
HOUSE BILL 1696

State of Washington

58th Legislature

2003 Regular Session

By Representatives Simpson, Delvin and Lovick; by request of
Lieutenant Governor

Read first time 02/05/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to alcohol-related offenses; amending RCW
2 46.20.342, 46.20.380, 46.20.394, 46.20.400, 46.20.410, 46.20.720,
3 46.20.740, and 46.63.020; reenacting and amending RCW 46.20.3101,
4 46.20.391, and 46.61.5055; and prescribing penalties.

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

6 **Sec. 1.** RCW 46.20.3101 and 1998 c 213 s 2, 1998 c 209 s 2, and
7 1998 c 207 s 8 are each reenacted and amended to read as follows:

8 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
9 deny the arrested person's license, permit, or privilege to drive as
10 follows:

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

12 (a) For a first refusal within seven years, where there has not
13 been a previous incident within seven years that resulted in
14 administrative action under this section, revocation or denial for
15 ((one-year)) two years. A revocation or denial imposed under this
16 subsection (1)(a) shall run concurrently with the period of any
17 suspension, revocation, or denial imposed for a criminal conviction
18 arising out of the same incident;

1 (b) For a second (~~or subsequent~~) refusal within seven years, or
2 for a first refusal where there has been one or more previous incidents
3 within seven years that have resulted in administrative action under
4 this section, revocation or denial for (~~two~~) three years or until the
5 person reaches age twenty-one, whichever is longer. A revocation
6 imposed under this subsection (1)(b) shall run (~~consecutively to~~)
7 concurrently with the period of any suspension, revocation, or denial
8 imposed pursuant to a criminal conviction arising out of the same
9 incident;

10 (c) For a third or subsequent refusal within seven years, or for a
11 second refusal where there have been two or more previous incidents
12 within seven years that have resulted in administrative action under
13 this section, revocation or denial for four years or until the person
14 reaches age twenty-one, whichever is longer. A revocation imposed
15 under this subsection (1)(c) shall run concurrently with the period of
16 any suspension, revocation, or denial imposed under a criminal
17 conviction arising out of the same incident.

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

21 (a) For a first incident within seven years, where there has not
22 been a previous incident within seven years that resulted in
23 administrative action under this section, suspension for (~~ninety~~) one
24 hundred eighty days;

25 (b) For a second (~~or subsequent~~) incident within seven years,
26 revocation or denial for two years;

27 (c) For a third or subsequent incident within seven years,
28 revocation or denial for three years.

29 (3) In the case of an incident where a person under age twenty-one
30 has submitted to or been administered a test or tests indicating that
31 the alcohol concentration of the person's breath or blood was in
32 violation of RCW 46.61.502, 46.61.503, or 46.61.504:

33 (a) For a first incident within seven years, suspension or denial
34 for (~~ninety~~) one hundred eighty days;

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

1 (4) The department of licensing, after considering the requirements
2 of federal law regarding state eligibility for grants or other funding,
3 may provide by rule that a person whose license, permit, or privilege
4 to drive has been suspended, revoked, or denied under this section may
5 apply for a temporary restricted license under RCW 46.20.391. The rule
6 shall establish minimum portions of the periods of suspension,
7 revocation, or denial set forth in this section after which a person
8 may apply for such a temporary restricted license. A person applying
9 for such a temporary restricted license shall provide proof to the
10 satisfaction of the department that an ignition interlock or other
11 biological or technical device approved by the department has been
12 installed on a vehicle owned or operated by the person. The department
13 shall require the person to maintain such a device on a vehicle owned
14 or operated by the person, and shall prohibit the person from operating
15 any vehicle except one equipped with such a device, for the remainder
16 of the period of suspension, revocation, or denial. Subject to any
17 periodic renewal requirements established by the department pursuant to
18 this section and subject to any applicable compliance requirements
19 under this chapter or other law, a temporary restricted license granted
20 as the result of an application under this section extends through the
21 remaining portion of any suspension, revocation, or denial under this
22 section and also through the period of any suspension, revocation, or
23 denial imposed under a criminal conviction arising out of the same
24 incident.

25 **Sec. 2.** RCW 46.20.342 and 2001 c 325 s 3 are each amended to read
26 as follows:

27 (1) It is unlawful for any person to drive a motor vehicle in this
28 state while that person is in a suspended or revoked status or when his
29 or her privilege to drive is suspended or revoked in this or any other
30 state. Any person who has a valid Washington driver's license is not
31 guilty of a violation of this section.

32 (a) A person found to be a habitual offender under chapter 46.65
33 RCW, who violates this section while an order of revocation issued
34 under chapter 46.65 RCW prohibiting such operation is in effect, is
35 guilty of driving while license suspended or revoked in the first
36 degree, a gross misdemeanor. Upon the first such conviction, the
37 person shall be punished by imprisonment for not less than ten days.

