was under the age of twenty-one years; or

24 (B) That the person refused to submit to a test offered pursuant to
25 RCW 46.20.308; and

26 (iii) ~~((That the test indicated that the person's alcohol~~
27 ~~concentration was 0.10 or higher; and~~

28 (iv)) Any other information that the department may require by
29 rule.

30 (3) Upon receipt of a ~~((sworn statement))~~ report under subsection
31 (2) of this section, the department shall suspend, revoke, or deny the
32 person's license, permit, or driving privilege~~((, or shall issue a~~
33 ~~probationary license,))~~ effective beginning ~~((thirty))~~ forty-five days
34 from the date of the arrest, or from the date the department gave
35 notice in the event of a blood test, or beginning when the suspension,
36 revocation, or denial~~((, or issuance))~~ is sustained at a hearing
37 pursuant to subsection (5) of this section, whichever occurs first.
38 The duration of the suspension, revocation, or denial~~((, or issuance of~~
39 ~~a probationary license,))~~ shall be as follows:

1 (a) Upon receipt of a first (~~sworn statement, issuance of a~~
2 ~~probationary license~~) report showing:

3 (i) An alcohol concentration of 0.08 or more, or 0.02 or more if
4 the person is under the age of twenty-one years, suspension or denial
5 for ninety days or until the person reaches the age of seventeen years,
6 whichever is longer, followed by placement in probationary status under
7 RCW 46.20.355;

8 (ii) That the person refused to submit to a test offered pursuant
9 to RCW 46.20.308, revocation or denial for one year or, if the driver
10 is under the age of twenty-one years, for one year or until the person
11 reaches the age of seventeen years, whichever is longer, followed by
12 placement in probationary status under RCW 46.20.355;

13 (b) Upon receipt of a second report indicating an arrest date
14 within five years of the arrest date indicated by a previous report and
15 the second report shows:

16 (i) An alcohol concentration of 0.08 or more, or 0.02 or more if
17 the person is under the age of twenty-one years, revocation or denial
18 for one year or until the person reaches the age of eighteen years,
19 whichever is longer, followed by placement in probationary status under
20 RCW 46.20.355;

21 (ii) That the person refused to submit to a test offered pursuant
22 to RCW 46.20.308, revocation or denial for two years or until the
23 person reaches the age of eighteen years, whichever is longer, followed
24 by placement in probationary status under RCW 46.20.355;

25 (c) Upon receipt of a (~~second~~) third or subsequent (~~statement~~)
26 report indicating an arrest date that is within five years of the
27 arrest date indicated by (~~a previous statement, revocation for two~~
28 years)) the first report under (a) of this subsection and the third
29 report shows:

30 (i) An alcohol concentration of 0.08 or more, or 0.02 or more if
31 the person is under the age of twenty-one years, revocation or denial
32 for two years or until the person reaches the age of eighteen years,
33 whichever is longer, followed by placement in probationary status under
34 RCW 46.20.355;

35 (ii) That the person refused to submit to a test offered pursuant
36 to RCW 46.20.308, revocation or denial for three years or until the
37 person reaches the age of eighteen years, whichever is longer, followed
38 by placement in probationary status under RCW 46.20.355.

1 (4) A person receiving notification under subsection (2) of this
2 section may, within ~~((five))~~ seven days after his or her arrest, or
3 after the date the department gave notice in the event of a blood test,
4 request a hearing before the department under subsection (5) of this
5 section. The request shall be in writing. The person shall pay a fee
6 of one hundred dollars as part of the request. If the request is
7 mailed, it must be postmarked within ~~((five))~~ seven days after the
8 arrest, or after the date the department gave notice in the event of a
9 blood test.

10 (5)(a) Upon timely receipt of a request and a one hundred dollar
11 fee under subsection (4) of this section, the department shall afford
12 the person an opportunity for a hearing. ~~((Except as otherwise~~
13 ~~provided in this section, the hearing is subject to and shall be~~
14 ~~scheduled and conducted in accordance with RCW 46.20.329 and~~
15 ~~46.20.332.)) The director shall appoint a designee or designees to
16 conduct the hearing. A hearing officer shall conduct the hearing, may
17 issue subpoenas for the attendance of witnesses and the production of
18 documents, and shall administer oaths to witnesses. The hearing
19 officer shall not issue a subpoena for the attendance of a witness at
20 the request of the person requesting the hearing unless the request is
21 accompanied by the fee required by RCW 5.56.010 for a witness in
22 district court. The report of the law enforcement officer and any
23 other evidence accompanying that report is admissible without further
24 evidentiary foundation and the certifications authorized by the
25 criminal rules for courts of limited jurisdiction are admissible
26 without further evidentiary foundation. The person requesting the
27 hearing may be represented by counsel, may present evidence, and may
28 testify. The hearing shall be recorded and shall be conducted in the
29 county of arrest, except that all or part of the hearing may, at the
30 discretion of the department, be conducted by telephone or other
31 electronic means. The hearing shall be held within ~~((thirty))~~ forty-
32 five days following the arrest~~((, unless otherwise agreed to by the~~
33 ~~department and the person. The hearing shall cover the issues of:~~~~

34 ~~(a) Whether)), or following the date the department gave notice in~~
35 ~~the event of a blood test.~~

36 (b) The hearing officer shall sustain the suspension, revocation,
37 or denial of the person's license, permit, or privilege to drive if the
38 hearing officer determines, based on a preponderance of the evidence,
39 that:

1 (i) The law enforcement officer had reasonable grounds to believe
2 the arrested person was driving or in actual physical control of a
3 motor vehicle within this state while under the influence of
4 intoxicating liquor; and

5 ~~((b) Whether the test of the person's alcohol concentration was~~
6 ~~administered in accordance with RCW 46.20.308; and~~

7 ~~(c) Whether the test indicated that the person's alcohol~~
8 ~~concentration was 0.10 or higher.~~

9 ~~(6) The period of any suspension, revocation, or denial imposed~~
10 ~~under this section shall run consecutively to the period of any~~
11 ~~suspension, revocation, or denial imposed pursuant to a criminal~~
12 ~~conviction arising out of the same incident.))~~

13 (ii) Either (A) a test of the person's breath or blood was
14 administered in accordance with RCW 46.20.308 and the result of each
15 test showed an alcohol concentration of 0.08 or more, or 0.02 or more
16 if the person was under the age of twenty-one years, or (B) the person
17 refused to submit to a test offered pursuant to RCW 46.20.308.

18 (6) No determination of facts by the hearing officer under
19 subsection (5) of this section shall have any collateral estoppel
20 effect on a subsequent criminal prosecution and shall not preclude
21 litigation of those same facts in a subsequent criminal prosecution.

22 (7) If the person fails to timely request a hearing, fails to pay
23 the required fee, or fails to appear at a requested hearing, the right
24 to a hearing is waived and the suspension, revocation, or denial shall
25 be sustained.

