

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6047

Chapter 275, Laws of 1994

(partial veto)

53rd Legislature
1994 Regular Session

DRIVING UNDER THE INFLUENCE

EFFECTIVE DATE: 7/1/94

Passed by the Senate March 10, 1994
YEAS 45 NAYS 0

JOEL PRITCHARD

President of the Senate

Passed by the House March 10, 1994
YEAS 96 NAYS 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved April 1, 1994, with the
exception of section 35, which was
vetoed.

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
SUBSTITUTE SENATE BILL 6047 as passed
by the Senate and the House of
Representatives on the dates hereon
set forth.

MARTY BROWN

Secretary

FILED

April 1, 1994 - 2:23 p.m.

**Secretary of State
State of Washington**

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PART I - DUI PENALTIES

11 NEW SECTION. **Sec. 1.** A new section is added to chapter 46.04 RCW
 12 to read as follows:

13 "Alcohol concentration" means (1) grams of alcohol per two hundred
 14 ten liters of a person's breath, or (2) the percent by weight of
 15 alcohol in a person's blood.

16 **Sec. 2.** RCW 46.61.502 and 1993 c 328 s 1 are each amended to read
 17 as follows:

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

21 ~~(a) And the person has 0.10 grams or more of alcohol per two~~
 22 ~~hundred ten liters of breath within two hours after driving, as shown~~
 23 ~~by analysis of the person's breath made under RCW 46.61.506; or~~

24 ~~(b) And the person has 0.10 percent or more by weight of alcohol in~~
 25 ~~the person's blood within two hours after driving, as shown by analysis~~
 26 ~~of the person's blood made under RCW 46.61.506; or~~

1 ~~(c) While the person is under the influence of or affected by~~
2 ~~intoxicating liquor or any drug; or~~

3 ~~(d) While the person is under the combined influence of or affected~~
4 ~~by intoxicating liquor and any drug.~~

5 ~~(2) The fact that any person charged with a violation of this~~
6 ~~section is or has been entitled to use such drug under the laws of this~~
7 ~~state shall not constitute a defense against any charge of violating~~
8 ~~this section.~~

9 ~~(3) It is an affirmative defense to a violation of subsection (1)~~
10 ~~(a) and (b) 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 driving and before the~~
13 ~~administration of an analysis of the person's breath or blood to cause~~
14 ~~the defendant's alcohol concentration to be 0.10 or more within two~~
15 ~~hours after driving. The court shall not admit evidence of this~~
16 ~~defense unless the defendant notifies the prosecution prior to the~~
17 ~~omnibus or pretrial hearing in the case of the defendant's intent to~~
18 ~~assert the affirmative defense.~~

19 ~~(4) Analyses of blood or breath samples obtained more than two~~
20 ~~hours after the alleged driving may be used as evidence that within two~~
21 ~~hours of the alleged driving, a person had 0.10 grams or more of~~
22 ~~alcohol per two hundred ten liters of breath or 0.10 percent or more of~~
23 ~~alcohol in the person's blood, pursuant to subsection (1) (a) and (b)~~
24 ~~of this section, and may be used as evidence that a person was under~~
25 ~~the influence of or affected by intoxicating liquors or any drug~~
26 ~~pursuant to subsection (1) (c) and (d) of this section.)) A person is~~
27 ~~guilty of driving while under the influence of intoxicating liquor or~~
28 ~~any drug if the person drives a vehicle within this state:~~

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

32 ~~(b) While the person is under the influence of or affected by~~
33 ~~intoxicating liquor or any drug; or~~

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

36 ~~(2) The fact that a person charged with a violation of this section~~
37 ~~is or has been entitled to use a drug under the laws of this state~~
38 ~~shall not constitute a defense against a charge of violating this~~
39 ~~section.~~

1 (3) It is an affirmative defense to a violation of subsection
2 (1)(a) of this section which the defendant must prove by a
3 preponderance of the evidence that the defendant consumed a sufficient
4 quantity of alcohol after the time of driving and before the
5 administration of an analysis of the person's breath or blood to cause
6 the defendant's alcohol concentration to be 0.10 or more within two
7 hours after driving. The court shall not admit evidence of this
8 defense unless the defendant notifies the prosecution prior to the
9 omnibus or pretrial hearing in the case of the defendant's intent to
10 assert the affirmative defense.

11 (4) Analyses of blood or breath samples obtained more than two
12 hours after the alleged driving may be used as evidence that within two
13 hours of the alleged driving, a person had an alcohol concentration of
14 0.10 or more in violation of subsection (1)(a) of this section, and in
15 any case in which the analysis shows an alcohol concentration above
16 0.00 may be used as evidence that a person was under the influence of
17 or affected by intoxicating liquor or any drug in violation of
18 subsection (1) (b) or (c) of this section.

