

---

**ENGROSSED SUBSTITUTE SENATE BILL 6475**

---

**State of Washington**

**55th Legislature**

**1998 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Roach, Fairley, Patterson, Kline, Haugen, McAuliffe, Goings, Kohl, Rasmussen and Oke; by request of Governor Locke)

Read first time 01/29/98.

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 46.61.503, 46.61.504, 46.61.506, 88.12.025, 46.20.355, 10.05.100,  
4 10.05.010, 10.05.120, 10.05.160, 46.01.260, 46.20.285, 46.20.391, and  
5 46.12.240; reenacting and amending RCW 46.61.5055; adding a new section  
6 to chapter 46.61 RCW; creating a new section; and prescribing  
7 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 violation of RCW 46.61.503 in his  
8 or her system and being under the age of twenty-one. However, in those  
9 instances where the person is incapable due to physical injury,  
10 physical incapacity, or other physical limitation, of providing a  
11 breath sample or where the person is being treated in a hospital,  
12 clinic, doctor's office, emergency medical vehicle, ambulance, or other  
13 similar facility in which a breath testing instrument is not present or  
14 where the officer has reasonable grounds to believe that the person is  
15 under the influence of a drug, a blood test shall be administered by a  
16 qualified person as provided in RCW 46.61.506(4). The officer shall  
17 inform the person of his or her right to refuse the breath or blood  
18 test, and of his or her right to have additional tests administered by  
19 any qualified person of his or her choosing as provided in RCW  
20 46.61.506. The officer shall warn the 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  
28 violation of RCW 46.61.503 in the case of a person under age twenty-  
29 one; and

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

32 (3) Except as provided in this section, the test administered shall  
33 be of the breath only. If an individual is unconscious or is under  
34 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
35 or vehicular assault as provided in RCW 46.61.522, or if an individual  
36 is under arrest for the crime of driving while under the influence of  
37 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
38 results from an accident in which there has been serious bodily injury

1 to another person, a breath or blood test may be administered without  
2 the consent of the individual so arrested.

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

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

14 (6) If, after arrest and after the other applicable conditions and  
15 requirements of this section have been satisfied, a test or tests of  
16 the person's blood or breath is administered and the test results  
17 indicate that the alcohol concentration of the person's breath or blood  
18 is ~~((0.10))~~ 0.08 or more if the person is age twenty-one or over, or is  
19 ~~((0.02 or more))~~ in violation of RCW 46.61.503 if the person is under  
20 the age of twenty-one, or the person refuses to submit to a test, the  
21 arresting officer or other law enforcement officer at whose direction  
22 any test has been given, or the department, where applicable, if the  
23 arrest results in a test of the person's blood, shall:

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

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

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

34 (d) Serve notice in writing that the marked license or permit, if  
35 any, is a temporary license that is valid for sixty days from the date  
36 of arrest or from the date notice has been given in the event notice is  
37 given by the department following a blood test, or until the  
38 suspension, revocation, or denial of the person's license, permit, or  
39 privilege to drive is sustained at a hearing pursuant to subsection (8)

1 of this section, whichever occurs first. No temporary license is valid  
2 to any greater degree than the license or permit that it replaces; and

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

7 (i) That the officer had reasonable grounds to believe the arrested  
8 person had been driving or was in actual physical control of a motor  
9 vehicle within this state while under the influence of intoxicating  
10 liquor or drugs, or both, or was under the age of twenty-one years and  
11 had been driving or was in actual physical control of a motor vehicle  
12 while having an alcohol concentration of ~~((0.02 or more))~~ in violation  
13 of RCW 46.61.503;

14 (ii) That after receipt of the warnings required by subsection (2)  
15 of this section the person refused to submit to a test of his or her  
16 blood or breath, or a test was administered and the results indicated  
17 that the alcohol concentration of the person's breath or blood was  
18 ~~((0.10))~~ 0.08 or more if the person is age twenty-one or over, or was  
19 ~~((0.02 or more))~~ in violation of RCW 46.61.503 if the person is under  
20 the age of twenty-one; and