26 (8) Except for a revocation of a person's license, permit, or
27 privilege to drive imposed under this section for refusal to submit to
28 a test offered pursuant to RCW 46.20.308, a suspension, revocation, or
29 denial imposed under this section shall be stayed if the person is
30 accepted for deferred prosecution as provided in chapter 10.05 RCW for
31 the incident upon which the suspension, revocation, or denial is based.
32 If the deferred prosecution is terminated, the stay shall be lifted and
33 the suspension, revocation, or denial reinstated. If the deferred
34 prosecution is completed, the stay shall be lifted and the suspension,
35 revocation, or denial canceled.

36 ~~((7))~~ (9) If the suspension, revocation, or denial is sustained,
37 the department of licensing may recover costs in excess of one hundred
38 dollars as provided by RCW 12.20.060. If costs are recovered, the
39 person's license, permit, or privilege to drive shall not be reissued

1 or renewed until these costs are paid. If the suspension, revocation,
2 or denial is rescinded, the person shall be awarded the amount of the
3 hearing fee and costs as provided by RCW 12.20.060 and the department
4 shall reissue the person's license or permit to drive without charge.
5 If the suspension, revocation, or denial~~((, or issuance))~~ is sustained
6 ~~((after such a hearing))~~, the person whose license, privilege, or
7 permit is suspended, revoked, or denied~~((, or who has been issued a~~
8 ~~probationary license,))~~ has the right to ~~((file a petition in))~~ appeal
9 to the superior court of the county of arrest in the same manner as an
10 appeal from a decision of a court of limited jurisdiction. The
11 appellant must pay the costs associated with obtaining the record of
12 the hearing before the hearing officer. A court may stay the
13 suspension, revocation, or denial if it finds that the appellant is
14 likely to prevail in the appeal and that without a stay the appellant
15 will suffer irreparable injury. If the court stays the suspension,
16 revocation, or denial, it may impose conditions on such stay. The stay
17 shall not exceed ninety days, except for good cause shown, but shall in
18 no event exceed one hundred eighty days.

19 ~~((+8))~~ (10) When it has been finally determined under the
20 procedures of this section that a nonresident's privilege to operate a
21 motor vehicle in this state has been suspended, revoked, or denied, the
22 department shall give information in writing of the action taken to the
23 motor vehicle administrator of the state of the person's residence and
24 of any state in which he or she has a license.

25 **Sec. 13.** RCW 46.20.291 and 1993 c 501 s 4 are each amended to read
26 as follows:

27 The department is authorized to suspend the license of a driver
28 upon a showing by its records or other sufficient evidence that the
29 licensee:

30 (1) Has committed an offense for which mandatory revocation or
31 suspension of license is provided by law or has violated a mandatory
32 condition of probation imposed under RCW 46.61.5051;

33 (2) Has, by reckless or unlawful operation of a motor vehicle,
34 caused or contributed to an accident resulting in death or injury to
35 any person or serious property damage;

36 (3) Has been convicted of offenses against traffic regulations
37 governing the movement of vehicles, or found to have committed traffic
38 infractions, with such frequency as to indicate a disrespect for

1 traffic laws or a disregard for the safety of other persons on the
2 highways;

3 (4) Is incompetent to drive a motor vehicle under RCW 46.20.031(3);
4 (~~or~~))

5 (5) Has failed to respond to a notice of traffic infraction, failed
6 to appear at a requested hearing, violated a written promise to appear
7 in court, or has failed to comply with the terms of a notice of traffic
8 infraction or citation, as provided in RCW 46.20.289; (~~or~~))

9 (6) Has committed one of the prohibited practices relating to
10 drivers' licenses defined in RCW 46.20.336; or

11 (7) Has submitted to a test offered pursuant to RCW 46.20.308 and
12 the result of the test showed an alcohol concentration of 0.08 or more,
13 or 0.02 or more if the person was under the age of twenty-one years.

14 **PART III - IMPLIED CONSENT**

15 **Sec. 14.** RCW 46.20.308 and 1994 c 275 s 13 are each amended to
16 read as follows:

17 (1) Any person who operates a motor vehicle within this state is
18 deemed to have given consent, subject to the provisions of RCW
19 46.61.506, to a test or tests of his or her breath or blood for the
20 purpose of determining the (~~alcoholic content~~) alcohol concentration
21 of his or her breath or blood if arrested for any offense where, at the
22 time of the arrest, the arresting officer has reasonable grounds to
23 believe the person had been driving or was in actual physical control
24 of a motor vehicle while under the influence of intoxicating liquor.

25 (2) The test or tests of breath shall be administered at the
26 direction of a law enforcement officer having reasonable grounds to
27 believe the person to have been driving or in actual physical control
28 of a motor vehicle within this state while under the influence of
29 intoxicating liquor. However, in those instances where: (a) The
30 person is incapable due to physical injury, physical incapacity, or
31 other physical limitation, of providing a breath sample; or (b) (~~as a~~
32 ~~result of a traffic accident~~) the person is being treated (~~for a~~
33 ~~medical condition~~) in a hospital, clinic, doctor's office, or other
34 similar facility in which a breath testing instrument is not present,
35 a blood test shall be administered by a qualified person as provided in
36 RCW 46.61.506(4). The officer shall inform the person (~~of his or her~~
37 ~~right to refuse the breath or blood test, and~~) of his or her right to

1 have additional tests administered by any qualified person of his or
2 her choosing as provided in RCW 46.61.506. The officer shall warn the
3 driver that ~~((a))~~ (i) his or her privilege to drive will be revoked
4 or denied if he or she refuses to submit to the test, ~~((and (b) that))~~
5 (ii) knowing refusal to submit to the test is a crime punishable as a
6 gross misdemeanor, (iii) if the person is under the age of twenty-one
7 years, his or her license, permit, or privilege to drive will be
8 suspended, revoked, or denied if the test is administered and the
9 result of each test shows an alcohol concentration of 0.02 or more,
10 (iv) if the person is age twenty-one years or older, his or her
11 license, permit, or privilege to drive will be suspended, revoked, or
12 denied if the test is administered and the result of each test shows an
13 alcohol concentration of 0.08 or more, and (v) his or her refusal to
14 take the test may be used in a criminal trial.

15 (3) Except as provided in this section, the test administered shall
16 be of the breath only. If an individual is unconscious or is under
17 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
18 or vehicular assault as provided in RCW 46.61.522, or if an individual
19 is under arrest for the crime of driving while under the influence of
20 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
21 results from an accident in which another person has been seriously
22 injured ~~((and there is a reasonable likelihood that such other person~~
23 ~~may die as a result of injuries sustained in the accident))~~, a breath
24 or blood test may be administered without the consent of the individual
25 so arrested.