1 Upon the second conviction, the person shall be punished by
2 imprisonment for not less than ninety days. Upon the third or
3 subsequent conviction, the person shall be punished by imprisonment for
4 not less than one hundred eighty days. If the person is also convicted
5 of the offense defined in RCW 46.61.502 or 46.61.504, when both
6 convictions arise from the same event, the minimum sentence of
7 confinement shall be not less than ninety days. The minimum sentence
8 of confinement required shall not be suspended or deferred. A
9 conviction under this subsection does not prevent a person from
10 petitioning for reinstatement as provided by RCW 46.65.080.

11 (b) A person who violates this section while an order of suspension
12 or revocation prohibiting such operation is in effect and while the
13 person is not eligible to reinstate his or her driver's license or
14 driving privilege, other than for a suspension for the reasons
15 described in (c) of this subsection, is guilty of driving while license
16 suspended or revoked in the second degree, a gross misdemeanor. This
17 subsection applies when a person's driver's license or driving
18 privilege has been suspended or revoked by reason of:

19 (i) A conviction of a felony in the commission of which a motor
20 vehicle was used;

21 (ii) A previous conviction under this section;

22 (iii) A notice received by the department from a court or diversion
23 unit as provided by RCW 46.20.265, relating to a minor who has
24 committed, or who has entered a diversion unit concerning an offense
25 relating to alcohol, legend drugs, controlled substances, or imitation
26 controlled substances;

27 (iv) A conviction of RCW 46.20.410, relating to the violation of
28 restrictions of an occupational or a temporary restricted driver's
29 license;

30 (v) A conviction of RCW 46.20.345, relating to the operation of a
31 motor vehicle with a suspended or revoked license;

32 (vi) A conviction of RCW 46.52.020, relating to duty in case of
33 injury to or death of a person or damage to an attended vehicle;

34 (vii) A conviction of RCW 46.61.024, relating to attempting to
35 elude pursuing police vehicles;

36 (viii) A conviction of RCW 46.61.500, relating to reckless driving;

37 (ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a
38 person under the influence of intoxicating liquor or drugs;

1 (x) A conviction of RCW 46.61.520, relating to vehicular homicide;
2 (xi) A conviction of RCW 46.61.522, relating to vehicular assault;
3 (xii) A conviction of RCW 46.61.527(4), relating to reckless
4 endangerment of roadway workers;
5 (xiii) A conviction of RCW 46.61.530, relating to racing of
6 vehicles on highways;
7 (xiv) A conviction of RCW 46.61.685, relating to leaving children
8 in an unattended vehicle with motor running;
9 (xv) A conviction of RCW 46.61.740, relating to theft of motor
10 vehicle fuel;
11 (xvi) A conviction of RCW 46.64.048, relating to attempting,
12 aiding, abetting, coercing, and committing crimes;
13 (xvii) An administrative action taken by the department under
14 chapter 46.20 RCW; or
15 (xviii) A conviction of a local law, ordinance, regulation, or
16 resolution of a political subdivision of this state, the federal
17 government, or any other state, of an offense substantially similar to
18 a violation included in this subsection.
19 (c) A person who violates this section when his or her driver's
20 license or driving privilege is, at the time of the violation,
21 suspended or revoked solely because (i) the person must furnish proof
22 of satisfactory progress in a required alcoholism or drug treatment
23 program, (ii) the person must furnish proof of financial responsibility
24 for the future as provided by chapter 46.29 RCW, (iii) the person has
25 failed to comply with the provisions of chapter 46.29 RCW relating to
26 uninsured accidents, (iv) the person has failed to respond to a notice
27 of traffic infraction, failed to appear at a requested hearing,
28 violated a written promise to appear in court, or has failed to comply
29 with the terms of a notice of traffic infraction or citation, as
30 provided in RCW 46.20.289, (v) the person has committed an offense in
31 another state that, if committed in this state, would not be grounds
32 for the suspension or revocation of the person's driver's license, (vi)
33 the person has been suspended or revoked by reason of one or more of
34 the items listed in (b) of this subsection, but was eligible to
35 reinstate his or her driver's license or driving privilege at the time
36 of the violation, or (vii) the person has received traffic citations or
37 notices of traffic infraction that have resulted in a suspension under

1 RCW 46.20.267 relating to intermediate drivers' licenses, or any
2 combination of (i) through (vii), is guilty of driving while license
3 suspended or revoked in the third degree, a misdemeanor.