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

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

33 (8) A person receiving notification under subsection (6)(b) of this  
34 section may, within thirty days after the notice has been given,  
35 request in writing a formal hearing before the department. The person  
36 shall pay a fee of one hundred dollars as part of the request. If the  
37 request is mailed, it must be postmarked within thirty days after  
38 receipt of the notification. Upon timely receipt of such a request for  
39 a formal hearing, including receipt of the required one hundred dollar

1 fee, the department shall afford the person an opportunity for a  
2 hearing. Except as otherwise provided in this section, the hearing is  
3 subject to and shall be scheduled and conducted in accordance with RCW  
4 46.20.329 and 46.20.332. The hearing shall be conducted in the county  
5 of the arrest, except that all or part of the hearing may, at the  
6 discretion of the department, be conducted by telephone or other  
7 electronic means. The hearing shall be held within sixty days  
8 following the arrest or following the date notice has been given in the  
9 event notice is given by the department following a blood test, unless  
10 otherwise agreed to by the department and the person, in which case the  
11 action by the department shall be stayed, and any valid temporary  
12 license marked under subsection (6)(c) of this section extended, if the  
13 person is otherwise eligible for licensing. For the purposes of this  
14 section, the scope of the hearing shall cover the issues of whether a  
15 law enforcement officer had reasonable grounds to believe the person  
16 had been driving or was in actual physical control of a motor vehicle  
17 within this state while under the influence of intoxicating liquor or  
18 any drug or had been driving or was in actual physical control of a  
19 motor vehicle within this state while having alcohol in his or her  
20 system in a concentration of ((0.02 or more)) in violation of RCW  
21 46.61.503 and was under the age of twenty-one, whether the person was  
22 placed under arrest, and (a) whether the person refused to submit to  
23 the test or tests upon request of the officer after having been  
24 informed that such refusal would result in the revocation of the  
25 person's license, permit, or privilege to drive, or (b) if a test or  
26 tests were administered, whether the applicable requirements of this  
27 section were satisfied before the administration of the test or tests,  
28 whether the person submitted to the test or tests, or whether a test  
29 was administered without express consent as permitted under this  
30 section, and whether the test or tests indicated that the alcohol  
31 concentration of the person's breath or blood was ((0.10)) 0.08 or more  
32 if the person was age twenty-one or over at the time of the arrest, or  
33 was ((0.02 or more)) in violation of RCW 46.61.503 if the person was  
34 under the age of twenty-one at the time of the arrest. The sworn  
35 report or report under a declaration authorized by RCW 9A.72.085  
36 submitted by a law enforcement officer is prima facie evidence that the  
37 officer had reasonable grounds to believe the person had been driving  
38 or was in actual physical control of a motor vehicle within this state  
39 while under the influence of intoxicating liquor or drugs, or both, or

1 the person had been driving or was in actual physical control of a  
2 motor vehicle within this state while having alcohol in his or her  
3 system in a concentration of (~~(0.02 or more)~~) in violation of RCW  
4 46.61.503 and was under the age of twenty-one and that the officer  
5 complied with the requirements of this section.

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

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

1 the court stays the suspension, revocation, or denial(~~(, or placement~~  
2 ~~in probationary status)~~) it may impose conditions on such stay.

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

27 A suspension, revocation, or denial imposed under this section,  
28 other than as a result of a breath test refusal, shall be stayed if the  
29 person is accepted for deferred prosecution as provided in chapter  
30 10.05 RCW for the incident upon which the suspension, revocation, or  
31 denial is based. If the deferred prosecution is terminated, the stay  
32 shall be lifted and the suspension, revocation, or denial reinstated.  
33 If the deferred prosecution is completed, the stay shall be lifted and  
34 the suspension, revocation, or denial canceled.

35 (11) When it has been finally determined under the procedures of  
36 this section that a nonresident's privilege to operate a motor vehicle  
37 in this state has been suspended, revoked, or denied, the department  
38 shall give information in writing of the action taken to the motor

1 vehicle administrator of the state of the person's residence and of any  
2 state in which he or she has a license.