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

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

37 ~~((6) The department of licensing, upon the receipt of a sworn~~
38 ~~report of the law enforcement officer that the officer had reasonable~~
39 ~~grounds to believe the arrested person had been driving or was in~~

1 actual physical control of a motor vehicle within this state while
2 under the influence of intoxicating liquor and that the person had
3 refused to submit to the test or tests upon the request of the law
4 enforcement officer after being informed that refusal would result in
5 the revocation of the person's privilege to drive, shall revoke the
6 person's license or permit to drive or any nonresident operating
7 privilege.

8 (7) Upon revoking the license or permit to drive or the nonresident
9 operating privilege of any person, the department shall immediately
10 notify the person involved in writing by personal service or by
11 certified mail of its decision and the grounds therefor, and of the
12 person's right to a hearing, specifying the steps he or she must take
13 to obtain a hearing. Within fifteen days after the notice has been
14 given, the person may, in writing, request a formal hearing. The
15 person shall pay a fee of one hundred dollars as part of the request.
16 Upon receipt of such request and such fee, the department shall afford
17 the person an opportunity for a hearing as provided in RCW 46.20.329
18 and 46.20.332. The hearing shall be conducted in the county of the
19 arrest. For the purposes of this section, the scope of such hearing
20 shall cover the issues of whether a law enforcement officer had
21 reasonable grounds to believe the person had been driving or was in
22 actual physical control of a motor vehicle within this state while
23 under the influence of intoxicating liquor, whether the person was
24 placed under arrest, and whether the person refused to submit to the
25 test or tests upon request of the officer after having been informed
26 that such refusal would result in the revocation of the person's
27 privilege to drive. The department shall order that the revocation
28 either be rescinded or sustained. Any decision by the department
29 revoking a person's driving privilege shall be stayed and shall not
30 take effect while a formal hearing is pending as provided in this
31 section or during the pendency of a subsequent appeal to superior court
32 so long as there is no conviction for a moving violation or no finding
33 that the person has committed a traffic infraction that is a moving
34 violation during pendency of the hearing and appeal.

35 (8) If the revocation is sustained after such a hearing, the person
36 whose license, privilege, or permit is revoked has the right to file a
37 petition in the superior court of the county of arrest to review the
38 final order of revocation by the department in the manner provided in
39 RCW 46.20.334.

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

7 NEW SECTION. **Sec. 15.** A new section is added to chapter 46.20 RCW
8 to read as follows:

9 (1) A person is guilty of refusal to submit to a breath alcohol
10 test when he or she:

11 (a) Is arrested for any offense where, at the time of the arrest,
12 the arresting officer has reasonable grounds to believe the arrested
13 person had been driving or was in actual physical control of a motor
14 vehicle while under the influence of intoxicating liquor; and

15 (b) Receives the warnings under RCW 46.20.308(2); and

16 (c) Knowingly, as defined in RCW 9A.08.010(1)(b), refuses to submit
17 to the test offered pursuant to RCW 46.20.308.

18 (2) Refusal to submit to a breath alcohol test is a gross
19 misdemeanor, punishable under chapter 9A.20 RCW.

20 (3) The department of licensing shall suspend, revoke, or deny the
21 license, permit, or privilege to drive of a person convicted under this
22 section as follows:

23 (a) Upon the first such conviction, suspension or denial for ninety
24 days or until the person reaches the age of seventeen years, whichever
25 is longer;

26 (b) Upon the second such conviction within a five-year period,
27 revocation or denial for one year or until the person reaches the age
28 of eighteen years, whichever is longer; and

29 (c) Upon the third or subsequent conviction within a five-year
30 period from the first conviction, revocation or denial for two years or
31 until the person reaches the age of eighteen years, whichever is
32 longer.

33 If a person convicted under this section also is convicted under
34 RCW 46.61.502 or 46.61.504 based on the same incident, the period of
35 suspension, revocation, or denial imposed under this section shall run
36 consecutive to the period of suspension, revocation, or denial imposed
37 under RCW 46.61.5051. The period of suspension, revocation, or denial
38 imposed under this section shall be reduced by the length of the period

1 of suspension, revocation, or denial imposed under RCW 46.20.365 based
2 on the same incident.

3 (4) A conviction under this section shall be considered a
4 conviction under RCW 46.61.502 or 46.61.504 for purposes of imposing a
5 mandatory minimum sentence under RCW 46.61.5051 for subsequent offenses
6 within a five-year period, unless the person is convicted both under
7 this section and under RCW 46.61.502 or 46.61.504 based on the same
8 incident, in which case the conviction under this section shall not be
9 considered a conviction under RCW 46.61.502 or 46.61.504.

10 **Sec. 16.** RCW 46.63.020 and 1994 c 275 s 33 and 1994 c 141 s 2 are
11 each reenacted and amended to read as follows:

12 Failure to perform any act required or the performance of any act
13 prohibited by this title or an equivalent administrative regulation or
14 local law, ordinance, regulation, or resolution relating to traffic
15 including parking, standing, stopping, and pedestrian offenses, is
16 designated as a traffic infraction and may not be classified as a
17 criminal offense, except for an offense contained in the following
18 provisions of this title or a violation of an equivalent administrative
19 regulation or local law, ordinance, regulation, or resolution:

20 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
21 vehicle while under the influence of intoxicating liquor or a
22 controlled substance;

23 (2) RCW 46.09.130 relating to operation of nonhighway vehicles;

24 (3) RCW 46.10.090(2) relating to the operation of a snowmobile
25 while under the influence of intoxicating liquor or narcotics or
26 habit-forming drugs or in a manner endangering the person of another;

27 (4) RCW 46.10.130 relating to the operation of snowmobiles;

28 (5) Chapter 46.12 RCW relating to certificates of ownership and
29 registration;

30 (6) RCW 46.16.010 relating to initial registration of motor
31 vehicles;

32 (7) RCW 46.16.011 relating to permitting unauthorized persons to
33 drive;

34 (8) RCW 46.16.160 relating to vehicle trip permits;

35 (9) RCW 46.16.381 (6) or (9) relating to unauthorized use or
36 acquisition of a special placard or license plate for disabled persons'
37 parking;

1 (10) RCW 46.20.021 relating to driving without a valid driver's
2 license;

3 (11) RCW 46.20.--- (section 15 of this act) relating to refusal to
4 submit to a breath alcohol test;

5 (12) RCW 46.20.336 relating to the unlawful possession and use of
6 a driver's license;

7 (~~(12)~~) (13) RCW 46.20.342 relating to driving with a suspended or
8 revoked license or status;

9 (~~(13)~~) (14) RCW 46.20.410 relating to the violation of
10 restrictions of an occupational driver's license;

11 (~~(14)~~) (15) RCW 46.20.420 relating to the operation of a motor
12 vehicle with a suspended or revoked license;

13 (~~(15)~~) (16) RCW 46.20.750 relating to assisting another person to
14 start a vehicle equipped with an ignition interlock device;

15 (~~(16)~~) (17) RCW 46.25.170 relating to commercial driver's
16 licenses;

17 (~~(17)~~) (18) Chapter 46.29 RCW relating to financial
18 responsibility;