4 (2) Upon receiving a record of conviction of any person or upon
5 receiving an order by any juvenile court or any duly authorized court
6 officer of the conviction of any juvenile under this section, the
7 department shall:

8 (a) For a conviction of driving while suspended or revoked in the
9 first degree, as provided by subsection (1)(a) of this section, extend
10 the period of administrative revocation imposed under chapter 46.65 RCW
11 for an additional period of one year from and after the date the person
12 would otherwise have been entitled to apply for a new license or have
13 his or her driving privilege restored; or

14 (b) For a conviction of driving while suspended or revoked in the
15 second degree, as provided by subsection (1)(b) of this section, not
16 issue a new license or restore the driving privilege for an additional
17 period of one year from and after the date the person would otherwise
18 have been entitled to apply for a new license or have his or her
19 driving privilege restored; or

20 (c) Not extend the period of suspension or revocation if the
21 conviction was under subsection (1)(c) of this section. If the
22 conviction was under subsection (1)(a) or (b) of this section and the
23 court recommends against the extension and the convicted person has
24 obtained a valid driver's license, the period of suspension or
25 revocation shall not be extended.

26 **Sec. 3.** RCW 46.20.380 and 1985 ex.s. c 1 s 6 are each amended to
27 read as follows:

28 No person may file an application for an occupational or a
29 temporary restricted driver's license as provided in RCW 46.20.391
30 unless he or she first pays to the director or other person authorized
31 to accept applications and fees for driver's licenses a fee of twenty-
32 five dollars. The applicant shall receive upon payment an official
33 receipt for the payment of such fee. All such fees shall be forwarded
34 to the director who shall transmit such fees to the state treasurer in
35 the same manner as other driver's license fees.

1 **Sec. 4.** RCW 46.20.391 and 1999 c 274 s 4 and 1999 c 272 s 1 are
2 each reenacted and amended to read as follows:

3 (1) Any person licensed under this chapter who is convicted of an
4 offense relating to motor vehicles for which suspension or revocation
5 of the driver's license is mandatory, other than vehicular homicide or
6 vehicular assault, or who has had his or her license suspended under
7 RCW 46.20.3101 (2)(a) or (3)(a), may submit to the department an
8 application for ~~((an occupational))~~ a temporary restricted driver's
9 license. The department, upon receipt of the prescribed fee and upon
10 determining that the petitioner is ~~((engaged in an occupation or trade
11 that makes it essential that the petitioner operate a motor vehicle))~~
12 eligible to receive the license under subsection (3) of this section,
13 may issue ~~((an occupational))~~ a temporary restricted driver's license
14 and may set definite restrictions as provided in RCW 46.20.394. No
15 person may petition for, and the department shall not issue, ~~((an
16 occupational))~~ a temporary restricted driver's license that is
17 effective during the first:

18 (a) Thirty days of any suspension ((or revocation)) imposed either
19 for a violation of RCW 46.61.502 or 46.61.504 or under RCW 46.20.3101
20 (2)(a) or (3)(a), or for both a violation of RCW 46.61.502 or 46.61.504
21 and under RCW 46.20.3101 (2)(a) or (3)(a) where the action arises from
22 the same incident((. — A person aggrieved by the decision of the
23 department on the application for an occupational driver's license may
24 request a hearing as provided by rule of the department));

25 (b) Ninety days of a revocation imposed under RCW 46.20.3101 (1)(a)
26 or (2)(b);

27 (c) Year of a revocation imposed under RCW 46.61.5055 (2) or (3) or
28 46.20.3101(1) (b) or (c).

29 A petitioner under (a), (b), or (c) of this subsection must also
30 agree to have an approved ignition interlock or other approved
31 biological or technical device installed on a vehicle owned or operated
32 by the person, and shall agree not to operate any vehicle except one
33 equipped with such a device, for the remainder of the period of
34 suspension, revocation, or denial. Subject to any periodic renewal
35 requirements established by the department pursuant to this section and
36 subject to any applicable compliance requirements under this chapter or
37 other law, a temporary restricted license granted after a suspension or
38 revocation under RCW 46.61.5055 or 46.20.3101 extends through the

1 remaining portion of any concurrent or consecutive suspension or
2 revocation that may be imposed as the result of administrative action
3 and criminal conviction arising out of the same incident.

4 (2)(a) A person licensed under this chapter whose driver's license
5 is suspended administratively due to failure to appear or pay a traffic
6 ticket under RCW 46.20.289; a violation of the financial responsibility
7 laws under chapter 46.29 RCW; or for multiple violations within a
8 specified period of time under RCW 46.20.291, may apply to the
9 department for an occupational driver's license if the applicant
10 demonstrates to the satisfaction of the department that one of the
11 following additional conditions are met:

12 (i) The applicant is in an apprenticeship program or an on-the-job
13 training program for which a driver's license is required;

14 (ii) The applicant presents evidence that he or she has applied for
15 a position in an apprenticeship or on-the-job training program and the
16 program has certified that a driver's license is required to begin the
17 program, provided that a license granted under this provision shall be
18 in effect no longer than fourteen days;

19 (iii) The applicant is in a program that assists persons who are
20 enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to
21 become gainfully employed and the program requires a driver's license;
22 or

23 (iv) The applicant is undergoing substance abuse treatment or is
24 participating in meetings of a twelve-step group such as alcoholics
25 anonymous.

