
HOUSE BILL 2640

State of Washington

55th Legislature

1998 Regular Session

By Representatives Sheahan, Costa, Kenney, Conway, Anderson and Gardner; by request of Governor Locke

Read first time 01/16/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to driving under the influence of intoxicating
2 liquor or any drug; amending RCW 46.20.308, 46.20.3101, 46.61.502,
3 46.61.504, 46.61.506, 88.12.025, 46.20.355, 10.05.010, 10.05.120,
4 10.05.160, 46.01.260, 46.20.285, 46.20.391, 46.55.113, 46.55.120,
5 46.61.5058, and 46.12.240; reenacting and amending RCW 46.61.5055;
6 adding a new section to chapter 46.61 RCW; creating a new section; and
7 prescribing penalties.

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

9 **Sec. 1.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read
10 as follows:

11 (1) Any person who operates a motor vehicle within this state is
12 deemed to have given consent, subject to the provisions of RCW
13 46.61.506, to a test or tests of his or her breath or blood for the
14 purpose of determining the alcohol concentration or presence of any
15 drug in his or her breath or blood if arrested for any offense where,
16 at the time of the arrest, the arresting officer has reasonable grounds
17 to believe the person had been driving or was in actual physical
18 control of a motor vehicle while under the influence of intoxicating
19 liquor or any drug or was in violation of RCW 46.61.503.

1 (2) The test or tests of breath shall be administered at the
2 direction of a law enforcement officer having reasonable grounds to
3 believe the person to have been driving or in actual physical control
4 of a motor vehicle within this state while under the influence of
5 intoxicating liquor or the person to have been driving or in actual
6 physical control of a motor vehicle while having alcohol in a
7 concentration of 0.02 or more in his or her system and being under the
8 age of twenty-one. However, in those instances where the person is
9 incapable due to physical injury, physical incapacity, or other
10 physical limitation, of providing a breath sample or where the person
11 is being treated in a hospital, clinic, doctor's office, emergency
12 medical vehicle, ambulance, or other similar facility in which a breath
13 testing instrument is not present or where the officer has reasonable
14 grounds to believe that the person is under the influence of a drug, a
15 blood test shall be administered by a qualified person as provided in
16 RCW 46.61.506(4). The officer shall inform the person of his or her
17 right to refuse the breath or blood test, and of his or her right to
18 have additional tests administered by any qualified person of his or
19 her choosing as provided in RCW 46.61.506. The officer shall warn the
20 driver that:

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

23 (b) His or her license, permit, or privilege to drive will be
24 suspended, revoked, or denied(~~(, or placed in probationary status)~~) if
25 the test is administered and the test indicates the alcohol
26 concentration of the person's breath or blood is (~~(0.10)~~) 0.08 or more,
27 in the case of a person age twenty-one or over, or 0.02 or more in the
28 case of a person under age twenty-one; and

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

31 (3) Except as provided in this section, the test administered shall
32 be of the breath only. If an individual is unconscious or is under
33 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
34 or vehicular assault as provided in RCW 46.61.522, or if an individual
35 is under arrest for the crime of driving while under the influence of
36 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
37 results from an accident in which there has been serious bodily injury
38 to another person, a breath or blood test may be administered without
39 the consent of the individual so arrested.

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

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

12 (6) If, after arrest and after the other applicable conditions and
13 requirements of this section have been satisfied, a test or tests of
14 the person's blood or breath is administered and the test results
15 indicate that the alcohol concentration of the person's breath or blood
16 is ~~((0.10))~~ 0.08 or more if the person is age twenty-one or over, or is
17 0.02 or more if the person is under the age of twenty-one, or the
18 person refuses to submit to a test, the arresting officer or other law
19 enforcement officer at whose direction any test has been given, or the
20 department, where applicable, if the arrest results in a test of the
21 person's blood, shall:

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

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

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

32 (d) Serve notice in writing that the marked license or permit, if
33 any, is a temporary license that is valid for sixty days from the date
34 of arrest or from the date notice has been given in the event notice is
35 given by the department following a blood test, or until the
36 suspension, revocation, or denial of the person's license, permit, or
37 privilege to drive is sustained at a hearing pursuant to subsection (8)
38 of this section, whichever occurs first. No temporary license is valid
39 to any greater degree than the license or permit that it replaces; and

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

5 (i) That the officer had reasonable grounds to believe the arrested
6 person had been driving or was in actual physical control of a motor
7 vehicle within this state while under the influence of intoxicating
8 liquor or drugs, or both, or was under the age of twenty-one years and
9 had been driving or was in actual physical control of a motor vehicle
10 while having an alcohol concentration of 0.02 or more;

11 (ii) That after receipt of the warnings required by subsection (2)
12 of this section the person refused to submit to a test of his or her
13 blood or breath, or a test was administered and the results indicated
14 that the alcohol concentration of the person's breath or blood was
15 (~~0.10~~) 0.08 or more if the person is age twenty-one or over, or was
16 0.02 or more if the person is under the age of twenty-one; and

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

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

29 (8) A person receiving notification under subsection (6)(b) of this
30 section may, within thirty days after the notice has been given,
31 request in writing a formal hearing before the department. The person
32 shall pay a fee of one hundred dollars as part of the request. If the
33 request is mailed, it must be postmarked within thirty days after
34 receipt of the notification. Upon timely receipt of such a request for
35 a formal hearing, including receipt of the required one hundred dollar
36 fee, the department shall afford the person an opportunity for a
37 hearing. Except as otherwise provided in this section, the hearing is
38 subject to and shall be scheduled and conducted in accordance with RCW
39 46.20.329 and 46.20.332. The hearing shall be conducted in the county

1 of the arrest, except that all or part of the hearing may, at the
2 discretion of the department, be conducted by telephone or other
3 electronic means. The hearing shall be held within sixty days
4 following the arrest or following the date notice has been given in the
5 event notice is given by the department following a blood test, unless
6 otherwise agreed to by the department and the person, in which case the
7 action by the department shall be stayed, and any valid temporary
8 license marked under subsection (6)(c) of this section extended, if the
9 person is otherwise eligible for licensing. For the purposes of this
10 section, the scope of the hearing shall cover the issues of whether a
11 law enforcement officer had reasonable grounds to believe the person
12 had been driving or was in actual physical control of a motor vehicle
13 within this state while under the influence of intoxicating liquor or
14 any drug or had been driving or was in actual physical control of a
15 motor vehicle within this state while having alcohol in his or her
16 system in a concentration of 0.02 or more and was under the age of
17 twenty-one, whether the person was placed under arrest, and (a) whether
18 the person refused to submit to the test or tests upon request of the
19 officer after having been informed that such refusal would result in
20 the revocation of the person's license, permit, or privilege to drive,
21 or (b) if a test or tests were administered, whether the applicable
22 requirements of this section were satisfied before the administration
23 of the test or tests, whether the person submitted to the test or
24 tests, or whether a test was administered without express consent as
25 permitted under this section, and whether the test or tests indicated
26 that the alcohol concentration of the person's breath or blood was
27 ((0.10)) 0.08 or more if the person was age twenty-one or over at the
28 time of the arrest, or was 0.02 or more if the person was under the age
29 of twenty-one at the time of the arrest. The sworn report or report
30 under a declaration authorized by RCW 9A.72.085 submitted by a law
31 enforcement officer is prima facie evidence that the officer had
32 reasonable grounds to believe the person had been driving or was in
33 actual physical control of a motor vehicle within this state while
34 under the influence of intoxicating liquor or drugs, or both, or the
35 person had been driving or was in actual physical control of a motor
36 vehicle within this state while having alcohol in his or her system in
37 a concentration of 0.02 or more and was under the age of twenty-one and
38 that the officer complied with the requirements of this section.