19 (~~(18)~~) (19) RCW 46.30.040 relating to providing false evidence of
20 financial responsibility;

21 (~~(19)~~) (20) RCW 46.37.435 relating to wrongful installation of
22 sunscreening material;

23 (~~(20)~~) (21) RCW 46.44.180 relating to operation of mobile home
24 pilot vehicles;

25 (~~(21)~~) (22) RCW 46.48.175 relating to the transportation of
26 dangerous articles;

27 (~~(22)~~) (23) RCW 46.52.010 relating to duty on striking an
28 unattended car or other property;

29 (~~(23)~~) (24) RCW 46.52.020 relating to duty in case of injury to
30 or death of a person or damage to an attended vehicle;

31 (~~(24)~~) (25) RCW 46.52.090 relating to reports by repairmen,
32 storagemen, and appraisers;

33 (~~(25)~~) (26) RCW 46.52.100 relating to driving under the influence
34 of liquor or drugs;

35 (~~(26)~~) (27) RCW 46.52.130 relating to confidentiality of the
36 driving record to be furnished to an insurance company, an employer,
37 and an alcohol/drug assessment or treatment agency;

38 (~~(27)~~) (28) RCW 46.55.020 relating to engaging in the activities
39 of a registered tow truck operator without a registration certificate;

1 ~~((28))~~ (29) RCW 46.55.035 relating to prohibited practices by tow
2 truck operators;

3 ~~((29))~~ (30) RCW 46.61.015 relating to obedience to police
4 officers, flagmen, or fire fighters;

5 ~~((30))~~ (31) RCW 46.61.020 relating to refusal to give information
6 to or cooperate with an officer;

7 ~~((31))~~ (32) RCW 46.61.022 relating to failure to stop and give
8 identification to an officer;

9 ~~((32))~~ (33) RCW 46.61.024 relating to attempting to elude
10 pursuing police vehicles;

11 ~~((33))~~ (34) RCW 46.61.500 relating to reckless driving;

12 ~~((34))~~ (35) RCW 46.61.502(~~(7)~~) and 46.61.504(~~(7, 46.61.5051,~~
13 ~~46.61.5052, and 46.61.5053))~~) relating to persons under the influence of
14 intoxicating liquor or drugs;

15 ~~((35))~~ (36) RCW 46.61.520 relating to vehicular homicide by motor
16 vehicle;

17 ~~((36))~~ (37) RCW 46.61.522 relating to vehicular assault;

18 ~~((37))~~ (38) RCW 46.61.525 relating to negligent driving;

19 ~~((38))~~ (39) RCW 46.61.527(4) relating to reckless endangerment of
20 roadway workers;

21 ~~((39))~~ (40) RCW 46.61.530 relating to racing of vehicles on
22 highways;

23 ~~((40))~~ (41) RCW 46.61.685 relating to leaving children in an
24 unattended vehicle with the motor running;

25 ~~((41))~~ (42) RCW 46.64.010 relating to unlawful cancellation of or
26 attempt to cancel a traffic citation;

27 ~~((42))~~ (43) RCW 46.64.048 relating to attempting, aiding,
28 abetting, coercing, and committing crimes;

29 ~~((43))~~ (44) Chapter 46.65 RCW relating to habitual traffic
30 offenders;

31 ~~((44))~~ (45) Chapter 46.70 RCW relating to unfair motor vehicle
32 business practices, except where that chapter provides for the
33 assessment of monetary penalties of a civil nature;

34 ~~((45))~~ (46) Chapter 46.72 RCW relating to the transportation of
35 passengers in for hire vehicles;

36 ~~((46))~~ (47) Chapter 46.80 RCW relating to motor vehicle wreckers;

37 ~~((47))~~ (48) Chapter 46.82 RCW relating to driver's training
38 schools;

1 RCW 70.96A.020 if the petition alleges alcoholism(~~(, an approved drug~~
2 ~~program as designated in chapter 71.24 RCW if the petition alleges)) or~~
3 drug addiction, or by (~~(an approved mental health center))~~ a licensed
4 service provider, as defined by RCW 71.24.025, if the petition alleges
5 a mental problem.

6 The secretary of social and health services shall periodically
7 provide to courts of limited jurisdiction and superior courts a list of
8 the approved treatment programs and licensed service providers in the
9 county in which the court is located. The court shall not approve the
10 treatment unless the approved treatment program or licensed service
11 provider preparing the written diagnostic evaluation and recommended
12 treatment and the approved treatment program or licensed service
13 provider proposing to administer the treatment both are on the list
14 provided by the secretary of social and health services.

15 (2) Before entry of an order deferring prosecution, a petitioner
16 shall be advised of his or her rights as an accused and execute, as a
17 condition of receiving treatment, a statement that contains: (a) An
18 acknowledgement of his or her rights; (b) an acknowledgement and waiver
19 of the right to testify, the right to call witnesses to testify, the
20 right to present evidence in his or her defense, and the right to jury
21 trial; (c) a stipulation to the admissibility of the facts contained in
22 the written police report; and (~~(+e))~~ (d) an acknowledgement that the
23 (~~(statement))~~ report will be entered and used to support a finding of
24 guilty if the court finds cause to revoke the order granting deferred
25 prosecution. The petitioner shall also be advised that he or she may,
26 if he or she proceeds to trial and is found guilty, be allowed to seek
27 suspension of some or all of the fines and incarceration that may be
28 ordered upon the condition that he or she seek treatment and, further,
29 that he or she may seek treatment from public and private agencies at
30 any time without regard to whether or not he or she is found guilty of
31 the offense charged. (~~(He))~~ The petitioner shall also be advised that
32 the court will not accept a petition for deferred prosecution from a
33 person who sincerely believes that he or she is innocent of the charges
34 or sincerely believes that he or she does not, in fact, suffer from
35 alcoholism, drug addiction, or mental problems.

36 (3) The petitioner shall state in his or her petition any other
37 offenses or cases for which the petitioner has, is, or will be seeking
38 a deferred prosecution and the court shall not enter an order granting
39 the deferred prosecution for offenses committed more than seven days

1 apart, and shall advise the petitioner that any attempt to seek a
2 deferred prosecution for offenses committed more than seven days apart
3 will be a breach of the conditions of deferred prosecution.

4 (4) Before entering an order deferring prosecution, the court shall
5 make specific findings that: (a) The petitioner has stipulated to the
6 admissibility of the facts as contained in the written police report;
7 (b) the petitioner has acknowledged the admissibility of the stipulated
8 facts in any criminal hearing or trial on the underlying offense or
9 offenses held subsequent to revocation of the order granting deferred
10 prosecution; ~~((and))~~ (c) the petitioner has acknowledged and waived the
11 right to testify, the right to call witnesses to testify, the right to
12 present evidence in his or her defense, and the right to a jury trial;
13 (d) the petitioner's statements, stipulations, acknowledgements, and
14 waivers were made knowingly and voluntarily; (e) the petitioner
15 qualifies for deferred prosecution; and (f) the proposed treatment
16 includes, at a minimum: (i) The frequency and type of contact between
17 the petitioner and the treatment program, (ii) the specific issues to
18 be addressed in the treatment and description of proposed treatment,
19 (iii) the monitoring plans, including any requirements regarding living
20 conditions, lifestyle requirements, and monitoring by family members
21 and others, (iv) anticipated length of treatment, and (v) recommended
22 prohibitions relating to use of alcohol or drugs. Such findings shall
23 be included in the order granting deferred prosecution.