26 (b) If the suspension is for failure to respond, pay, or comply
27 with a notice of traffic infraction or conviction, the applicant must
28 enter into a payment plan with the court.

29 (c) An occupational driver's license issued to an applicant
30 described in (a) of this subsection shall be valid for the period of
31 the suspension or revocation but not more than two years.

32 (d) Upon receipt of evidence that a holder of an occupational
33 driver's license granted under this subsection is no longer enrolled in
34 an apprenticeship or on-the-job training program, the director shall
35 give written notice by first class mail to the driver that the
36 occupational driver's license shall be canceled. The effective date of
37 cancellation shall be fifteen days from the date of mailing the notice.
38 If at any time before the cancellation goes into effect the driver

1 submits evidence of continued enrollment in the program, the
2 cancellation shall be stayed. If the cancellation becomes effective,
3 the driver may obtain, at no additional charge, a new occupational
4 driver's license upon submittal of evidence of enrollment in another
5 program that meets the criteria set forth in this subsection.

6 (e) The department shall not issue an occupational driver's license
7 under (a)(iv) of this subsection if the applicant is able to receive
8 transit services sufficient to allow for the applicant's participation
9 in the programs referenced under (a)(iv) of this subsection.

10 (3) An applicant for an occupational or a temporary restricted
11 driver's license is eligible to receive such license only if:

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

16 (b) Within seven years immediately preceding the date of the
17 offense that gave rise to the present conviction or incident, the
18 applicant has not committed (~~(any of the following offenses: (i)~~
19 ~~Driving or being in actual physical control of a motor vehicle while~~
20 ~~under the influence of intoxicating liquor; (ii))~~) vehicular homicide
21 under RCW 46.61.520(~~(+)~~) or (~~((+iii))~~) vehicular assault under RCW
22 46.61.522; and

23 (c) The applicant meets at least one of the following
24 circumstances:

25 (i) Is engaged in an occupation or trade that makes it essential
26 that he or she operate a motor vehicle, except as allowed under
27 subsection (2)(a) of this section;

28 (ii) Is undergoing continuing health care or providing continuing
29 health care to another who is dependent upon the applicant;

30 (iii) Is enrolled in an educational institution and pursuing a
31 course of study leading to a diploma, degree, or other certification of
32 successful educational completion;

33 (iv) Is undergoing substance abuse treatment;

34 (v) Is fulfilling court-ordered community service responsibilities;

35 (vi) Is in an apprenticeship, on-the-job training, or welfare-to-
36 work program; or

37 (vii) Presents evidence that he or she has applied for a position
38 in an apprenticeship or on-the-job training program for which a

1 driver's license is required to begin the program, provided that a
2 license granted under this provision shall be in effect for no longer
3 than fourteen days; and

4 (d) The applicant files satisfactory proof of financial
5 responsibility under chapter 46.29 RCW.

6 (4) A person aggrieved by the decision of the department on an
7 application for an occupational or a temporary restricted driver's
8 license may request a hearing as provided by rule of the department.

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

17 **Sec. 5.** RCW 46.20.394 and 1999 c 272 s 2 are each amended to read
18 as follows:

19 In issuing an occupational or a temporary restricted driver's
20 license under RCW 46.20.391, the department shall describe the type of
21 (~~occupation permitted~~) qualifying circumstances and shall set forth
22 in detail the specific hours of the day during which the person may
23 drive to and from his (~~place of work~~) home, which may not exceed
24 twelve hours in any one day; the days of the week during which the
25 license may be used; and the general routes over which the person may
26 travel. In issuing an occupational driver's license under RCW
27 46.20.391(2)(a)(iv), or a temporary restricted license under RCW
28 46.20.391(3)(c)(iv), the department shall set forth in detail the
29 specific hours during which the person may drive to and from substance
30 abuse treatment or meetings of a twelve-step group such as alcoholics
31 anonymous, the days of the week during which the license may be used,
32 and the general routes over which the person may travel. These
33 restrictions shall be prepared in written form by the department, which
34 document shall be carried in the vehicle at all times and presented to
35 a law enforcement officer under the same terms as the occupational or
36 temporary restricted driver's license. Any violation of the

1 restrictions constitutes a violation of RCW 46.20.342 and subjects the
2 person to all procedures and penalties therefor.

3 **Sec. 6.** RCW 46.20.400 and 1967 c 32 s 33 are each amended to read
4 as follows:

5 If an occupational or a temporary restricted driver's license is
6 issued and is not revoked during the period for which issued the
7 licensee may obtain a new driver's license at the end of such period,
8 but no new driver's (~~permit shall~~) license may be issued to such
9 person until he or she surrenders his or her occupational or temporary
10 restricted driver's license and his or her copy of the order and the
11 director is satisfied that he or she complies with all other provisions
12 of law relative to the issuance of a driver's license.