1 A hearing officer shall conduct the hearing, may issue subpoenas
2 for the attendance of witnesses and the production of documents, and
3 shall administer oaths to witnesses. The hearing officer shall not
4 issue a subpoena for the attendance of a witness at the request of the
5 person unless the request is accompanied by the fee required by RCW
6 5.56.010 for a witness in district court. The sworn report or report
7 under a declaration authorized by RCW 9A.72.085 of the law enforcement
8 officer and any other evidence accompanying the report shall be
9 admissible without further evidentiary foundation and the
10 certifications authorized by the criminal rules for courts of limited
11 jurisdiction shall be admissible without further evidentiary
12 foundation. The person may be represented by counsel, may question
13 witnesses, may present evidence, and may testify. The department shall
14 order that the suspension, revocation, or denial(~~(, or placement in~~
15 ~~probationary status))~~) either be rescinded or sustained.

16 (9) If the suspension, revocation, or denial(~~(, or placement in~~
17 ~~probationary status))~~) is sustained after such a hearing, the person
18 whose license, privilege, or permit is suspended, revoked, or denied(~~(, or~~
19 ~~placed in probationary status))~~) has the right to file a petition in
20 the superior court of the county of arrest to review the final order of
21 revocation by the department in the same manner as an appeal from a
22 decision of a court of limited jurisdiction. The appellant must pay
23 the costs associated with obtaining the record of the hearing before
24 the hearing officer. The filing of the appeal does not stay the
25 effective date of the suspension, revocation, or denial(~~(, or placement~~
26 ~~in probationary status))~~). A petition filed under this subsection must
27 include the petitioner's grounds for requesting review. Upon granting
28 petitioner's request for review, the court shall review the
29 department's final order of suspension, revocation, or denial(~~(, or~~
30 ~~placement in probationary status))~~) as expeditiously as possible. If
31 judicial relief is sought for a stay or other temporary remedy from the
32 department's action, the court shall not grant such relief unless the
33 court finds that the appellant is likely to prevail in the appeal and
34 that without a stay the appellant will suffer irreparable injury. If
35 the court stays the suspension, revocation, or denial(~~(, or placement~~
36 ~~in probationary status))~~) it may impose conditions on such stay.

37 (10) If a person whose driver's license, permit, or privilege to
38 drive has been or will be suspended, revoked, or denied(~~(, or placed in~~
39 ~~probationary status))~~) under subsection (7) of this section, other than

1 as a result of a breath test refusal, and who has not committed an
2 offense (~~((within the last five years))~~) for which he or she was granted
3 a deferred prosecution under chapter 10.05 RCW, petitions a court for
4 a deferred prosecution on criminal charges arising out of the arrest
5 for which action has been or will be taken under subsection (7) of this
6 section, the court may direct the department to stay any actual or
7 proposed suspension, revocation, or denial(~~(, or placement in~~
8 ~~probationary status))~~) for at least forty-five days but not more than
9 ninety days. If the court stays the suspension, revocation, or
10 denial(~~(, or placement in probationary status))~~), it may impose
11 conditions on such stay. If the person is otherwise eligible for
12 licensing, the department shall issue a temporary license, or extend
13 any valid temporary license marked under subsection (6) of this
14 section, for the period of the stay. If a deferred prosecution
15 treatment plan is not recommended in the report made under RCW
16 10.05.050, or if treatment is rejected by the court, or if the person
17 declines to accept an offered treatment plan, or if the person violates
18 any condition imposed by the court, then the court shall immediately
19 direct the department to cancel the stay and any temporary marked
20 license or extension of a temporary license issued under this
21 subsection.

22 A suspension, revocation, or denial imposed under this section,
23 other than as a result of a breath test refusal, shall be stayed if the
24 person is accepted for deferred prosecution as provided in chapter
25 10.05 RCW for the incident upon which the suspension, revocation, or
26 denial is based. If the deferred prosecution is terminated, the stay
27 shall be lifted and the suspension, revocation, or denial reinstated.
28 If the deferred prosecution is completed, the stay shall be lifted and
29 the suspension, revocation, or denial canceled.

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

36 **Sec. 2.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to read
37 as follows:

1 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
2 deny the arrested person's license, permit, or privilege to drive as
3 follows:

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

5 (a) For a first refusal (~~((within five years))~~), where there has not
6 been a previous incident (~~((within five years))~~) that resulted in
7 administrative action under this section, revocation or denial for one
8 year;

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

17 (2) In the case of an incident where a person has submitted to or
18 been administered a test or tests indicating that the alcohol
19 concentration of the person's breath or blood was (~~((0.10))~~) 0.08 or
20 more:

21 (a) For a first incident (~~((within five years))~~), where there has not
22 been a previous incident (~~((within five years))~~) that resulted in
23 administrative action under this section, (~~((placement in probationary
24 status as provided in RCW 46.20.355))~~) suspension for ninety days;

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

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

31 (a) For a first incident (~~((within five years))~~), suspension or
32 denial for ninety days;

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

36 **Sec. 3.** RCW 46.61.502 and 1994 c 275 s 2 are each amended to read
37 as follows:

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

4 (a) And the person has, within two hours after driving, an alcohol
5 concentration of ((0.10)) 0.08 or higher as shown by analysis of the
6 person's breath or blood made under RCW 46.61.506; or

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

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

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

15 (3) It is an affirmative defense to a violation of subsection
16 (1)(a) of this section which the defendant must prove by a
17 preponderance of the evidence that the defendant consumed a sufficient
18 quantity of alcohol after the time of driving and before the
19 administration of an analysis of the person's breath or blood to cause
20 the defendant's alcohol concentration to be ((0.10)) 0.08 or more
21 within two hours after driving. The court shall not admit evidence of
22 this defense unless the defendant notifies the prosecution prior to the
23 omnibus or pretrial hearing in the case of the defendant's intent to
24 assert the affirmative defense.

25 (4) Analyses of blood or breath samples obtained more than two
26 hours after the alleged driving may be used as evidence that within two
27 hours of the alleged driving, a person had an alcohol concentration of
28 ((0.10)) 0.08 or more in violation of subsection (1)(a) of this
29 section, and in any case in which the analysis shows an alcohol
30 concentration above 0.00 may be used as evidence that a person was
31 under the influence of or affected by intoxicating liquor or any drug
32 in violation of subsection (1)(b) or (c) of this section.

