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HOUSE BILL 2305

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State of Washington

53rd Legislature

1994 Regular Session

By Representatives Long, Appelwick, Morris, Johanson, Padden, Van Luven, Jones, Brough, Carlson, Karahalios, Chandler, J. Kohl and Talcott

Read first time 01/12/94. Referred to Committee on Judiciary.

1 AN ACT Relating to driving or being in physical control of a motor  
2 vehicle while under the influence of intoxicating liquor or drugs;  
3 amending RCW 46.61.515; reenacting and amending RCW 46.61.515;  
4 providing an effective date; and providing an expiration date.

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

6 **Sec. 1.** RCW 46.61.515 and 1993 c 501 s 7 and 1993 c 239 s 1 are  
7 each reenacted and amended to read as follows:

8 (1) Every person who is convicted of a violation of RCW 46.61.502  
9 or 46.61.504 shall be punished by imprisonment for not less than  
10 twenty-four consecutive hours nor more than one year, and by a fine of  
11 not less than two hundred fifty dollars and not more than one thousand  
12 dollars. Unless the judge finds the person to be indigent, two hundred  
13 fifty dollars of the fine shall not be suspended or deferred. Twenty-  
14 four consecutive hours of the jail sentence shall not be suspended or  
15 deferred unless the judge finds that the imposition of the jail  
16 sentence will pose a substantial risk to the defendant's physical or  
17 mental well-being. Whenever the mandatory jail sentence is suspended  
18 or deferred, the judge must state, in writing, the reason for granting  
19 the suspension or deferral and the facts upon which the suspension or

1 deferral is based. The court may impose conditions of probation that  
2 may include nonrepetition, alcohol or drug treatment, supervised  
3 probation, or other conditions that may be appropriate. The convicted  
4 person shall, in addition, be required to complete a course in an  
5 alcohol information school approved by the department of social and  
6 health services or more intensive treatment in a program approved by  
7 the department of social and health services, as determined by the  
8 court. A diagnostic evaluation and treatment recommendation shall be  
9 prepared under the direction of the court by an alcoholism agency  
10 approved by the department of social and health services or a qualified  
11 probation department approved by the department of social and health  
12 services. A copy of the report shall be forwarded to the department of  
13 licensing. Based on the diagnostic evaluation, the court shall  
14 determine whether the convicted person shall be required to complete a  
15 course in an alcohol information school approved by the department of  
16 social and health services or more intensive treatment in a program  
17 approved by the department of social and health services. Standards  
18 for approval for alcohol treatment programs shall be prescribed by rule  
19 under the Administrative Procedure Act, chapter 34.05 RCW. The  
20 department of social and health services shall periodically review the  
21 costs of alcohol information schools and treatment programs as part of  
22 the approval process.

23 (2) On a second or subsequent conviction for driving or being in  
24 physical control of a motor vehicle while under the influence of  
25 intoxicating liquor or drugs which results from an arrest that occurs  
26 within a five-year period of the previous conviction, a person shall be  
27 punished by imprisonment for not less than seven days nor more than one  
28 year and by a fine of not less than five hundred dollars and not more  
29 than two thousand dollars. District courts and courts organized under  
30 chapter 35.20 RCW are authorized to impose such fine. Unless the judge  
31 finds the person to be indigent, five hundred dollars of the fine shall  
32 not be suspended or deferred. The minimum jail sentence shall not be  
33 suspended or deferred unless the judge finds that the imposition of the  
34 jail sentence will pose a substantial risk to the defendant's physical  
35 or mental well-being. Whenever the mandatory jail sentence is  
36 suspended or deferred, the judge must state, in writing, the reason for  
37 granting the suspension or deferral and the facts upon which the  
38 suspension or deferral is based. If, at the time of the arrest on a  
39 second or subsequent offense, the driver is without a license or permit

1 because of a previous suspension or revocation for a reason listed in  
2 RCW 46.20.342(1) (a) or (b), or because of a previous suspension or  
3 revocation for a reason listed in RCW 46.20.342(1)(c) if the original  
4 suspension or revocation was the result of a conviction of RCW  
5 46.61.502 or 46.61.504, the minimum mandatory sentence shall be ninety  
6 days in jail and a five hundred dollar fine. The penalty so imposed  
7 shall not be suspended or deferred. The person shall, in addition, be  
8 required to complete a diagnostic evaluation by an alcoholism agency  
9 approved by the department of social and health services or a qualified  
10 probation department approved by the department of social and health  
11 services. The report shall be forwarded to the department of  
12 licensing. If the person is found to have an alcohol or drug problem  
13 requiring treatment, the person shall complete treatment at an approved  
14 alcoholism treatment program or approved drug treatment center.