13 **Sec. 7.** RCW 46.20.410 and 1967 c 32 s 34 are each amended to read
14 as follows:

15 Any person convicted for violation of any restriction of an
16 occupational or a temporary restricted driver's license shall in
17 addition to the immediate revocation of such license and any other
18 penalties provided by law be fined not less than fifty nor more than
19 two hundred dollars or imprisoned for not more than six months or both
20 such fine and imprisonment.

21 **Sec. 8.** RCW 46.20.720 and 2001 c 247 s 1 are each amended to read
22 as follows:

23 (1) The court may order that after a period, if any, of suspension,
24 revocation, or denial of driving privileges, and for up to as long as
25 the court has jurisdiction, any person originally charged with or
26 convicted of any offense involving the use, consumption, or possession
27 of alcohol (~~while operating a motor vehicle~~) may drive only a motor
28 vehicle equipped with a functioning ignition interlock or other
29 biological or technical device.

30 (2) If a person is convicted of a violation of RCW 46.61.502 or
31 46.61.504 or an equivalent local ordinance and: (a) It is (~~:(a)~~)
32 the person's first conviction (~~or a deferred prosecution under chapter~~
33 ~~10.05 RCW~~) and his or her alcohol concentration was at least 0.15, or
34 (~~by reason of the person's refusal~~) the person refused to take a test
35 offered pursuant to RCW 46.20.308 (~~there is no test result indicating~~

1 ~~the person's alcohol concentration~~)); or (b) it is the person's second
2 or subsequent conviction; or (c) the ~~((person's first conviction and~~
3 ~~the person has a previous deferred prosecution under chapter 10.05 RCW~~
4 ~~or it is))~~ person enters a deferred prosecution under chapter 10.05 RCW
5 ~~((and the person has a previous conviction))~~, the court shall order
6 that after any applicable period of suspension, revocation, or denial
7 of driving privileges, a functioning ignition interlock or other
8 biological or technical device shall be installed on a vehicle owned or
9 operated by the person and that the person may drive only a motor
10 vehicle equipped with a functioning ignition interlock or other
11 biological or technical device. The requirement to drive only a motor
12 vehicle equipped with a functioning ignition interlock or other
13 biological or technical device may not be suspended. The court may
14 waive the requirement for the use of such a device if the court makes
15 a specific finding in writing that such devices are not reasonably
16 available in the local area. Nothing in this section may be
17 interpreted as entitling a person to more than one deferred
18 prosecution.

19 (3) The court shall establish a specific calibration setting at
20 which the ignition interlock or other biological or technical device
21 will prevent the motor vehicle from being started and the period of
22 time that the person shall be subject to the restriction. In the case
23 of a person under subsection (2) of this section, the period of time of
24 the restriction will be as follows:

25 (a) For a person (i) who is subject to RCW 46.61.5055 (1)(b), (2),
26 or (3), ~~((or who is subject to a deferred prosecution program under~~
27 ~~chapter 10.05 RCW,))~~ and (ii) who has not previously been restricted
28 under this section, a period of not less than one year;

29 (b) For a person who has previously been restricted under (a) of
30 this subsection, a period of not less than five years;

31 (c) For a person who has previously been restricted under (b) of
32 this subsection, a period of not less than ten years(~~-~~

33 ~~For purposes of this section, "convicted" means being found guilty~~
34 ~~of an offense or being placed on a deferred prosecution program under~~
35 ~~chapter 10.05 RCW)); and~~

36 (d) For a person who has entered a deferred prosecution, a period
37 of time prescribed by RCW 10.05.140.

1 **Sec. 9.** RCW 46.20.740 and 2001 c 55 s 1 are each amended to read
2 as follows:

3 (1) The department shall attach or imprint a notation on the
4 driving record of any person restricted under RCW 46.20.720 stating
5 that the person may operate only a motor vehicle equipped with an
6 ignition interlock or other biological or technical device. The
7 department may not issue a driver's license to the person without
8 evidence that an ignition interlock or other approved biological or
9 technical device has been installed and is maintained on a vehicle
10 owned or operated by the person while this restriction remains on the
11 person's driving record.

12 (2) It is a misdemeanor for a person with such a notation on his or
13 her driving record to operate a motor vehicle that is not so equipped.
14 In addition to any other penalty, upon conviction the period of time
15 during which the person is required to have an interlock or other
16 device installed, and is required to operate only a vehicle with such
17 a device, shall be extended by the same amount as the original period.
18 Upon notification of the conviction, the department shall alter the
19 notation required in subsection (1) of this section accordingly.