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

34 **Sec. 4.** RCW 46.61.504 and 1994 c 275 s 3 are each amended to read
35 as follows:

36 (1) A person is guilty of being in actual physical control of a
37 motor vehicle while under the influence of intoxicating liquor or any

1 drug if the person has actual physical control of a vehicle within this
2 state:

3 (a) And the person has, within two hours after being in actual
4 physical control of the vehicle, an alcohol concentration of ((0.10))
5 0.08 or higher as shown by analysis of the person's breath or blood
6 made under RCW 46.61.506; or

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

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

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

17 (3) It is an affirmative defense to a violation of subsection
18 (1)(a) of this section which the defendant must prove by a
19 preponderance of the evidence that the defendant consumed a sufficient
20 quantity of alcohol after the time of being in actual physical control
21 of the vehicle and before the administration of an analysis of the
22 person's breath or blood to cause the defendant's alcohol concentration
23 to be ((0.10)) 0.08 or more within two hours after being in such
24 control. The court shall not admit evidence of this defense unless the
25 defendant notifies the prosecution prior to the omnibus or pretrial
26 hearing in the case of the defendant's intent to assert the affirmative
27 defense.

28 (4) Analyses of blood or breath samples obtained more than two
29 hours after the alleged being in actual physical control of a vehicle
30 may be used as evidence that within two hours of the alleged being in
31 such control, a person had an alcohol concentration of ((0.10)) 0.08 or
32 more in violation of subsection (1)(a) of this section, and in any case
33 in which the analysis shows an alcohol concentration above 0.00 may be
34 used as evidence that a person was under the influence of or affected
35 by intoxicating liquor or any drug in violation of subsection (1)(b) or
36 (c) of this section.

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

1 **Sec. 5.** RCW 46.61.506 and 1995 c 332 s 18 are each amended to read
2 as follows:

3 (1) Upon the trial of any civil or criminal action or proceeding
4 arising out of acts alleged to have been committed by any person while
5 driving or in actual physical control of a vehicle while under the
6 influence of intoxicating liquor or any drug, if the person's alcohol
7 concentration is less than (~~0.10~~) 0.08, it is evidence that may be
8 considered with other competent evidence in determining whether the
9 person was under the influence of intoxicating liquor or any drug.

10 (2) The breath analysis shall be based upon grams of alcohol per
11 two hundred ten liters of breath. The foregoing provisions of this
12 section shall not be construed as limiting the introduction of any
13 other competent evidence bearing upon the question whether the person
14 was under the influence of intoxicating liquor or any drug.

15 (3) Analysis of the person's blood or breath to be considered valid
16 under the provisions of this section or RCW 46.61.502 or 46.61.504
17 shall have been performed according to methods approved by the state
18 toxicologist and by an individual possessing a valid permit issued by
19 the state toxicologist for this purpose. The state toxicologist is
20 directed to approve satisfactory techniques or methods, to supervise
21 the examination of individuals to ascertain their qualifications and
22 competence to conduct such analyses, and to issue permits which shall
23 be subject to termination or revocation at the discretion of the state
24 toxicologist.

25 (4) When a blood test is administered under the provisions of RCW
26 46.20.308, the withdrawal of blood for the purpose of determining its
27 alcoholic or drug content may be performed only by a physician, a
28 registered nurse, or a qualified technician. This limitation shall not
29 apply to the taking of breath specimens.

30 (5) The person tested may have a physician, or a qualified
31 technician, chemist, registered nurse, or other qualified person of his
32 or her own choosing administer one or more tests in addition to any
33 administered at the direction of a law enforcement officer. The
34 failure or inability to obtain an additional test by a person shall not
35 preclude the admission of evidence relating to the test or tests taken
36 at the direction of a law enforcement officer.

37 (6) Upon the request of the person who shall submit to a test or
38 tests at the request of a law enforcement officer, full information

1 concerning the test or tests shall be made available to him or her or
2 his or her attorney.

3 **Sec. 6.** RCW 88.12.025 and 1993 c 244 s 8 are each amended to read
4 as follows:

5 (1) It shall be unlawful for any person to operate a vessel in a
6 reckless manner.

7 (2) It shall be a violation for a person to operate a vessel while
8 under the influence of intoxicating liquor or any drug. A person is
9 considered to be under the influence of intoxicating liquor or any drug
10 if:

11 (a) The person has ~~((0.10))~~ 0.08 grams or more of alcohol per two
12 hundred ten liters of breath, as shown by analysis of the person's
13 breath made under RCW 46.61.506; or

14 (b) The person has ~~((0.10))~~ 0.08 percent or more by weight of
15 alcohol in the person's blood, as shown by analysis of the person's
16 blood made under RCW 46.61.506; or

17 (c) The person is under the influence of or affected by
18 intoxicating liquor or any drug; or

19 (d) The person is under the combined influence of or affected by
20 intoxicating liquor and any drug.

21 The fact that any person charged with a violation of this section
22 is or has been entitled to use such drug under the laws of this state
23 shall not constitute a defense against any charge of violating this
24 section. A person cited under this subsection may upon request be
25 given a breath test for breath alcohol or may request to have a blood
26 sample taken for blood alcohol analysis. An arresting officer shall
27 administer field sobriety tests when circumstances permit.

28 (3) A violation of this section is a misdemeanor, punishable as
29 provided under RCW 9.92.030. In addition, the court may order the
30 defendant to pay restitution for any damages or injuries resulting from
31 the offense.

32 **Sec. 7.** RCW 46.20.355 and 1995 1st sp.s. c 17 s 1 are each amended
33 to read as follows:

34 (1) Upon ~~((placing a license, permit, or privilege to drive in
35 probationary status under RCW 46.20.310(2)(a), or upon))~~ receipt of an
36 abstract indicating a deferred prosecution has been granted under RCW
37 10.05.060, or upon receipt of a notice of conviction of RCW 46.61.502

1 or 46.61.504, the department of licensing shall order the person to
2 surrender any Washington state driver's license that may be in his or
3 her possession. The department shall revoke the license, permit, or
4 privilege to drive of any person who fails to surrender it as required
5 by this section for one year, unless the license has been previously
6 surrendered to the department, a law enforcement officer, or a court,
7 or the person has completed an affidavit of lost, stolen, destroyed, or
8 previously surrendered license, such revocation to take effect thirty
9 days after notice is given of the requirement for license surrender.

10 (2) The department shall place a person's driving privilege in
11 probationary status as required by RCW 10.05.060(~~(, 46.20.308,)~~) or
12 46.61.5055 for a period of five years from the date the probationary
13 status is required to go into effect.