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

5 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or  
6 deny the arrested person's license, permit, or privilege to drive as  
7 follows:

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

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

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

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

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

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

31 (3) In the case of an incident where a person under age twenty-one  
32 has submitted to or been administered a test or tests indicating that  
33 the alcohol concentration of the person's breath or blood was (~~((0.02 or  
34 more))~~) in violation of RCW 46.61.503:

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

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

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

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

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

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

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

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

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

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

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

1       **Sec. 4.** RCW 46.61.503 and 1995 c 332 s 2 are each amended to read  
2 as follows:

3       (1) Notwithstanding any other provision of this title, a person is  
4 guilty of driving a motor vehicle after consuming alcohol if the person  
5 operates a motor vehicle within this state and the person:

6       (a) Is under the age of twenty-one;

7       (b) Has, within two hours after operating the motor vehicle, an  
8 alcohol concentration of (~~0.02 or more~~) at least 0.02 but less than  
9 the concentration specified in RCW 46.61.502, as shown by analysis of  
10 the person's breath or blood made under RCW 46.61.506.

11       (2) It is an affirmative defense to a violation of subsection (1)  
12 of this section which the defendant must prove by a preponderance of  
13 the evidence that the defendant consumed a sufficient quantity of  
14 alcohol after the time of driving and before the administration of an  
15 analysis of the person's breath or blood to cause the defendant's  
16 alcohol concentration to be (~~0.02 or more~~) in violation of subsection  
17 (1) of this section within two hours after driving. The court shall  
18 not admit evidence of this defense unless the defendant notifies the  
19 prosecution prior to the earlier of: (a) Seven days prior to trial; or  
20 (b) the omnibus or pretrial hearing in the case of the defendant's  
21 intent to assert the affirmative defense.

22       (3) Analyses of blood or breath samples obtained more than two  
23 hours after the alleged driving may be used as evidence that within two  
24 hours of the alleged driving, a person had an alcohol concentration  
25 (~~of 0.02 or more~~) in violation of subsection (1) of this section.

26       (4) A violation of this section is a misdemeanor.

27       **Sec. 5.** RCW 46.61.504 and 1994 c 275 s 3 are each amended to read  
28 as follows:

29       (1) A person is guilty of being in actual physical control of a  
30 motor vehicle while under the influence of intoxicating liquor or any  
31 drug if the person has actual physical control of a vehicle within this  
32 state:

33       (a) And the person has, within two hours after being in actual  
34 physical control of the vehicle, an alcohol concentration of (~~0.10~~)  
35 0.08 or higher as shown by analysis of the person's breath or blood  
36 made under RCW 46.61.506; or

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

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

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

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

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

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

30 **Sec. 6.** RCW 46.61.506 and 1995 c 332 s 18 are each amended to read  
31 as follows:

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

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

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

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

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

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

32 **Sec. 7.** RCW 88.12.025 and 1993 c 244 s 8 are each amended to read  
33 as follows:

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

36 (2) It shall be a violation for a person to operate a vessel while  
37 under the influence of intoxicating liquor or any drug. A person is

1 considered to be under the influence of intoxicating liquor or any drug  
2 if:

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

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

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

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

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

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

24 **Sec. 8.** RCW 46.20.355 and 1995 1st sp.s. c 17 s 1 are each amended  
25 to read as follows:

26 (1) Upon ~~((placing a license, permit, or privilege to drive in  
27 probationary status under RCW 46.20.310(2)(a), or upon))~~ receipt of an  
28 abstract indicating a deferred prosecution has been granted under RCW  
29 10.05.060, or upon receipt of a notice of conviction of RCW 46.61.502  
30 or 46.61.504, the department of licensing shall order the person to  
31 surrender any Washington state driver's license that may be in his or  
32 her possession. The department shall revoke the license, permit, or  
33 privilege to drive of any person who fails to surrender it as required  
34 by this section for one year, unless the license has been previously  
35 surrendered to the department, a law enforcement officer, or a court,  
36 or the person has completed an affidavit of lost, stolen, destroyed, or  
37 previously surrendered license, such revocation to take effect thirty  
38 days after notice is given of the requirement for license surrender.