20 **Sec. 10.** RCW 46.61.5055 and 1999 c 324 s 5, 1999 c 274 s 6, and
21 1999 c 5 s 1 are each reenacted and amended to read as follows:

22 (1) A person who is convicted of a violation of RCW 46.61.502 or
23 46.61.504 and who has no prior offense within seven years shall be
24 punished as follows:

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

29 (i) By imprisonment for not less than one day nor more than one
30 year. Twenty-four consecutive hours of the imprisonment may not be
31 suspended or deferred unless the court finds that the imposition of
32 this mandatory minimum sentence would impose a substantial risk to the
33 offender's physical or mental well-being. Whenever the mandatory
34 minimum sentence is suspended or deferred, the court shall state in
35 writing the reason for granting the suspension or deferral and the
36 facts upon which the suspension or deferral is based. In lieu of the
37 mandatory minimum term of imprisonment required under this subsection

1 (1)(a)(i), the court may order not less than fifteen days of electronic
2 home monitoring. The offender shall pay the cost of electronic home
3 monitoring. The county or municipality in which the penalty is being
4 imposed shall determine the cost. The court may also require the
5 offender's electronic home monitoring device to include an alcohol
6 detection breathalyzer, and the court may restrict the amount of
7 alcohol the offender may consume during the time the offender is on
8 electronic home monitoring; and

9 (ii) By a fine of (~~not less than three hundred fifty dollars nor~~
10 ~~more than~~) five thousand dollars. Up to four thousand six hundred
11 fifty dollars of the fine may be suspended or deferred upon
12 presentation to the court following the minimum period of ineligibility
13 of a temporary restricted license issued under RCW 46.20.391. The
14 suspended or deferred portion of the fine may be reinstated if the
15 person is convicted of failing to comply with the terms of the
16 temporary restricted license under RCW 46.20.391 and 46.20.740. Three
17 hundred fifty dollars of the fine may not be suspended or deferred
18 unless the court finds the offender to be indigent; or

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

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

1 (ii) By a fine of (~~not less than five hundred dollars nor more~~
2 ~~than~~) five thousand dollars. Up to four thousand five hundred dollars
3 of the fine may be suspended or deferred upon presentation to the court
4 following the minimum period of ineligibility of a temporary restricted
5 license issued under RCW 46.20.391. The suspended or deferred portion
6 of the fine may be reinstated if the person is convicted of failing to
7 comply with the terms of the temporary restricted license under RCW
8 46.20.391 and 46.20.740. Five hundred dollars of the fine may not be
9 suspended or deferred unless the court finds the offender to be
10 indigent; and

11 (iii) By a court-ordered restriction under RCW 46.20.720.

12 (2) A person who is convicted of a violation of RCW 46.61.502 or
13 46.61.504 and who has one prior offense within seven years shall be
14 punished as follows:

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

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

34 (ii) By a fine of (~~not less than five hundred dollars nor more~~
35 ~~than~~) five thousand dollars. Up to four thousand five hundred dollars
36 of the fine may be suspended or deferred upon presentation to the court
37 following the minimum period of ineligibility of a temporary restricted
38 license issued under RCW 46.20.391. The suspended or deferred portion

1 of the fine may be reinstated if the person is convicted of failing to
2 comply with the terms of the temporary restricted license under RCW
3 46.20.391 and 46.20.740. Five hundred dollars of the fine may not be
4 suspended or deferred unless the court finds the offender to be
5 indigent; and

6 (iii) By a court-ordered restriction under RCW 46.20.720; or

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

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

26 (ii) By a fine of (~~not less than seven hundred fifty dollars nor~~
27 ~~more than~~) five thousand dollars. Up to four thousand two hundred
28 fifty dollars of the fine may be suspended or deferred upon
29 presentation to the court following the minimum period of ineligibility
30 of a temporary restricted license issued under RCW 46.20.391. The
31 suspended or deferred portion of the fine may be reinstated if the
32 person is convicted of failing to comply with the terms of the
33 temporary restricted license under RCW 46.20.391 and 46.20.740. Seven
34 hundred fifty dollars of the fine may not be suspended or deferred
35 unless the court finds the offender to be indigent; and

36 (iii) By a court-ordered restriction under RCW 46.20.720.

37 (3) A person who is convicted of a violation of RCW 46.61.502 or

1 46.61.504 and who has two or more prior offenses within seven years
2 shall be punished as follows:

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

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

23 (ii) By a fine of (~~not less than one thousand dollars nor more~~
24 ~~than~~) five thousand dollars. Up to four thousand dollars of the fine
25 may be suspended or deferred upon presentation to the court following
26 the minimum period of ineligibility of a temporary restricted license
27 issued under RCW 46.20.391. The suspended or deferred portion of the
28 fine may be reinstated if the person is convicted of failing to comply
29 with the terms of the temporary restricted license under RCW 46.20.391
30 and 46.20.740. One thousand dollars of the fine may not be suspended
31 or deferred unless the court finds the offender to be indigent; and