15 In addition to any nonsuspendable and nondeferrable jail sentence  
16 required by this subsection, whenever the court imposes less than one  
17 year in jail, the court shall also suspend but shall not defer a period  
18 of confinement for a period not exceeding two years. The suspension of  
19 the sentence may be conditioned upon nonrepetition, alcohol or drug  
20 treatment, supervised probation, or other conditions that may be  
21 appropriate. The sentence may be imposed in whole or in part upon  
22 violation of a condition of suspension during the suspension period.

23 (3) The license or permit to drive or any nonresident privilege of  
24 any person convicted of driving or being in physical control of a motor  
25 vehicle while under the influence of intoxicating liquor or drugs  
26 shall:

27 (a) On the first conviction under either offense, be suspended by  
28 the department until the person reaches age nineteen or for ninety  
29 days, whichever is longer. The department of licensing shall determine  
30 the person's eligibility for licensing based upon the reports provided  
31 by the designated alcoholism agency or probation department and shall  
32 deny reinstatement until enrollment and participation in an approved  
33 program has been established and the person is otherwise qualified;

34 (b) On a second conviction under either offense within a five-year  
35 period, be revoked by the department for one year. The department of  
36 licensing shall determine the person's eligibility for licensing based  
37 upon the reports provided by the designated alcoholism agency or  
38 probation department and shall deny reinstatement until satisfactory

1 progress in an approved program has been established and the person is  
2 otherwise qualified;

3 (c) On a third or subsequent conviction of driving or being in  
4 physical control of a motor vehicle while under the influence of  
5 intoxicating liquor or drugs, vehicular homicide, or vehicular assault,  
6 or any combination thereof within a five-year period, be revoked by the  
7 department for two years.

8 (4) In any case provided for in this section, where a driver's  
9 license is to be revoked or suspended, the revocation or suspension  
10 shall be stayed and shall not take effect until after the determination  
11 of any appeal from the conviction which may lawfully be taken, but in  
12 case the conviction is sustained on appeal the revocation or suspension  
13 takes effect as of the date that the conviction becomes effective for  
14 other purposes.

15 (5)(a) In addition to penalties set forth in this section, a one  
16 hundred twenty-five dollar fee shall be assessed to a person who is  
17 either convicted, sentenced to a lesser charge, or given deferred  
18 prosecution, as a result of an arrest for violating RCW 46.61.502,  
19 46.61.504, 46.61.520, or 46.61.522. This fee is for the purpose of  
20 funding the Washington state toxicology laboratory and the Washington  
21 state patrol breath test program.

22 (b) Upon a verified petition by the person assessed the fee, the  
23 court may suspend payment of all or part of the fee if it finds that  
24 the person does not have the ability to pay.

25 (c) When a minor has been adjudicated a juvenile offender for an  
26 offense which, if committed by an adult, would constitute a violation  
27 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall  
28 assess the one hundred twenty-five dollar fee under (a) of this  
29 subsection. Upon a verified petition by a minor assessed the fee, the  
30 court may suspend payment of all or part of the fee if it finds that  
31 the minor does not have the ability to pay the fee.

32 (6) The fee assessed under subsection (5) of this section shall be  
33 collected by the clerk of the court and distributed as follows:

34 (a) Forty percent shall be subject to distribution under RCW  
35 3.62.020, 3.62.040, or 10.82.040.

36 (b) If the case involves a blood test by the state toxicology  
37 laboratory, the remainder of the fee shall be forwarded to the state  
38 treasurer for deposit in the death investigations account to be used

1 solely for funding the state toxicology laboratory blood testing  
2 program.

3 (c) Otherwise, the remainder of the fee shall be forwarded to the  
4 state treasurer for deposit in the state patrol highway account to be  
5 used solely for funding the Washington state patrol breath test  
6 program.