24 **Sec. 19.** RCW 10.05.030 and 1975 1st ex.s. c 244 s 3 are each
25 amended to read as follows:

26 The arraignment judge upon consideration of the petition ~~((and with~~
27 ~~the concurrence of the prosecuting attorney))~~ may continue the
28 arraignment and refer such person for a diagnostic ~~((investigation~~
29 ~~and))~~ evaluation to an approved ~~((alcoholism))~~ treatment ~~((facility as~~
30 ~~designated in chapter 70.96A RCW))~~ program, if the petition alleges an
31 alcohol or drug problem~~((, an approved drug treatment center as~~
32 ~~designated in chapter 71.24 RCW, if the petition alleges a drug~~
33 ~~problem, or to an approved mental health center,))~~ or to a licensed
34 service provider if the petition alleges a mental problem.

35 **Sec. 20.** RCW 10.05.040 and 1985 c 352 s 7 are each amended to read
36 as follows:

1 The ((facility)) approved treatment program or licensed service
2 provider to which such person is referred shall conduct an
3 ~~((investigation and examination))~~ evaluation to determine:

- 4 (1) Whether the person suffers from the problem described;
5 (2) Whether the problem is such that if not treated there is a
6 probability that similar misconduct will occur in the future;
7 (3) Whether extensive and long term treatment is required;
8 (4) Whether effective treatment for the person's problem is
9 available; and
10 (5) Whether the person is amenable to treatment.

11 **Sec. 21.** RCW 10.05.050 and 1985 c 352 s 8 are each amended to read
12 as follows:

13 The ((facility)) approved treatment program or licensed service
14 provider shall make a written ~~((report to the court))~~ diagnostic
15 evaluation stating its findings and recommendations after the
16 ~~((examination))~~ evaluation required by RCW 10.05.040. If its findings
17 and recommendations support treatment, it shall also recommend a
18 treatment ~~((plan))~~ setting out:

- 19 (1) The type;
20 (2) Nature;
21 (3) Length;
22 (4) A treatment time schedule; and
23 (5) Approximate cost of the treatment.

24 ~~((The report with the treatment plan))~~ If the written diagnostic
25 evaluation and recommended treatment is used in support of a petition
26 for deferred prosecution, the evaluation and treatment shall be filed
27 with the court and a copy given to the petitioner ((and)), petitioner's
28 counsel((. — A copy of the treatment plan shall be given to the
29 prosecutor by petitioner's counsel at the request of)), and the
30 prosecutor. The ((evaluation facility)) approved treatment program or
31 licensed service provider making the written ((report)) diagnostic
32 evaluation and recommended treatment shall ((append to the report a
33 commitment by the treatment facility that it)) include the name of the
34 approved treatment program or licensed service provider that will
35 provide the treatment in accordance with this chapter. The
36 ((facility)) approved treatment program or licensed service provider
37 that will provide the treatment shall agree to provide the court with
38 a statement every three months for the first year and every six months

1 for the second year regarding (a) the petitioner's cooperation with the
2 treatment ((plan)) proposed and (b) the petitioner's progress or
3 failure in treatment. These statements shall be made as a declaration
4 by the person who is personally responsible for providing the
5 treatment.

6 **Sec. 22.** RCW 10.05.060 and 1994 c 275 s 17 are each amended to
7 read as follows:

8 If the ((report)) written diagnostic evaluation recommends
9 treatment, the court shall examine the treatment ((plan)). If it
10 approves the ((plan)) recommended treatment and the petitioner agrees
11 to comply with its terms and conditions and agrees to pay the cost
12 thereof, if able to do so, or arrange for the treatment, an entry shall
13 be made upon the person's court docket showing that the person has been
14 accepted for deferred prosecution. A copy of the treatment ((plan))
15 shall be attached to the docket, which shall then be removed from the
16 regular court dockets and filed in a special court deferred prosecution
17 file. If the charge be one that an abstract of the docket showing the
18 charge, the date of the violation for which the charge was made, and
19 the date of petitioner's acceptance is required to be sent to the
20 department of licensing, an abstract shall be sent, and the department
21 of licensing shall make an entry of the charge and of the petitioner's
22 acceptance for deferred prosecution on the department's driving record
23 of the petitioner. The entry is not a conviction for purposes of Title
24 46 RCW, but a deferred prosecution for a violation of RCW 46.61.502 or
25 46.61.504 shall be considered a conviction under RCW 46.61.502 or
26 46.61.504 for purposes of imposing a mandatory minimum sentence under
27 RCW 46.61.5051 for subsequent offenses within a five-year period. Upon
28 receipt of the abstract of the docket, the department shall ((~~issue the~~
29 ~~petitioner a probationary license in accordance with RCW 46.20.355, and~~
30 ~~the petitioner's driver's license shall be on~~)) place the petitioner's
31 driving privilege in probationary status ((for five years from the date
32 of the violation that gave rise to the charge)), pursuant to RCW
33 46.20.355. The department shall maintain the record for ten years from
34 date of entry of the order granting deferred prosecution.

35 **Sec. 23.** RCW 10.05.090 and 1994 c 275 s 18 are each amended to
36 read as follows:

1 (1) If a petitioner, who has been accepted for a deferred
2 prosecution, fails or neglects to carry out and fulfill any term or
3 condition of the petitioner's treatment ((plan)), the ((facility,
4 center, institution, or agency)) approved treatment program or licensed
5 service provider administering the treatment shall immediately report
6 such breach to the court, the probation department, the prosecutor, and
7 the petitioner or petitioner's attorney of record, together with its
8 recommendation. If the approved treatment program or licensed service
9 provider fails to report the petitioner's breach as required by this
10 section, the court, the probation department, or the prosecutor may
11 notify the secretary of social and health services of such failure to
12 report. After notification under this section, the secretary of social
13 and health services shall fine such approved treatment program or
14 licensed service provider two hundred fifty dollars, and after three
15 notifications under this section within one year, the secretary of
16 social and health services shall revoke the license or certification of
17 such approved treatment program or licensed service provider.