32 (iii) By a court-ordered restriction under RCW 46.20.720; or

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

37 (i) By imprisonment for not less than one hundred twenty days nor
38 more than one year and one hundred fifty days of electronic home

1 monitoring. The offender shall pay for the cost of the electronic
2 monitoring. The county or municipality where the penalty is being
3 imposed shall determine the cost. The court may also require the
4 offender's electronic home monitoring device include an alcohol
5 detection breathalyzer, and may restrict the amount of alcohol the
6 offender may consume during the time the offender is on electronic home
7 monitoring. One hundred twenty days of imprisonment and one hundred
8 fifty days of electronic home monitoring may not be suspended or
9 deferred unless the court finds that the imposition of this mandatory
10 minimum sentence would impose a substantial risk to the offender's
11 physical or mental well-being. Whenever the mandatory minimum sentence
12 is suspended or deferred, the court shall state in writing the reason
13 for granting the suspension or deferral and the facts upon which the
14 suspension or deferral is based; and

15 (ii) By a fine of (~~not less than one thousand five hundred dollars~~
16 ~~nor more than~~) five thousand dollars. Up to three thousand five
17 hundred dollars of the fine may be suspended or deferred upon
18 presentation to the court following the minimum period of ineligibility
19 of a temporary restricted license issued under RCW 46.20.391. The
20 suspended or deferred portion of the fine may be reinstated if the
21 person is convicted of failing to comply with the terms of the
22 temporary restricted license under RCW 46.20.391 and 46.20.740. One
23 thousand five hundred dollars of the fine may not be suspended or
24 deferred unless the court finds the offender to be indigent; and

25 (iii) By a court-ordered restriction under RCW 46.20.720.

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

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

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

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

35 (6) The license, permit, or nonresident privilege of a person
36 convicted of driving or being in physical control of a motor vehicle
37 while under the influence of intoxicating liquor or drugs must:

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

5 (i) Where there has been no prior offense within seven years, be
6 suspended or denied by the department for ~~((ninety))~~ one hundred eighty
7 days;

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

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

12 (b) If the person's alcohol concentration was at least 0.15 ~~((or~~
13 ~~if by reason of the person's refusal to take a test offered under RCW~~
14 ~~46.20.308 there is no test result indicating the person's alcohol~~
15 ~~concentration))~~:

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

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

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

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

25 (i) Where there has been no prior offense within seven years, be
26 revoked or denied by the department for two years;

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

29 (iii) Where there have been two or more prior offenses within seven
30 years, be revoked or denied by the department for four years.

31 For purposes of this subsection, the department shall refer to the
32 driver's record maintained under RCW 46.52.120 when determining the
33 existence of prior offenses.

34 (7) After expiration of any period of suspension, revocation, or
35 denial of the offender's license, permit, or privilege to drive
36 required by this section, the department shall place the offender's
37 driving privilege in probationary status pursuant to RCW 46.20.355.

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

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

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

35 (9) A court may waive the electronic home monitoring requirements
36 of this chapter when:

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

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

2 (c) The court determines that there is reason to believe that the
3 offender would violate the conditions of the electronic home monitoring
4 penalty.

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

11 Whenever the combination of jail time and electronic home
12 monitoring or alternative sentence would exceed three hundred sixty-
13 five days, the offender shall serve the jail portion of the sentence
14 first, and the electronic home monitoring or alternative portion of the
15 sentence shall be reduced so that the combination does not exceed three
16 hundred sixty-five days.

17 (10) An offender serving a sentence under this section, whether or
18 not a mandatory minimum term has expired, may be granted an
19 extraordinary medical placement by the jail administrator subject to
20 the standards and limitations set forth in RCW 9.94A.728(4).

21 (11) For purposes of this section:

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

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

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

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

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

31 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
32 9A.36.050 or an equivalent local ordinance, if the conviction is the
33 result of a charge that was originally filed as a violation of RCW
34 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
35 46.61.520 or 46.61.522;

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

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

4 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
5 prosecution for a violation of RCW 46.61.5249, or an equivalent local
6 ordinance, if the charge under which the deferred prosecution was
7 granted was originally filed as a violation of RCW 46.61.502 or
8 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
9 46.61.522; and

10 (b) "Within seven years" means that the arrest for a prior offense
11 occurred within seven years of the arrest for the current offense.