7 **Sec. 2.** RCW 46.61.515 and 1993 c 501 s 7 are each amended to read  
8 as follows:

9 (1) Every person who is convicted of a violation of RCW 46.61.502  
10 or 46.61.504 shall be punished by imprisonment for not less than  
11 twenty-four consecutive hours nor more than one year, and by a fine of  
12 not less than two hundred fifty dollars and not more than one thousand  
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14 fifty dollars of the fine shall not be suspended or deferred. Twenty-  
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17 sentence will pose a substantial risk to the defendant's physical or  
18 mental well-being. Whenever the mandatory jail sentence is suspended  
19 or deferred, the judge must state, in writing, the reason for granting  
20 the suspension or deferral and the facts upon which the suspension or  
21 deferral is based. The court may impose conditions of probation that  
22 may include nonrepetition, alcohol or drug treatment, supervised  
23 probation, or other conditions that may be appropriate. The convicted  
24 person shall, in addition, be required to complete a course in an  
25 alcohol information school approved by the department of social and  
26 health services or more intensive treatment in a program approved by  
27 the department of social and health services, as determined by the  
28 court. A diagnostic evaluation and treatment recommendation shall be  
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31 probation department approved by the department of social and health  
32 services. A copy of the report shall be forwarded to the department of  
33 licensing. Based on the diagnostic evaluation, the court shall  
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35 course in an alcohol information school approved by the department of  
36 social and health services or more intensive treatment in a program  
37 approved by the department of social and health services. Standards  
38 for approval for alcohol treatment programs shall be prescribed by rule

1 under the administrative procedure act, chapter 34.05 RCW. The  
2 department of social and health services shall periodically review the  
3 costs of alcohol information schools and treatment programs as part of  
4 the approval process.

5 (2) On a second or subsequent conviction for driving or being in  
6 physical control of a motor vehicle while under the influence of  
7 intoxicating liquor or drugs which results from an arrest that occurs  
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10 year and by a fine of not less than five hundred dollars and not more  
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23 RCW 46.20.342(1) (a) or (b), or because of a previous suspension or  
24 revocation for a reason listed in RCW 46.20.342(1)(c) if the original  
25 suspension or revocation was the result of a conviction of RCW  
26 46.61.502 or 46.61.504, the minimum mandatory sentence shall be ninety  
27 days in jail and a five hundred dollar fine. The penalty so imposed  
28 shall not be suspended or deferred. The person shall, in addition, be  
29 required to complete a diagnostic evaluation by an alcoholism agency  
30 approved by the department of social and health services or a qualified  
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32 services. The report shall be forwarded to the department of  
33 licensing. If the person is found to have an alcohol or drug problem  
34 requiring treatment, the person shall complete treatment at an approved  
35 alcoholism treatment program or approved drug treatment center.

36 In addition to any nonsuspendable and nondeferrable jail sentence  
37 required by this subsection, whenever the court imposes less than one  
38 year in jail, the court shall also suspend but shall not defer a period  
39 of confinement for a period not exceeding two years. The suspension of

1 the sentence may be conditioned upon nonrepetition, alcohol or drug  
2 treatment, supervised probation, or other conditions that may be  
3 appropriate. The sentence may be imposed in whole or in part upon  
4 violation of a condition of suspension during the suspension period.

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12 the person's eligibility for licensing based upon the reports provided  
13 by the designated alcoholism agency or probation department and shall  
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16 (b) On a second conviction under either offense within a five-year  
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18 licensing shall determine the person's eligibility for licensing based  
19 upon the reports provided by the designated alcoholism agency or  
20 probation department and shall deny reinstatement until satisfactory  
21 progress in an approved program has been established and the person is  
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23 (c) On a third or subsequent conviction of driving or being in  
24 physical control of a motor vehicle while under the influence of  
25 intoxicating liquor or drugs, vehicular homicide, or vehicular assault,  
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27 department for two years.

28 (4) In any case provided for in this section, where a driver's  
29 license is to be revoked or suspended, the revocation or suspension  
30 shall be stayed and shall not take effect until after the determination  
31 of any appeal from the conviction which may lawfully be taken, but in  
32 case the conviction is sustained on appeal the revocation or suspension  
33 takes effect as of the date that the conviction becomes effective for  
34 other purposes.

35 NEW SECTION. **Sec. 3.** Section 1 of this act shall expire June 30,  
36 1995.

1        NEW SECTION.   **Sec. 4.**   Section 2 of this act shall take effect June  
2   30, 1995.

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