1 (2) The department shall place a person's driving privilege in  
2 probationary status as required by RCW 10.05.060(~~(, 46.20.308,)~~) or  
3 46.61.5055 for a period of five years from the date the probationary  
4 status is required to go into effect.

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

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

25 (5) A probationary license shall enable the department and law  
26 enforcement personnel to determine that the person is on probationary  
27 status. The fact that a person's driving privilege is in probationary  
28 status or that the person has been issued a probationary license shall  
29 not be a part of the person's record that is available to insurance  
30 companies.

31 **Sec. 9.** RCW 46.61.5055 and 1997 c 229 s 11 and 1997 c 66 s 14 are  
32 each reenacted and amended to read as follows:

33 (1) A person who is convicted of a violation of RCW 46.61.502 or  
34 46.61.504 and who has no prior offense (~~(within five years)~~) shall be  
35 punished as follows:

36 (a) In the case of a person whose alcohol concentration was less  
37 than 0.15, or for whom for reasons other than the person's refusal to

1 take a test offered pursuant to RCW 46.20.308 there is no test result  
2 indicating the person's alcohol concentration:

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

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

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

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

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

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

38 (iii) By revocation of the offender's license or permit to drive,  
39 or suspension of any nonresident privilege to drive, for a period of

1 one year. The period of license, permit, or privilege suspension may  
2 not be suspended. The court shall notify the department of licensing  
3 of the conviction, and upon receiving notification of the conviction  
4 the department shall suspend the offender's license, permit, or  
5 privilege.

6 (2) A person who is convicted of a violation of RCW 46.61.502 or  
7 46.61.504 and who has one prior offense (~~within five years~~) shall be  
8 punished as follows:

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

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

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

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

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

36 (i) By imprisonment for not less than forty-five days nor more than  
37 one year. Forty-five days of the imprisonment may not be suspended or  
38 deferred unless the court finds that the imposition of this mandatory  
39 minimum sentence would impose a substantial risk to the offender's

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

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

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

16 (3) A person who is convicted of a violation of RCW 46.61.502 or  
17 46.61.504 and who has two or more prior offenses (~~within five years~~)  
18 shall be punished as follows:

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

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

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

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

1 conviction the department shall revoke the offender's license, permit,  
2 or privilege; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1       ~~((v))~~ (e) A conviction for a violation of RCW 46.61.5249,  
2 46.61.500, or 9A.36.050, or an equivalent local ordinance, if the  
3 conviction is the result of a charge that was originally filed as a  
4 violation of RCW 46.61.502 or 46.61.504, or an equivalent local  
5 ordinance, or of RCW 46.61.520 or 46.61.522;

6       ~~((vi))~~ (f) An out-of-state conviction for a violation that would  
7 have been a violation of ~~(a)((i)), ((ii))~~ (b), ~~((iii))~~ (c),  
8 ~~((iv))~~ (d), or ~~((v))~~ (e) of this subsection if committed in this  
9 state;

10       ~~((vii))~~ (g) A deferred prosecution under chapter 10.05 RCW  
11 granted in a prosecution for a violation of RCW 46.61.502, 46.61.504,  
12 or an equivalent local ordinance; or

13       ~~((viii))~~ (h) A deferred prosecution under chapter 10.05 RCW  
14 granted in a prosecution for a violation of RCW 46.61.5249, or an  
15 equivalent local ordinance, if the charge under which the deferred  
16 prosecution was granted was originally filed as a violation of RCW  
17 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
18 46.61.520 or 46.61.522.