18 (2) The court upon receiving such a report shall hold a hearing to
19 determine whether the petitioner should be removed from the deferred
20 prosecution program. At the hearing, evidence shall be taken of the
21 petitioner's alleged failure to comply with the treatment ((plan)) and
22 the petitioner shall have the right to present evidence on his or her
23 own behalf. The court shall either order that the petitioner continue
24 on the treatment ((plan)) or be removed from deferred prosecution. If
25 removed from deferred prosecution, the court shall enter judgment
26 pursuant to RCW 10.05.020 and, if the charge for which the deferred
27 prosecution was granted was a misdemeanor or gross misdemeanor under
28 Title 46 RCW, shall notify the department of licensing of the removal
29 and entry of judgment.

30 **Sec. 24.** RCW 10.05.100 and 1985 c 352 s 13 are each amended to
31 read as follows:

32 (1) If ((a)), after notice to the petitioner and a hearing, the
33 court finds, by a preponderance of the evidence and regardless of the
34 prosecution status of the similar offense, that the petitioner ((is
35 subsequently)) committed or was convicted of a similar offense while in
36 a deferred prosecution program, ((upon notice)) the court shall remove
37 the petitioner's docket from the deferred prosecution file and the
38 court shall enter judgment pursuant to RCW 10.05.020.

1 (2) If the charge for which the deferred prosecution was granted
2 was a misdemeanor or gross misdemeanor under Title 46 RCW, the court
3 shall notify the department of licensing of the removal and entry of
4 judgment.

5 (3) For the purposes of this section, "convicted" means an
6 unvacated forfeiture of bail or collateral deposited to secure a
7 defendant's appearance in court, the payment of a fine, and any
8 adjudication of guilt, including a verdict of guilty, a finding of
9 guilty, and acceptance of a plea of guilty. For the purposes of this
10 section, a "similar offense" to a violation of RCW 46.61.502 or
11 46.61.504 includes any criminal traffic offense and any "alcohol-
12 related" offense, as defined by RCW 46.01.260(2).

13 **Sec. 25.** RCW 10.05.120 and 1994 c 275 s 19 are each amended to
14 read as follows:

15 (1) Upon proof of successful completion of the two-year treatment
16 program and verification that the petitioner has not been convicted of
17 or found by the court to have committed a similar offense within five
18 years after the date of entry of the order granting deferred
19 prosecution, the court shall dismiss the charges pending against the
20 petitioner. A successfully completed deferred prosecution for a
21 violation of RCW 46.61.502 or 46.61.504 shall be considered a
22 conviction under RCW 46.61.502 or 46.61.504 for purposes of imposing a
23 mandatory minimum sentence under RCW 46.61.5051 for subsequent offenses
24 within a five-year period.

25 (2) If the charge for which the deferred prosecution was granted
26 was a misdemeanor or gross misdemeanor under Title 46 RCW, the court
27 shall notify the department of licensing of the dismissal.

28 (3) For the purposes of this section, "convicted" means an
29 unvacated forfeiture of bail or collateral deposited to secure a
30 defendant's appearance in court, the payment of a fine, and any
31 adjudication of guilt, including a verdict of guilty, a finding of
32 guilty, and acceptance of a plea of guilty. For the purposes of this
33 section, a "similar offense" to a violation of RCW 46.61.502 or
34 46.61.504 includes any criminal traffic offense and any "alcohol-
35 related" offense, as defined by RCW 46.01.260(2).

36 **Sec. 26.** RCW 10.05.140 and 1991 c 247 s 1 are each amended to read
37 as follows:

1 As a condition of granting a deferred prosecution petition for a
2 violation of RCW 46.61.502 or 46.61.504, the court shall order that the
3 petitioner (~~((shall))~~): (1) Not operate a motor vehicle ((upon the public
4 highways)) within this state without a valid operator's license and
5 proof of (~~((liability insurance. The amount of liability insurance~~
6 ~~shall be established by the court at not less than that established by~~
7 ~~RCW 46.29.490))~~ financial responsibility for the future, as defined by
8 RCW 46.29.260, (2) not drive a motor vehicle within this state while
9 having any measurable alcohol in his or her breath or blood within two
10 hours after driving, and (3) not refuse to submit to a test of his or
11 her breath or blood to determine alcohol concentration upon request of
12 a law enforcement officer who has reasonable grounds to believe the
13 person was driving or was in actual physical control of a motor vehicle
14 within this state while under the influence of intoxicating liquor.
15 The court shall not grant a deferred prosecution unless the petitioner
16 has executed all acknowledgements, stipulations, and waivers specified
17 in RCW 10.05.020. As a condition of granting a deferred prosecution
18 petition, the court may order the petitioner to make restitution and to
19 pay costs as defined in RCW 10.01.160. (~~((The court may terminate the~~
20 ~~deferred prosecution program upon violation of this section.))~~) Upon
21 violation of any of the conditions authorized or required by this
22 section, the court shall remove the petitioner from the deferred
23 prosecution program and shall enter judgment pursuant to RCW 10.05.020.
24 If the charge for which the deferred prosecution was granted was a
25 misdemeanor or gross misdemeanor under Title 46 RCW, the court shall
26 notify the department of licensing of the removal and entry of
27 judgment.

28 **Sec. 27.** RCW 10.05.160 and 1985 c 352 s 18 are each amended to
29 read as follows:

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

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

34 (2) Failure of the court to obtain proof of (~~((insurance))~~) financial
35 responsibility for the future or a treatment (~~((plan))~~) conforming to the
36 requirements of this chapter;

37 (3) Failure of the court to comply with the requirements of RCW
38 10.05.020, 10.05.090, 10.05.100, or 10.05.140;

1 (4) Failure of the (~~evaluation facility~~) approved treatment
2 program or licensed service provider to provide the information
3 required in RCW 10.05.040 and 10.05.050, if the defendant has been
4 referred to the (~~facility~~) approved treatment program or licensed
5 service provider for treatment. If an appeal on such basis is
6 successful, the trial court may consider the use of another treatment
7 (~~facility~~) program or licensed service provider.

8 **Sec. 28.** RCW 10.05.170 and 1991 c 247 s 2 are each amended to read
9 as follows:

10 As a condition of granting deferred prosecution, the court may
11 order supervision of the petitioner during the period of deferral and
12 may levy a monthly assessment upon the petitioner as provided in RCW
13 10.64.120. In a jurisdiction with a probation department, the court
14 may appoint the probation department to supervise the petitioner. In
15 a jurisdiction without a probation department, the court may appoint an
16 appropriate person or agency to supervise the petitioner. A supervisor
17 appointed under this section shall be required to do at least the
18 following:

19 (1) If the charge for which deferral is granted relates to
20 operation of a motor vehicle, at least once every six months request
21 from the department of licensing an abstract of the petitioner's
22 driving record and notify the court and the prosecutor if the
23 petitioner has been convicted of any criminal traffic offense or any
24 "alcohol-related" offense, as defined by RCW 46.01.260(2). For
25 purposes of this section, "convicted" means an unvacated forfeiture of
26 bail or collateral deposited to secure a defendant's appearance in
27 court, the payment of a fine, and any adjudication of guilt, including
28 a verdict of guilty, a finding of guilty, and acceptance of a plea of
29 guilty; and

30 (2) At least once every month make contact with the petitioner or
31 with any agency to which the petitioner has been directed for treatment
32 as a part of the deferral to determine the petitioner's compliance with
33 the treatment and notify the court and the prosecutor if the petitioner
34 has failed or neglected to carry out and fulfill any term or condition
35 of the treatment.