14 (3) Following receipt of an abstract indicating a deferred
15 prosecution has been granted under RCW 10.05.060, (~~or following~~
16 ~~receipt of a sworn report under RCW 46.20.308 that requires immediate~~
17 ~~placement in probationary status under RCW 46.20.3101(2)(a),~~) or upon
18 reinstatement or reissuance of a driver's license suspended or revoked
19 as the result of a conviction of RCW 46.61.502 or 46.61.504, the
20 department shall require the person to obtain a probationary license in
21 order to operate a motor vehicle in the state of Washington, except as
22 otherwise exempt under RCW 46.20.025. The department shall not issue
23 the probationary license unless the person is otherwise qualified for
24 licensing, and the person must renew the probationary license on the
25 same cycle as the person's regular license would have been renewed
26 until the expiration of the five-year probationary status period
27 imposed under subsection (2) of this section.

28 (4) For each original issue or renewal of a probationary license
29 under this section, the department shall charge a fee of fifty dollars
30 in addition to any other licensing fees required. Except for when
31 renewing a probationary license, the department shall waive the fifty-
32 dollar fee if the person has a probationary license in his or her
33 possession at the time a new probationary license is required.

34 (5) A probationary license shall enable the department and law
35 enforcement personnel to determine that the person is on probationary
36 status. The fact that a person's driving privilege is in probationary
37 status or that the person has been issued a probationary license shall
38 not be a part of the person's record that is available to insurance
39 companies.

1 **Sec. 8.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are
2 each reenacted and amended to read as follows:

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

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

10 (i) By imprisonment for not less than one day nor more than one
11 year. Twenty-four consecutive hours of the imprisonment may not be
12 suspended or deferred unless the court finds that the imposition of
13 this mandatory minimum sentence would impose a substantial risk to the
14 offender's physical or mental well-being. Whenever the mandatory
15 minimum sentence is suspended or deferred, the court shall state in
16 writing the reason for granting the suspension or deferral and the
17 facts upon which the suspension or deferral is based; and

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

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

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

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

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

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

7 (iii) By revocation of the offender's license or permit to drive,
8 or suspension of any nonresident privilege to drive, for a period of
9 one year. The period of license, permit, or privilege suspension may
10 not be suspended. The court shall notify the department of licensing
11 of the conviction, and upon receiving notification of the conviction
12 the department shall suspend the offender's license, permit, or
13 privilege.

14 (2) A person who is convicted of a violation of RCW 46.61.502 or
15 46.61.504 and who has one prior offense (~~within five years~~) shall be
16 punished as follows:

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

21 (i) By imprisonment for not less than thirty days nor more than one
22 year. Thirty days of the imprisonment may not be suspended or deferred
23 unless the court finds that the imposition of this mandatory minimum
24 sentence would impose a substantial risk to the offender's physical or
25 mental well-being. Whenever the mandatory minimum sentence is
26 suspended or deferred, the court shall state in writing the reason for
27 granting the suspension or deferral and the facts upon which the
28 suspension or deferral is based; and

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

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

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

5 (i) By imprisonment for not less than forty-five days nor more than
6 one year. Forty-five days of the imprisonment may not be suspended or
7 deferred unless the court finds that the imposition of this mandatory
8 minimum sentence would impose a substantial risk to the offender's
9 physical or mental well-being. Whenever the mandatory minimum sentence
10 is suspended or deferred, the court shall state in writing the reason
11 for granting the suspension or deferral and the facts upon which the
12 suspension or deferral is based; and

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

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

24 (3) A person who is convicted of a violation of RCW 46.61.502 or
25 46.61.504 and who has two or more prior offenses (~~within five years~~)
26 shall be punished as follows:

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

31 (i) By imprisonment for not less than ninety days nor more than one
32 year. Ninety days of the imprisonment may not be suspended or deferred
33 unless the court finds that the imposition of this mandatory minimum
34 sentence would impose a substantial risk to the offender's physical or
35 mental well-being. Whenever the mandatory minimum sentence is
36 suspended or deferred, the court shall state in writing the reason for
37 granting the suspension or deferral and the facts upon which the
38 suspension or deferral is based; and

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

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

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

16 (i) By imprisonment for not less than one hundred twenty days nor
17 more than one year. One hundred twenty days of the imprisonment may
18 not be suspended or deferred unless the court finds that the imposition
19 of this mandatory minimum sentence would impose a substantial risk to
20 the offender's physical or mental well-being. Whenever the mandatory
21 minimum sentence is suspended or deferred, the court shall state in
22 writing the reason for granting the suspension or deferral and the
23 facts upon which the suspension or deferral is based; and

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

28 (iii) By revocation of the offender's license or permit to drive,
29 or suspension of any nonresident privilege to drive, for a period of
30 four years. The period of license, permit, or privilege revocation may
31 not be suspended. The court shall notify the department of licensing
32 of the conviction, and upon receiving notification of the conviction
33 the department shall revoke the offender's license, permit, or
34 privilege.

35 (4) In exercising its discretion in setting penalties within the
36 limits allowed by this section, the court shall particularly consider
37 whether the person's driving at the time of the offense was responsible
38 for injury or damage to another or another's property.

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

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

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

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

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

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

3 (8)((+a)) A "prior offense" means any of the following:

4 ((+i)) (a) A conviction for a violation of RCW 46.61.502 or an
5 equivalent local ordinance;

6 ((+ii)) (b) A conviction for a violation of RCW 46.61.504 or an
7 equivalent local ordinance;

8 ((+iii)) (c) A conviction for a violation of RCW 46.61.520
9 committed while under the influence of intoxicating liquor or any drug;

10 ((+iv)) (d) A conviction for a violation of RCW 46.61.522
11 committed while under the influence of intoxicating liquor or any drug;

12 ((+v)) (e) A conviction for a violation of RCW 46.61.5249 or
13 9A.36.050, or an equivalent local ordinance, if the conviction is the
14 result of a charge that was originally filed as a violation of RCW
15 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
16 46.61.520 or 46.61.522;

17 ((+vi)) (f) An out-of-state conviction for a violation that would
18 have been a violation of (a)((+i)), ((+ii)) (b), ((+iii)) (c),
19 ((+iv)) (d), or ((+v)) (e) of this subsection if committed in this
20 state;

21 ((+vii)) (g) A deferred prosecution under chapter 10.05 RCW
22 granted in a prosecution for a violation of RCW 46.61.502, 46.61.504,
23 or an equivalent local ordinance; or

24 ((+viii)) (h) A deferred prosecution under chapter 10.05 RCW
25 granted in a prosecution for a violation of RCW 46.61.5249, or an
26 equivalent local ordinance, if the charge under which the deferred
27 prosecution was granted was originally filed as a violation of RCW
28 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
29 46.61.520 or 46.61.522.

30 ~~((+b) "Within five years" means that the arrest for a prior offense
31 occurred within five years of the arrest for the current offense.))~~

32 **Sec. 9.** RCW 10.05.010 and 1985 c 352 s 4 are each amended to read
33 as follows:

34 In a court of limited jurisdiction a person charged with a
35 misdemeanor or gross misdemeanor may petition the court to be
36 considered for a deferred prosecution program. The petition shall be
37 filed with the court at least seven days before the date set for trial
38 but, upon a written motion and affidavit establishing good cause for

1 the delay and failure to comply with this section, the court may waive
2 this requirement subject to the defendant's reimbursement to the court
3 of the witness fees and expenses due for subpoenaed witnesses who have
4 appeared on the date set for trial.