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

21       **Sec. 10.** RCW 10.05.100 and 1985 c 352 s 13 are each amended to  
22 read as follows:

23       If a petitioner ~~((is subsequently convicted of a similar offense  
24 while in a deferred prosecution program)),~~ within five years after  
25 entry of an order of deferred prosecution, engages in conduct which  
26 results in conviction of an offense listed in RCW 46.61.5055(8), upon  
27 notice the court shall remove the petitioner's docket from the deferred  
28 prosecution file and the court shall enter judgment pursuant to RCW  
29 10.05.020.

30       **Sec. 11.** RCW 10.05.010 and 1985 c 352 s 4 are each amended to read  
31 as follows:

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

1 this requirement subject to the defendant's reimbursement to the court  
2 of the witness fees and expenses due for subpoenaed witnesses who have  
3 appeared on the date set for trial.

4 A person charged with a traffic infraction, misdemeanor, or gross  
5 misdemeanor under Title 46 RCW shall not be eligible for a deferred  
6 prosecution program unless the court makes specific findings pursuant  
7 to RCW 10.05.020. Such person shall not be eligible for a deferred  
8 prosecution program (~~((more than once in any five year period))~~) if he or  
9 she has committed a prior offense as defined in RCW 46.61.5055.  
10 Separate offenses (~~((committed more than seven days apart))~~) may not be  
11 consolidated in a single program.

12 **Sec. 12.** 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 and prosecutor  
17 shall review and verify the defendant's criminal history and driving  
18 record as provided in section 17 of this act. If the petitioner has  
19 not been arrested for or convicted of an offense listed in RCW  
20 46.61.5055(8) since entry of the order of deferred prosecution, the  
21 court shall dismiss the charges pending against the petitioner. If the  
22 defendant has been arrested for an offense listed in RCW 46.61.5055(8)  
23 since entry of the order of deferred prosecution, and there has been no  
24 disposition of the charge or charges, the court shall maintain the case  
25 in deferred prosecution status until a disposition has occurred.  
26 Unless the disposition was a conviction of an offense listed in RCW  
27 46.61.5055(8), the court shall dismiss the charges pending against the  
28 petitioner.

29 **Sec. 13.** RCW 10.05.160 and 1985 c 352 s 18 are each amended to  
30 read as follows:

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

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

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

1 (3) Failure of the court to comply with the requirements of RCW  
2 10.05.100;

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

8 (5) Defendant has committed a prior offense as defined by RCW  
9 46.61.5055.

10 **Sec. 14.** RCW 46.01.260 and 1997 c 66 s 11 are each amended to read  
11 as follows:

12 (1) Except as provided in subsection (2) of this section, the  
13 director, in his or her discretion, may destroy applications for  
14 vehicle licenses, copies of vehicle licenses issued, applications for  
15 drivers' licenses, copies of issued drivers' licenses, certificates of  
16 title and registration or other documents, records or supporting papers  
17 on file in his or her office which have been microfilmed or  
18 photographed or are more than five years old. If the applications for  
19 vehicle licenses are renewal applications, the director may destroy  
20 such applications when the computer record thereof has been updated.

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

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

27 (i) (~~Convictions or adjudications of the following offenses: RCW~~  
28 ~~46.61.502 or 46.61.504;~~

29 ~~(ii))~~ If the offense was originally charged as one of the offenses  
30 designated in (a) (~~(or (b)(i))~~) of this subsection, convictions or  
31 adjudications of the following offenses: RCW 46.61.500 (~~(or)~~),  
32 46.61.5249, 9A.36.050, or any other violation that was originally  
33 charged as one of the offenses designated in (a) (~~(or (b)(i))~~) of this  
34 subsection; or

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

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

1       **Sec. 15.** RCW 46.20.285 and 1996 c 199 s 5 are each amended to read  
2 as follows:

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

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

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

12       (3) Driving a motor vehicle while under the influence of  
13 intoxicating liquor or a narcotic drug, or under the influence of any  
14 other drug to a degree which renders the driver incapable of safely  
15 driving a motor vehicle, (~~upon a showing by the department's records  
16 that the conviction is the second such conviction for the driver within  
17 a period of five years. Upon a showing that the conviction is the  
18 third such conviction for the driver within a period of five years, the  
19 period of revocation shall be two years~~) for the period prescribed in  
20 RCW 46.61.5055;