36 **PART V - PROBATIONARY LICENSE**

1 **Sec. 29.** RCW 46.20.355 and 1994 c 275 s 8 are each amended to read
2 as follows:

3 (1) ~~Upon notification of a ((conviction under RCW 46.61.502 or~~
4 ~~46.61.504 for which the issuance of a probationary driver's license is~~
5 ~~required,)) sentence imposed under RCW 46.61.5051, upon receipt of a
6 report under RCW 46.20.365, or upon receipt of an abstract indicating
7 a deferred prosecution has been granted under RCW 10.05.060, the
8 department of licensing shall order the person to surrender his or her
9 license. Unless the person previously has surrendered his or her
10 license to a law enforcement officer, to the department, to a court, or
11 to the prosecutor or has completed an affidavit of lost, stolen,
12 destroyed, or previously surrendered license, the department shall
13 revoke the license, permit, or privilege to drive of any person who
14 fails to surrender it as required by this section for one year,
15 effective thirty days after notice is given of the requirement of
16 license surrender.~~

17 (2) ~~((Upon receipt of the surrendered license, and following the~~
18 ~~expiration of any period of license suspension or revocation, or~~
19 ~~following receipt of a sworn statement under RCW 46.20.365 that~~
20 ~~requires issuance of a probationary license, the department shall issue~~
21 ~~the person a probationary license if otherwise qualified. The~~
22 ~~probationary license shall be renewed on the same cycle as the person's~~
23 ~~regular license would have been renewed until five years after the date~~
24 ~~of its issuance.)) Upon notification of a sentence imposed under RCW
25 46.61.5051, upon receipt of a report under RCW 46.20.365, or upon
26 receipt of an abstract indicating a deferred prosecution has been
27 granted under RCW 10.05.060, the department shall place a person's
28 driving privilege in probationary status for five years from the date
29 of the arrest that gave rise to placement in probationary status
30 pursuant to RCW 46.61.5051, 46.20.365, or 10.05.060.~~

31 (3) After expiration of any period of suspension, revocation, or
32 denial, a person whose driving privilege is in probationary status must
33 obtain a probationary license in order to operate a motor vehicle in
34 this state, unless exempt under RCW 46.20.025. The department shall
35 not issue a probationary license unless the person is otherwise
36 qualified for licensing. A probationary license shall be renewed on
37 the same cycle as the person's regular license would have been renewed
38 until the probationary status expires. Possession of a probationary
39 license, or having a driving privilege in probationary status, does not

1 authorize a person to drive during a period of suspension, revocation,
2 or denial of the person's license, permit, or privilege to drive.

3 (4) For each original issue or ((reissue)) renewal of a
4 probationary license under this section, the department ((may)) shall
5 charge ((the)) a fee ((authorized under RCW 46.20.311 for the
6 reissuance of a license following a revocation for a violation of RCW
7 46.61.502 or 46.61.504)) of fifty dollars in addition to any other
8 licensing fees required.

9 ((4)) (5) A probationary license shall enable the department and
10 law enforcement personnel to determine that the person is on
11 probationary status(~~(, including the period of that status, for a~~
12 ~~violation of RCW 46.61.502 or 46.61.504 or 46.20.365)). ((That)) The~~
13 fact that a person's driving privilege is in probationary status or
14 that the person has been issued a probationary license shall not be a
15 part of the person's record that is available to insurance companies.

16 **PART VI - REINSTATEMENT**

17 **Sec. 30.** RCW 46.20.311 and 1994 c 275 s 27 are each amended to
18 read as follows:

19 (1) The department shall not suspend a driver's license, permit, or
20 privilege to drive a motor vehicle on the public highways for a fixed
21 period of more than one year, except as specifically permitted under
22 RCW 46.20.342 or other provision of law. Except for a suspension under
23 RCW 46.20.289 and 46.20.291(5), whenever the license, permit, or
24 driving privilege of any person is suspended by reason of a conviction,
25 a finding that a traffic infraction has been committed, pursuant to
26 chapter 46.29 RCW((7)) or ((pursuant to)) RCW 46.20.291 or 46.20.365,
27 or because of a violation of a mandatory condition of probation imposed
28 under RCW 46.61.5051, the suspension shall remain in effect until the
29 person gives and thereafter maintains proof of financial responsibility
30 for the future as provided in chapter 46.29 RCW. If the suspension is
31 imposed under RCW 46.61.5051, the department shall determine the
32 person's eligibility for licensing based upon the written diagnostic
33 evaluation and recommended treatment prepared pursuant to RCW
34 46.61.5056 and shall not reinstate the person's driving privilege until
35 the person completes a course in an approved alcohol information school
36 or establishes participation in any required treatment. The department
37 shall not issue to the person a new, duplicate, or renewal license

1 until the person pays a reissue fee of twenty dollars. If the
2 suspension is (~~the result of a violation of RCW 46.61.502 or~~
3 ~~46.61.504~~) imposed under section 15 of this act, RCW 46.20.365, or
4 46.61.5051, the reissue fee (~~shall be fifty~~) is one hundred dollars.

5 (2) Any person whose license, permit, or privilege to drive a motor
6 vehicle on the public highways has been revoked, unless the revocation
7 was for a cause which has been removed, is not entitled to have the
8 license, permit, or privilege renewed or restored until: (a) After the
9 expiration of one year from the date the license, permit, or privilege
10 to drive was revoked; (b) after the expiration of the applicable
11 revocation period provided by section 15 of this act, RCW ((46.20.308
12 ~~or 46.61.5052, 46.61.5053, or~~) 46.20.365, or 46.61.5051; (c) after the
13 expiration of two years for persons convicted of vehicular homicide; or
14 (d) after the expiration of the applicable revocation period provided
15 by RCW 46.20.265. If the revocation is imposed under RCW 46.61.5051,
16 the department shall determine the person's eligibility for licensing
17 based upon the written diagnostic evaluation and recommended treatment
18 prepared pursuant to RCW 46.61.5056 and shall not reinstate the
19 person's driving privilege until the person completes a course in an
20 approved alcohol information school or establishes participation in any
21 required treatment. After the expiration of the appropriate period,
22 the person may make application for a new license as provided by law
23 together with a reissue fee in the amount of twenty dollars, but if the
24 revocation is (~~the result of a violation of RCW 46.20.308, 46.61.502,~~
25 ~~or 46.61.504 or is the result of administrative action~~) imposed under
26 section 15 of this act, RCW 46.20.365, or 46.61.5051, the reissue fee
27 (~~shall be fifty~~) is one hundred dollars. Except for a revocation
28 under RCW 46.20.265, the department shall not then issue a new license
29 unless it is satisfied after investigation of the driving ability of
30 the person that it will be safe to grant the privilege of driving a
31 motor vehicle on the public highways, and until the person gives and
32 thereafter maintains proof of financial responsibility for the future
33 as provided in chapter 46.29 RCW. For a revocation under RCW
34 46.20.265, the department shall not issue a new license unless it is
35 satisfied after investigation of the driving ability of the person that
36 it will be safe to grant that person the privilege of driving a motor
37 vehicle on the public highways.