5 A person charged with a traffic infraction, misdemeanor, or gross
6 misdemeanor under Title 46 RCW shall not be eligible for a deferred
7 prosecution program unless the court makes specific findings pursuant
8 to RCW 10.05.020. Such person shall not be eligible for a deferred
9 prosecution program more than once (~~in any five year period~~).
10 Separate offenses (~~committed more than seven days apart~~) may not be
11 consolidated in a single program.

12 **Sec. 10.** RCW 10.05.120 and 1994 c 275 s 19 are each amended to
13 read as follows:

14 (~~Upon~~) Three years after receiving proof of successful completion
15 of the two-year treatment program, but not before five years following
16 entry of the order of deferred prosecution, the court shall dismiss the
17 charges pending against the petitioner.

18 **Sec. 11.** RCW 10.05.160 and 1985 c 352 s 18 are each amended to
19 read as follows:

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

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

24 (2) Failure of the court to obtain proof of insurance or a
25 treatment plan conforming to the requirements of this chapter;

26 (3) Failure of the court to comply with the requirements of RCW
27 10.05.100;

28 (4) Failure of the evaluation facility to provide the information
29 required in RCW 10.05.040 and 10.05.050, if the defendant has been
30 referred to the facility for treatment. If an appeal on such basis is
31 successful, the trial court may consider the use of another treatment
32 facility.

33 **Sec. 12.** RCW 46.01.260 and 1997 c 66 s 11 are each amended to read
34 as follows:

35 (1) Except as provided in subsection (2) of this section, the
36 director, in his or her discretion, may destroy applications for

1 vehicle licenses, copies of vehicle licenses issued, applications for
2 drivers' licenses, copies of issued drivers' licenses, certificates of
3 title and registration or other documents, records or supporting papers
4 on file in his or her office which have been microfilmed or
5 photographed or are more than five years old. If the applications for
6 vehicle licenses are renewal applications, the director may destroy
7 such applications when the computer record thereof has been updated.

8 (2)(a) The director shall not destroy records of convictions or
9 adjudications of RCW 46.61.502, 46.61.504, 46.61.520, and 46.61.522 and
10 shall maintain such records permanently on file.

11 (b) The director shall not (~~(, within ten years from the date of~~
12 ~~conviction, adjudication, or entry of deferred prosecution,~~) destroy
13 records of the following:

14 (i) (~~(Convictions or adjudications of the following offenses: RCW~~
15 ~~46.61.502 or 46.61.504;~~

16 ~~(ii)))~~ If the offense was originally charged as one of the offenses
17 designated in (a) (~~(or (b)(i))~~) of this subsection, convictions or
18 adjudications of the following offenses: RCW 46.61.500 (~~(or)~~),
19 46.61.5249, 9A.36.050, or any other violation that was originally
20 charged as one of the offenses designated in (a) (~~(or (b)(i))~~) of this
21 subsection; or

22 (~~(iii))~~) (ii) Deferred prosecutions granted under RCW 10.05.120.

23 (c) For purposes of RCW 46.52.100 and 46.52.130, offenses subject
24 to this subsection shall be considered "alcohol-related" offenses.

25 **Sec. 13.** RCW 46.20.285 and 1996 c 199 s 5 are each amended to read
26 as follows:

27 The department shall forthwith revoke the license of any driver for
28 the period of one calendar year unless otherwise provided in this
29 section, upon receiving a record of the driver's conviction of any of
30 the following offenses, when the conviction has become final:

31 (1) For vehicular homicide the period of revocation shall be two
32 years. The revocation period shall be tolled during any period of
33 total confinement for the offense;

34 (2) Vehicular assault. The revocation period shall be tolled
35 during any period of total confinement for the offense;

36 (3) Driving a motor vehicle while under the influence of
37 intoxicating liquor or a narcotic drug, or under the influence of any
38 other drug to a degree which renders the driver incapable of safely

1 driving a motor vehicle, (~~upon a showing by the department's records~~
2 ~~that the conviction is the second such conviction for the driver within~~
3 ~~a period of five years. Upon a showing that the conviction is the~~
4 ~~third such conviction for the driver within a period of five years, the~~
5 ~~period of revocation shall be two years~~) for the period prescribed in
6 RCW 46.61.5055;

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

8 (5) Failure to stop and give information or render aid as required
9 under the laws of this state in the event of a motor vehicle accident
10 resulting in the death or personal injury of another or resulting in
11 damage to a vehicle that is driven or attended by another;

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

15 (7) Reckless driving upon a showing by the department's records
16 that the conviction is the third such conviction for the driver within
17 a period of two years.

18 **Sec. 14.** RCW 46.20.391 and 1995 c 332 s 12 are each amended to
19 read as follows:

20 (1) Any person licensed under this chapter who is convicted of an
21 offense relating to motor vehicles for which suspension or revocation
22 of the driver's license is mandatory, other than vehicular homicide or
23 vehicular assault, may submit to the department an application for an
24 occupational driver's license. The department, upon receipt of the
25 prescribed fee and upon determining that the petitioner is engaged in
26 an occupation or trade that makes it essential that the petitioner
27 operate a motor vehicle, may issue an occupational driver's license and
28 may set definite restrictions as provided in RCW 46.20.394. No person
29 may petition for, and the department shall not issue, an occupational
30 driver's license that is effective during the first thirty days of any
31 suspension or revocation imposed for a violation of RCW 46.61.502 or
32 46.61.504. A person aggrieved by the decision of the department on the
33 application for an occupational driver's license may request a hearing
34 as provided by rule of the department.

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

37 (a) Within one year immediately preceding the date of the offense
38 that gave rise to the present conviction, the applicant has not

1 committed any offense relating to motor vehicles for which suspension
2 or revocation of a driver's license is mandatory; and

3 (b) (~~Within five years immediately preceding~~) Prior to the date
4 of the offense that gave rise to the present conviction, the applicant
5 has not committed any of the following offenses: (i) Driving or being
6 in actual physical control of a motor vehicle while under the influence
7 of intoxicating liquor; (ii) vehicular homicide under RCW 46.61.520; or
8 (iii) vehicular assault under RCW 46.61.522; and

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

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

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

20 NEW SECTION. Sec. 15. A new section is added to chapter 46.61 RCW
21 to read as follows:

22 (1) Immediately before the court orders a sentence, or deferred
23 prosecution under RCW 10.05.120, for any offense listed in subsection
24 (2) of this section, the court and prosecutor shall verify the
25 defendant's criminal history and driving record. The order shall
26 include specific findings as to the criminal history and driving
27 record. For purposes of this section, the criminal history shall
28 include all previous convictions and orders of deferred prosecution, as
29 reported through the judicial information system or otherwise available
30 to the court or prosecutor, current to within the periods specified in
31 subsection (3) of this section before the date of the order. For
32 purposes of this section, the driving record shall include all
33 information reported to the court by the department of licensing.