12 **Sec. 11.** RCW 46.63.020 and 2001 c 325 s 4 are each amended to read
13 as follows:

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

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

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

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

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

30 (5) Chapter 46.12 RCW relating to certificates of ownership and
31 registration and markings indicating that a vehicle has been destroyed
32 or declared a total loss;

33 (6) RCW 46.16.010 relating to initial registration of motor
34 vehicles;

35 (7) RCW 46.16.011 relating to permitting unauthorized persons to
36 drive;

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

1 (9) RCW 46.16.381(2) relating to knowingly providing false
2 information in conjunction with an application for a special placard or
3 license plate for disabled persons' parking;
4 (10) RCW 46.20.005 relating to driving without a valid driver's
5 license;
6 (11) RCW 46.20.091 relating to false statements regarding a
7 driver's license or instruction permit;
8 (12) RCW 46.20.0921 relating to the unlawful possession and use of
9 a driver's license;
10 (13) RCW 46.20.342 relating to driving with a suspended or revoked
11 license or status;
12 (14) RCW 46.20.345 relating to the operation of a motor vehicle
13 with a suspended or revoked license;
14 (15) RCW 46.20.410 relating to the violation of restrictions of an
15 occupational or a temporary restricted driver's license;
16 (16) RCW 46.20.740 relating to operation of a motor vehicle without
17 an ignition interlock device in violation of a license notation that
18 the device is required;
19 (17) RCW 46.20.750 relating to assisting another person to start a
20 vehicle equipped with an ignition interlock device;
21 (18) RCW 46.25.170 relating to commercial driver's licenses;
22 (19) Chapter 46.29 RCW relating to financial responsibility;
23 (20) RCW 46.30.040 relating to providing false evidence of
24 financial responsibility;
25 (21) RCW 46.37.435 relating to wrongful installation of
26 sunscreening material;
27 (22) RCW 46.44.180 relating to operation of mobile home pilot
28 vehicles;
29 (23) RCW 46.48.175 relating to the transportation of dangerous
30 articles;
31 (24) RCW 46.52.010 relating to duty on striking an unattended car
32 or other property;
33 (25) RCW 46.52.020 relating to duty in case of injury to or death
34 of a person or damage to an attended vehicle;
35 (26) RCW 46.52.090 relating to reports by repairmen, storagemen,
36 and appraisers;
37 (27) RCW 46.52.130 relating to confidentiality of the driving

1 record to be furnished to an insurance company, an employer, and an
2 alcohol/drug assessment or treatment agency;

3 (28) RCW 46.55.020 relating to engaging in the activities of a
4 registered tow truck operator without a registration certificate;

5 (29) RCW 46.55.035 relating to prohibited practices by tow truck
6 operators;

7 (30) RCW 46.61.015 relating to obedience to police officers,
8 flaggers, or fire fighters;

9 (31) RCW 46.61.020 relating to refusal to give information to or
10 cooperate with an officer;

11 (32) RCW 46.61.022 relating to failure to stop and give
12 identification to an officer;

13 (33) RCW 46.61.024 relating to attempting to elude pursuing police
14 vehicles;

15 (34) RCW 46.61.500 relating to reckless driving;

16 (35) RCW 46.61.502 and 46.61.504 relating to persons under the
17 influence of intoxicating liquor or drugs;

18 (36) RCW 46.61.503 relating to a person under age twenty-one
19 driving a motor vehicle after consuming alcohol;

20 (37) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

21 (38) RCW 46.61.522 relating to vehicular assault;

22 (39) RCW 46.61.5249 relating to first degree negligent driving;

23 (40) RCW 46.61.527(4) relating to reckless endangerment of roadway
24 workers;

25 (41) RCW 46.61.530 relating to racing of vehicles on highways;

26 (42) RCW 46.61.685 relating to leaving children in an unattended
27 vehicle with the motor running;

28 (43) RCW 46.61.740 relating to theft of motor vehicle fuel;

29 (44) RCW 46.64.010 relating to unlawful cancellation of or attempt
30 to cancel a traffic citation;

31 (45) RCW 46.64.048 relating to attempting, aiding, abetting,
32 coercing, and committing crimes;

33 (46) Chapter 46.65 RCW relating to habitual traffic offenders;

34 (47) RCW 46.68.010 relating to false statements made to obtain a
35 refund;

36 (48) Chapter 46.70 RCW relating to unfair motor vehicle business
37 practices, except where that chapter provides for the assessment of
38 monetary penalties of a civil nature;

1 (49) Chapter 46.72 RCW relating to the transportation of passengers
2 in for hire vehicles;
3 (50) RCW 46.72A.060 relating to limousine carrier insurance;
4 (51) RCW 46.72A.070 relating to operation of a limousine without a
5 vehicle certificate;
6 (52) RCW 46.72A.080 relating to false advertising by a limousine
7 carrier;
8 (53) Chapter 46.80 RCW relating to motor vehicle wreckers;
9 (54) Chapter 46.82 RCW relating to driver's training schools;
10 (55) RCW 46.87.260 relating to alteration or forgery of a cab card,
11 letter of authority, or other temporary authority issued under chapter
12 46.87 RCW;
13 (56) RCW 46.87.290 relating to operation of an unregistered or
14 unlicensed vehicle under chapter 46.87 RCW.

--- END ---