38 (3) Whenever the driver's license of any person is suspended
39 pursuant to Article IV of the nonresident violators compact or RCW

1 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue
2 to the person any new or renewal license until the person pays a
3 reissue fee of twenty dollars. If the suspension is the result of a
4 violation of the laws of this or any other state, province, or other
5 jurisdiction involving (a) the operation or physical control of a motor
6 vehicle upon the public highways while under the influence of
7 intoxicating liquor or drugs, ~~((or))~~ (b) the refusal to submit to a
8 ~~((chemical))~~ test of the driver's breath or blood ~~((alcohol content))~~
9 for alcohol concentration, or (c) the result of a test of the driver's
10 breath or blood showing an alcohol concentration of 0.08 or more, or
11 0.02 or more if the driver is under the age of twenty-one years, the
12 reissue fee ~~((shall be fifty))~~ is one hundred dollars.

13

PART VII - TECHNICAL

14 **Sec. 31.** RCW 46.04.480 and 1994 c 275 s 38 are each amended to
15 read as follows:

16 "Revoke," in all its forms, means the invalidation for a period of
17 one calendar year and thereafter until reissue: PROVIDED, That under
18 the provisions of RCW 46.20.285, section 15 of this act, 46.20.311,
19 46.20.265, 46.61.365, 46.61.5051, ~~((46.61.5052, or 46.61.5053,))~~ and
20 chapter 46.65 RCW the invalidation may last for a period other than one
21 calendar year.

22 **Sec. 32.** RCW 46.04.015 and 1994 c 275 s 1 are each amended to read
23 as follows:

24 "Alcohol concentration" means (1) grams of alcohol per two hundred
25 ten liters of a person's breath, or (2) ~~((the percent by weight of~~
26 alcohol in)) grams of alcohol per one hundred milliliters of a person's
27 blood.

28 **Sec. 33.** RCW 46.20.391 and 1994 c 275 s 29 are each amended to
29 read as follows:

30 (1) Any person licensed under this chapter who is convicted of an
31 offense relating to motor vehicles for which suspension or revocation
32 of the driver's license is mandatory, other than vehicular homicide or
33 vehicular assault, may submit to the department an application for an

1 occupational driver's license. The department, upon receipt of the
2 prescribed fee and upon determining that the petitioner is engaged in
3 an occupation or trade that makes it essential that the petitioner
4 operate a motor vehicle, may issue an occupational driver's license and
5 may set definite restrictions as provided in RCW 46.20.394. No person
6 may petition for, and the department shall not issue, an occupational
7 driver's license that is effective during the first thirty days of any
8 suspension or revocation imposed for a violation of section 15 of this
9 act, RCW 46.61.502, or 46.61.504. No person may petition for, and the
10 department shall not issue, an occupational driver's license if the
11 person is ineligible for such a license under RCW ((46.61.5052 or
12 46.61.5053)) 46.61.5051(8). A person aggrieved by the decision of the
13 department on the application for an occupational driver's license may
14 request a hearing as provided by rule of the department.

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

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

22 (b) Within five years immediately preceding the date of the offense
23 that gave rise to the present conviction, the applicant has not
24 committed any of the following offenses: (i) Driving or being in
25 actual physical control of a motor vehicle while under the influence of
26 intoxicating liquor under RCW 46.61.502 or 46.61.504; (ii) refusal to
27 submit to a breath alcohol test under section 15 of this act; (iii)
28 vehicular homicide under RCW 46.61.520; or ((+(iii+))) (iv) vehicular
29 assault under RCW 46.61.522; and

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

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

34 (3) The director shall cancel an occupational driver's license upon
35 receipt of notice that the holder thereof has been convicted of
36 operating a motor vehicle in violation of its restrictions, or of an
37 offense that pursuant to chapter 46.20 RCW would warrant suspension or
38 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.

3 **Sec. 34.** RCW 3.62.090 and 1994 c 275 s 34 are each amended to read
4 as follows:

5 (1) There shall be assessed and collected in addition to any fines,
6 forfeitures, or penalties assessed, other than for parking infractions,
7 by all courts organized under Title 3 or 35 RCW a public safety and
8 education assessment equal to sixty percent of such fines, forfeitures,
9 or penalties, which shall be remitted as provided in chapters 3.46,
10 3.50, 3.62, and 35.20 RCW. The assessment required by this section
11 shall not be suspended or waived by the court.

12 (2) There shall be assessed and collected in addition to any fines,
13 forfeitures, or penalties assessed, other than for parking infractions
14 and for fines levied under RCW 46.61.5051(~~(, 46.61.5052, and~~
15 ~~46.61.5053)~~), and in addition to the public safety and education
16 assessment required under subsection (1) of this section, by all courts
17 organized under Title 3 or 35 RCW, an additional public safety and
18 education assessment equal to fifty percent of the public safety and
19 education assessment required under subsection (1) of this section,
20 which shall be remitted to the state treasurer and deposited as
21 provided in RCW 43.08.250. The additional assessment required by this
22 subsection shall not be suspended or waived by the court.

23 **PART VIII - MISCELLANEOUS**

24 NEW SECTION. **Sec. 35.** A new section is added to chapter 46.20 RCW
25 to read as follows:

26 The department of licensing shall report to the appropriate
27 legislative committees and the governor by January 31st of each year
28 regarding the number of hearings requested and conducted under RCW
29 46.20.365, the number of those hearings at which the suspension,
30 revocation, or denial of the person's license, permit, or privilege to
31 drive was sustained and rescinded, and the reason for the rescission,
32 the length of the period following the arrest in which those hearings
33 were conducted, and any other information that the director believes
34 would be useful in evaluating the procedures required by RCW 46.20.365.

1 NEW SECTION. **Sec. 36.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 37.** The following acts or parts of acts are
6 each repealed:

- 7 (1) RCW 46.20.309 and 1994 c 275 s 10;
- 8 (2) RCW 46.61.5052 and 1994 c 275 s 5;
- 9 (3) RCW 46.61.5053 and 1994 c 275 s 6; and
- 10 (4) RCW 46.61.5057 and 1994 c 275 s 11.

11 NEW SECTION. **Sec. 38.** This act shall be known as the "1995 DUI
12 improvement act."

13 NEW SECTION. **Sec. 39.** Part headings and the table of contents as
14 used in this act do not constitute any part of the law.

15 NEW SECTION. **Sec. 40.** This act shall take effect August 1, 1995.

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