34 (2) The offenses to which this section applies are violations of
35 (a) RCW 46.61.502 or an equivalent local ordinance; (b) RCW 46.61.504
36 or an equivalent local ordinance; (c) RCW 46.61.520 committed while
37 under the influence of intoxicating liquor or any drug; (d) RCW
38 46.61.522 committed while under the influence of intoxicating liquor or

1 any drug; and (e) RCW 46.61.5249 or 9A.36.050, or an equivalent local
2 ordinance, if the conviction is the result of a charge that was
3 originally filed as a violation of RCW 46.61.502 or 46.61.504, or an
4 equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

5 (3) The periods applicable to previous convictions and orders of
6 deferred prosecution are: (a) One working day, in the case of previous
7 actions of courts that fully participate in the state judicial
8 information system; and (b) seven calendar days, in the case of
9 previous actions of courts that do not fully participate in the
10 judicial information system. For purposes of this subsection, "fully
11 participate" means regularly providing records to and receiving records
12 from the system by electronic means on a daily basis.

13 NEW SECTION. **Sec. 16.** The legislature finds that driving under
14 the influence of intoxicating liquor or any drug is a serious threat to
15 public safety and a major contributor to accidental deaths, injuries,
16 and damage to property on the public highways, streets, and roads.
17 Substantial law enforcement resources are devoted to enforcing laws
18 against this conduct and apprehending violators. The legislature
19 intends to establish and strengthen remedial measures to prevent from
20 driving persons who have driven under the influence. The impoundment
21 or forfeiture of a vehicle operated in violation of RCW 46.61.502 or
22 46.61.504 is intended to be a civil, in rem action against the vehicle
23 in order to remove it from the public highways and reduce the risk
24 posed to traffic safety by a vehicle accessible to a driver who is
25 reasonably believed to have violated these laws.

26 **Sec. 17.** RCW 46.55.113 and 1997 c 66 s 7 are each amended to read
27 as follows:

28 Whenever the driver of a vehicle is arrested for a violation of RCW
29 46.61.502 or 46.61.504, the arresting officer may take custody of the
30 vehicle and provide for its prompt removal to a place of safety, and,
31 if authorized by local ordinance or state agency rule, the vehicle is
32 subject to impoundment at the direction of a law enforcement officer.
33 In addition, a police officer may take custody of a vehicle and provide
34 for its prompt removal to a place of safety under any of the following
35 circumstances:

36 (1) Whenever a police officer finds a vehicle standing upon the
37 roadway in violation of any of the provisions of RCW 46.61.560, the

1 officer may provide for the removal of the vehicle or require the
2 driver or other person in charge of the vehicle to move the vehicle to
3 a position off the roadway;

4 (2) Whenever a police officer finds a vehicle unattended upon a
5 highway where the vehicle constitutes an obstruction to traffic or
6 jeopardizes public safety;

7 (3) Whenever a police officer finds an unattended vehicle at the
8 scene of an accident or when the driver of a vehicle involved in an
9 accident is physically or mentally incapable of deciding upon steps to
10 be taken to protect his or her property;

11 (4) Whenever the driver of a vehicle is arrested and taken into
12 custody by a police officer;

13 (5) Whenever a police officer discovers a vehicle that the officer
14 determines to be a stolen vehicle;

15 (6) Whenever a vehicle without a special license plate, card, or
16 decal indicating that the vehicle is being used to transport a disabled
17 person under RCW 46.16.381 is parked in a stall or space clearly and
18 conspicuously marked under RCW 46.61.581 which space is provided on
19 private property without charge or on public property;

20 (7) Upon determining that a person is operating a motor vehicle
21 without a valid driver's license in violation of RCW 46.20.005 or with
22 a license that has been expired for ninety days or more, or with a
23 suspended or revoked license in violation of RCW 46.20.342 or
24 46.20.420.

25 Nothing in this section may derogate from the powers of police
26 officers under the common law. For the purposes of this section, a
27 place of safety may include the business location of a registered tow
28 truck operator.

29 **Sec. 18.** RCW 46.55.120 and 1996 c 89 s 2 are each amended to read
30 as follows:

31 (1) Vehicles or other items of personal property registered or
32 titled with the department that are impounded by registered tow truck
33 operators pursuant to RCW 46.55.080, 46.55.085, or 46.55.113 may be
34 redeemed only under the following circumstances:

35 (a) Only the legal owner, the registered owner, a person authorized
36 in writing by the registered owner or the vehicle's insurer, a person
37 who is determined and verified by the operator to have the permission
38 of the registered owner of the vehicle or other item of personal

1 property registered or titled with the department, or one who has
2 purchased a vehicle or item of personal property registered or titled
3 with the department from the registered owner who produces proof of
4 ownership or written authorization and signs a receipt therefor, may
5 redeem an impounded vehicle or items of personal property registered or
6 titled with the department. In addition, any person redeeming a
7 vehicle impounded because the driver was arrested for a violation of
8 RCW 46.61.502 or 46.61.504 must prior to redemption establish with the
9 agency that ordered the vehicle impounded that he or she has a valid
10 driver's license and is in compliance with RCW 46.30.020. A vehicle
11 impounded because the driver is arrested for a violation of RCW
12 46.61.502 or 46.61.504 may be released only pursuant to a written order
13 from the agency that ordered the vehicle impounded.

14 (b) The vehicle or other item of personal property registered or
15 titled with the department shall be released upon the presentation to
16 any person having custody of the vehicle of commercially reasonable
17 tender sufficient to cover the costs of towing, storage, or other
18 services rendered during the course of towing, removing, impounding, or
19 storing any such vehicle. Commercially reasonable tender shall
20 include, without limitation, cash, major bank credit cards, or personal
21 checks drawn on in-state banks if accompanied by two pieces of valid
22 identification, one of which may be required by the operator to have a
23 photograph. If the towing firm can determine through the customer's
24 bank or a check verification service that the presented check would not
25 be paid by the bank or guaranteed by the service, the towing firm may
26 refuse to accept the check. Any person who stops payment on a personal
27 check or credit card, or does not make restitution within ten days from
28 the date a check becomes insufficient due to lack of funds, to a towing
29 firm that has provided a service pursuant to this section or in any
30 other manner defrauds the towing firm in connection with services
31 rendered pursuant to this section shall be liable for damages in the
32 amount of twice the towing and storage fees, plus costs and reasonable
33 attorney's fees.

34 (2)(a) The registered tow truck operator shall give to each person
35 who seeks to redeem an impounded vehicle, or item of personal property
36 registered or titled with the department, written notice of the right
37 of redemption and opportunity for a hearing, which notice shall be
38 accompanied by a form to be used for requesting a hearing, the name of
39 the person or agency authorizing the impound, and a copy of the towing

1 and storage invoice. The registered tow truck operator shall maintain
2 a record evidenced by the redeeming person's signature that such
3 notification was provided.