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

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

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

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

32       **Sec. 16.** RCW 46.20.391 and 1995 c 332 s 12 are each amended to  
33 read as follows:

34       (1) Any person licensed under this chapter who is convicted of an  
35 offense relating to motor vehicles for which suspension or revocation  
36 of the driver's license is mandatory, other than vehicular homicide or  
37 vehicular assault, may submit to the department an application for an  
38 occupational driver's license. The department, upon receipt of the

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

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

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

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

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

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

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

34 NEW SECTION. Sec. 17. A new section is added to chapter 46.61 RCW  
35 to read as follows:

36 (1) Immediately before the court orders a sentence, or deferred  
37 prosecution under RCW 10.05.120, for any offense listed in subsection  
38 (2) of this section, the court and prosecutor shall verify the

1 defendant's criminal history and driving record. The order shall  
2 include specific findings as to the criminal history and driving  
3 record. For purposes of this section, the criminal history shall  
4 include all previous convictions and orders of deferred prosecution, as  
5 reported through the judicial information system or otherwise available  
6 to the court or prosecutor, current to within the periods specified in  
7 subsection (3) of this section before the date of the order. For  
8 purposes of this section, the driving record shall include all  
9 information reported to the court by the department of licensing.

10 (2) The offenses to which this section applies are violations of  
11 (a) RCW 46.61.502 or an equivalent local ordinance; (b) RCW 46.61.504  
12 or an equivalent local ordinance; (c) RCW 46.61.520 committed while  
13 under the influence of intoxicating liquor or any drug; (d) RCW  
14 46.61.522 committed while under the influence of intoxicating liquor or  
15 any drug; and (e) RCW 46.61.5249 or 9A.36.050, or an equivalent local  
16 ordinance, if the conviction is the result of a charge that was  
17 originally filed as a violation of RCW 46.61.502 or 46.61.504, or an  
18 equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

19 (3) The periods applicable to previous convictions and orders of  
20 deferred prosecution are: (a) One working day, in the case of previous  
21 actions of courts that fully participate in the state judicial  
22 information system; and (b) seven calendar days, in the case of  
23 previous actions of courts that do not fully participate in the  
24 judicial information system. For purposes of this subsection, "fully  
25 participate" means regularly providing records to and receiving records  
26 from the system by electronic means on a daily basis.

27 **Sec. 18.** RCW 46.12.240 and 1987 c 388 s 8 are each amended to read  
28 as follows:

29 (1) The suspension, revocation, cancellation, or refusal by the  
30 director of any license or certificate provided for in chapters 46.12  
31 and 46.16 RCW is conclusive unless the person whose license or  
32 certificate is suspended, revoked, canceled, or refused appeals to the  
33 superior court of Thurston county, or at his option to the superior  
34 court of the county of his residence, for the purpose of having the  
35 suspension, revocation, cancellation, or refusal of the license or  
36 certificate set aside. Notice of appeal must be filed within ten days  
37 after receipt of the notice of suspension, revocation, cancellation, or  
38 refusal. Upon the filing of the notice of appeal the court shall issue

1 an order to the director to show cause why the license should not be  
2 granted or reinstated, which order shall be returnable not less than  
3 ten days after the date of service thereof upon the director. Service  
4 shall be in the manner prescribed for service of summons and complaint  
5 in other civil actions. Upon the hearing on the order to show cause,  
6 the court shall hear evidence concerning matters with reference to the  
7 suspension, revocation, cancellation, or refusal of the license or  
8 certificate and shall enter judgment either affirming or setting aside  
9 the suspension, revocation, cancellation, or refusal.

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

12 NEW SECTION. **Sec. 19.** If this act mandates an increased level of  
13 service by local governments, the local government may, under RCW  
14 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the  
15 legislature. The claims shall be subject to verification by the office  
16 of financial management.

--- END ---