4 (b) Any person seeking to redeem an impounded vehicle under this
5 section has a right to a hearing in the district court for the
6 jurisdiction in which the vehicle was impounded to contest the validity
7 of the impoundment or the amount of towing and storage charges. The
8 district court has jurisdiction to determine the issues involving all
9 impoundments including those authorized by the state or its agents.
10 Any request for a hearing shall be made in writing on the form provided
11 for that purpose and must be received by the district court within ten
12 days of the date the opportunity was provided for in subsection (2)(a)
13 of this section. If the hearing request is not received by the
14 district court within the ten-day period, the right to a hearing is
15 waived and the registered owner is liable for any towing, storage, or
16 other impoundment charges permitted under this chapter. Upon receipt
17 of a timely hearing request, the district court shall proceed to hear
18 and determine the validity of the impoundment.

19 (3)(a) The district court, within five days after the request for
20 a hearing, shall notify the registered tow truck operator, the person
21 requesting the hearing if not the owner, the registered and legal
22 owners of the vehicle or other item of personal property registered or
23 titled with the department, and the person or agency authorizing the
24 impound in writing of the hearing date and time.

25 (b) At the hearing, the person or persons requesting the hearing
26 may produce any relevant evidence to show that the impoundment, towing,
27 or storage fees charged were not proper. The court may consider a
28 written report made under oath by the officer who authorized the
29 impoundment in lieu of the officer's personal appearance at the
30 hearing.

31 (c) At the conclusion of the hearing, the district court shall
32 determine whether the impoundment was proper, whether the towing or
33 storage fees charged were in compliance with the posted rates, and who
34 is responsible for payment of the fees. The court may not adjust fees
35 or charges that are in compliance with the posted or contracted rates.

36 (d) If the impoundment is found proper, the impoundment, towing,
37 and storage fees as permitted under this chapter together with court
38 costs shall be assessed against the person or persons requesting the
39 hearing, unless the operator did not have a signed and valid

1 impoundment authorization from a private property owner or an
2 authorized agent.

3 (e) If the impoundment is determined to be in violation of this
4 chapter, then the registered and legal owners of the vehicle or other
5 item of personal property registered or titled with the department
6 shall bear no impoundment, towing, or storage fees, and any security
7 shall be returned or discharged as appropriate, and the person or
8 agency who authorized the impoundment shall be liable for any towing,
9 storage, or other impoundment fees permitted under this chapter. The
10 court shall enter judgment in favor of the registered tow truck
11 operator against the person or agency authorizing the impound for the
12 impoundment, towing, and storage fees paid. In addition, the court
13 shall enter judgment in favor of the registered and legal owners of the
14 vehicle, or other item of personal property registered or titled with
15 the department, for reasonable damages for loss of the use of the
16 vehicle during the time the same was impounded, for not less than fifty
17 dollars per day, against the person or agency authorizing the impound.
18 However, if an impoundment arising from an alleged violation of RCW
19 46.61.502 or 46.61.504 is determined to be in violation of this
20 chapter, then the law enforcement officer directing the impoundment and
21 the local government or state agency employing the officer are not
22 liable for damages if the officer had probable cause to believe the
23 driver of the vehicle was in violation of RCW 46.61.502 or 46.61.504.
24 If any judgment entered is not paid within fifteen days of notice in
25 writing of its entry, the court shall award reasonable attorneys' fees
26 and costs against the defendant in any action to enforce the judgment.
27 Notice of entry of judgment may be made by registered or certified
28 mail, and proof of mailing may be made by affidavit of the party
29 mailing the notice. Notice of the entry of the judgment shall read
30 essentially as follows:

31 TO:
32 YOU ARE HEREBY NOTIFIED JUDGMENT was entered against you in the
33 Court located at in the sum of
34 \$., in an action entitled, Case No.
35 YOU ARE FURTHER NOTIFIED that attorneys fees and costs
36 will be awarded against you under RCW . . . if the judgment is
37 not paid within 15 days of the date of this notice.
38 DATED this day of, 19. . .

1 Signature
2 Typed name and address
3 of party mailing notice

4 (4) Any impounded abandoned vehicle or item of personal property
5 registered or titled with the department that is not redeemed within
6 fifteen days of mailing of the notice of custody and sale as required
7 by RCW 46.55.110(2) shall be sold at public auction in accordance with
8 all the provisions and subject to all the conditions of RCW 46.55.130.
9 A vehicle or item of personal property registered or titled with the
10 department may be redeemed at any time before the start of the auction
11 upon payment of the applicable towing and storage fees.

12 **Sec. 19.** RCW 46.61.5058 and 1995 c 332 s 6 are each amended to
13 read as follows:

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

31 ~~(a) A vehicle encumbered by a bona fide security interest may be~~
32 ~~transferred to the secured party or to a person designated by the~~
33 ~~secured party;~~

34 ~~(b) A leased or rented vehicle may be transferred to the lessor,~~
35 ~~rental agency, or to a person designated by the lessor or rental~~
36 ~~agency; and~~

37 ~~(c) A vehicle may be transferred to a third party or a vehicle~~
38 ~~dealer who is a bona fide purchaser or may be subject to a bona fide~~

1 security interest in the vehicle unless it is established that (i) in
2 the case of a purchase by a third party or vehicle dealer, such party
3 or dealer had actual notice that the vehicle was subject to the
4 prohibition prior to the purchase, or (ii) in the case of a security
5 interest, the holder of the security interest had actual notice that
6 the vehicle was subject to the prohibition prior to the encumbrance of
7 title.

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

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

21 (4) Seizure under subsection (3) of this section automatically
22 commences proceedings for forfeiture. The law enforcement agency under
23 whose authority the seizure was made shall cause notice of the seizure
24 and)) If a vehicle is impounded because the operator is arrested for a
25 violation of RCW 46.61.502 or 46.61.504, the vehicle may be held for up
26 to fifteen days at the written direction of the agency ordering the
27 vehicle impounded and must not be released until a person eligible to
28 redeem it under RCW 46.55.120(1)(a) pays all towing, removal, and
29 storage fees, notwithstanding the fact that the impoundment was ordered
30 by a government agency. However, if the department's records show that
31 the operator has a prior offense, as defined in RCW 46.61.5055(8), and
32 the operator has a financial interest in the vehicle, the vehicle is
33 subject to forfeiture. If the vehicle is forfeited, then the
34 forfeiting agency shall pay all the impoundment, towing, and storage
35 fees for the vehicle and shall be entitled to recover those fees from
36 the operator of the forfeited vehicle, including any attorneys' fees,
37 costs of collection, and interest at the statutory rate for judgment
38 interest from the date of payment by the agency of such fees.

1 (2) A forfeiture proceeding is commenced by the law enforcement
2 agency causing notice of the intended forfeiture of the seized vehicle
3 to be served ((within fifteen)) not less than ten days after the
4 seizure on the registered tow truck operator that impounded the
5 vehicle, on the owner of the vehicle seized, on the person in charge of
6 the vehicle when it was seized, and on any person having a known right
7 or interest in the vehicle, including a community property interest.
8 The notice ((of seizure)) may be served by any method authorized by law
9 or court rule, including but not limited to service by certified mail
10 with return receipt requested. Service by mail is complete upon
11 mailing ((within the fifteen day period after the seizure)). Notice
12 ((of seizure)) in the case of ((property)) a vehicle subject to a
13 security interest that has been perfected on a certificate of title
14 shall be made by service upon the secured party or the secured party's
15 assignee at the address shown on the financing statement ((or)), the
16 certificate of title, or the transitional ownership record. Once the
17 registered tow truck operator that impounded the vehicle receives
18 notice, the vehicle must not be released except upon written order of
19 the chief law enforcement officer of the agency directing the
20 impoundment or his or her designee, an administrative law judge, or a
21 court.

22 ((+5)) (3) If no person notifies the seizing law enforcement
23 agency in writing of the person's claim of ownership or right to
24 possession of the seized vehicle within forty-five days of the seizure,
25 the vehicle is deemed forfeited.

26 ((+6)) (4) If a person notifies the seizing law enforcement agency
27 in writing of the person's claim of ownership or right to possession of
28 the seized vehicle within forty-five days of the seizure, the law
29 enforcement agency shall give the person or persons a reasonable
30 opportunity to be heard as to the claim or right. At the hearing, if
31 the seizing agency proves by a preponderance of the evidence that the
32 vehicle was operated by a person in violation of RCW 46.61.502 or
33 46.61.504, and that person has a prior offense as defined in RCW
34 46.61.5055(8), and has an ownership interest in the vehicle, then the
35 vehicle shall be forfeited. The hearing shall be before the chief law
36 enforcement officer of the seizing agency or the chief law enforcement
37 officer's designee, except where the seizing agency is a state agency
38 as defined in RCW 34.12.020, the hearing shall be before the chief law
39 enforcement officer of the seizing agency or an administrative law

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

24 ~~((+7))~~ (5) When a vehicle is forfeited under this chapter the
25 seizing law enforcement agency may sell the vehicle, retain it for
26 official use, or upon application by a law enforcement agency of this
27 state release the vehicle to that agency for the exclusive use of
28 enforcing this title; provided, however, that the agency shall first
29 satisfy any bona fide ~~((security interest to which the vehicle is~~
30 ~~subject under subsection (1)(a) or (c) of this section))~~ community
31 property interest in the vehicle of a person other than the person
32 whose operation of the vehicle in violation of RCW 46.61.502 or
33 46.61.504 led to the forfeiture, and any bona fide security interest to
34 which the vehicle is subject. The community property interest shall be
35 calculated as one-half of the sale price of a vehicle sold at auction,
36 or one-half of the fair market value of a vehicle retained or otherwise
37 disposed of, without deduction of towing, removal, and storage fees.

38 ~~((+8))~~ (6) When a vehicle is forfeited, the seizing agency shall
39 keep a record indicating the identity of the prior owner, if known, a

1 description of the vehicle, the disposition of the vehicle, the value
2 of the vehicle at the time of seizure, and the amount of proceeds
3 realized from disposition of the vehicle.

4 ~~((+9))~~ (7) Each seizing agency shall retain records of forfeited
5 vehicles for at least seven years.

6 ~~((+10))~~ (8) Each seizing agency shall file a report including a
7 copy of the records of forfeited vehicles with the state treasurer each
8 calendar quarter.

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

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

18 ~~((+13))~~ (11) The net proceeds of a forfeited vehicle is the value
19 of the forfeitable interest in the vehicle after deducting the cost of
20 satisfying a bona fide community property and security interest to
21 which the vehicle is subject at the time of seizure and all towing,
22 removal, and storage fees; and in the case of a sold vehicle, after
23 deducting the cost of sale, including reasonable fees or commissions
24 paid to independent selling agents.

25 ~~((+14))~~ (12) The value of a sold forfeited vehicle is the sale
26 price. The value of a retained forfeited vehicle is the fair market
27 value of the vehicle at the time of seizure, determined when possible
28 by reference to an applicable commonly used index, such as the index
29 used by the department of licensing. A seizing agency may, but need
30 not, use an independent qualified appraiser to determine the value of
31 retained vehicles. If an appraiser is used, the value of the vehicle
32 appraised is net of the cost of the appraisal.

33 (13) When a vehicle is forfeited under this chapter, the seizing
34 law enforcement agency shall send to the department a copy of the order
35 of forfeiture. Upon receipt of that order, the department shall cancel
36 the registration and license plates of the vehicle. A new registration
37 and license plates may be issued for the vehicle only to: (a) A person
38 who purchases the vehicle from the seizing law enforcement agency; (b)

1 the seizing law enforcement agency; or (c) another law enforcement
2 agency.

3 (14) Notwithstanding RCW 46.52.120(2), in any hearing under this
4 section to contest the validity of the forfeiture, an abstract of the
5 person's driving record may be admitted as and is prima facie evidence
6 that the person was convicted of each offense shown by the abstract.
7 In addition, a certified vehicle registration of the vehicle sought to
8 be forfeited shall be admissible without further evidentiary
9 foundation.

10 (15) No determination of facts made by a person conducting a
11 hearing under this section or RCW 46.55.120 shall have any collateral
12 estoppel effect on a subsequent criminal prosecution, and such a
13 determination shall not preclude litigation of those same facts in a
14 subsequent criminal prosecution.

15 **Sec. 20.** RCW 46.12.240 and 1987 c 388 s 8 are each amended to read
16 as follows:

17 (1) The suspension, revocation, cancellation, or refusal by the
18 director of any license or certificate provided for in chapters 46.12
19 and 46.16 RCW is conclusive unless the person whose license or
20 certificate is suspended, revoked, canceled, or refused appeals to the
21 superior court of Thurston county, or at his option to the superior
22 court of the county of his residence, for the purpose of having the
23 suspension, revocation, cancellation, or refusal of the license or
24 certificate set aside. Notice of appeal must be filed within ten days
25 after receipt of the notice of suspension, revocation, cancellation, or
26 refusal. Upon the filing of the notice of appeal the court shall issue
27 an order to the director to show cause why the license should not be
28 granted or reinstated, which order shall be returnable not less than
29 ten days after the date of service thereof upon the director. Service
30 shall be in the manner prescribed for service of summons and complaint
31 in other civil actions. Upon the hearing on the order to show cause,
32 the court shall hear evidence concerning matters with reference to the
33 suspension, revocation, cancellation, or refusal of the license or
34 certificate and shall enter judgment either affirming or setting aside
35 the suspension, revocation, cancellation, or refusal.

1 (2) This section does not apply to vehicle registration
2 cancellations under RCW ((~~46.16.710 through 46.16.760~~) 46.61.5058(13)).

--- END ---