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

20 **Sec. 3.** RCW 46.61.504 and 1993 c 328 s 2 are each amended to read
21 as follows:

22 ~~(1) ((A person is guilty of being in actual physical control of a~~
23 ~~motor vehicle while under the influence of intoxicating liquor or any~~
24 ~~drug if the person has actual physical control of a vehicle within this~~
25 ~~state:~~

26 ~~(a) And the person has 0.10 grams or more of alcohol per two~~
27 ~~hundred ten liters of breath within two hours after being in actual~~
28 ~~physical control of a motor vehicle, as shown by analysis of the~~
29 ~~person's breath made under RCW 46.61.506; or~~

30 ~~(b) And the person has 0.10 percent or more by weight of alcohol in~~
31 ~~the person's blood within two hours after being in actual physical~~
32 ~~control of a motor vehicle, as shown by analysis of the person's blood~~
33 ~~made under RCW 46.61.506; or~~

34 ~~(c) While the person is under the influence of or affected by~~
35 ~~intoxicating liquor or any drug; or~~

36 ~~(d) While the person is under the combined influence of or affected~~
37 ~~by intoxicating liquor and any drug.~~

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

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

18 ~~(4) Analyses of blood or breath samples obtained more than two~~
19 ~~hours after the alleged actual physical control of a motor vehicle may~~
20 ~~be used as evidence that within two hours of the alleged actual~~
21 ~~physical control of a motor vehicle, a person had 0.10 grams or more of~~
22 ~~alcohol per two hundred ten liters of breath or 0.10 percent or more of~~
23 ~~alcohol in the person's blood, pursuant to subsection (1) (a) and (b)~~
24 ~~of this section, and may be used as evidence that a person was under~~
25 ~~the influence of or affected by intoxicating liquors or any drug~~
26 ~~pursuant to subsection (1) (c) and (d) of this section.)) A person is~~
27 ~~guilty of being in actual physical control of a motor vehicle while~~
28 ~~under the influence of intoxicating liquor or any drug if the person~~
29 ~~has actual physical control of a vehicle within this state:~~

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

34 ~~(b) While the person is under the influence of or affected by~~
35 ~~intoxicating liquor or any drug; or~~

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

38 ~~(2) The fact that a person charged with a violation of this section~~
39 ~~is or has been entitled to use a drug under the laws of this state does~~

1 not constitute a defense against any charge of violating this section.
2 No person may be convicted under this section if, prior to being
3 pursued by a law enforcement officer, the person has moved the vehicle
4 safely off the roadway.

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

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

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

25 NEW SECTION. Sec. 4. A new section is added to chapter 46.61 RCW
26 to read as follows:

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

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

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

13 (c) By suspension of the offender's license or permit to drive, or
14 suspension of any nonresident privilege to drive, for a period of
15 ninety days. The court may suspend all or part of the ninety-day
16 period of suspension upon a plea agreement executed by the defendant
17 and the prosecutor. The court shall notify the department of licensing
18 of the conviction and of any period of suspension and shall notify the
19 department of the person's completion of any period of suspension.
20 Upon receiving notification of the conviction, or if applicable, upon
21 receiving notification of the completion of any period of suspension,
22 the department shall issue the offender a probationary license in
23 accordance with section 8 of this act.

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

28 (a) Violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an
29 alcohol concentration of 0.15 or more; or

30 (b) Violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c)
31 and, because of the person's refusal to take a test offered pursuant to
32 RCW 46.20.308, there is no test result indicating the person's alcohol
33 concentration, is guilty of a gross misdemeanor and shall be punished
34 as follows:

35 (i) By imprisonment for not less than two days nor more than one
36 year. Forty-eight consecutive hours of the imprisonment may not be
37 suspended or deferred unless the court finds that the imposition of
38 this mandatory minimum sentence would impose a substantial risk to the
39 offender's physical or mental well-being. Whenever the mandatory

1 minimum sentence is suspended or deferred, the court shall state in
2 writing the reason for granting the suspension or deferral and the
3 facts upon which the suspension or deferral is based; and

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

8 (iii) By suspension by the department of the offender's license or
9 permit to drive, or suspension of any nonresident privilege to drive,
10 for a period of one hundred twenty days. The court shall notify the
11 department of the conviction, and upon receiving notification of the
12 conviction the department shall suspend the offender's license and
13 shall issue the offender a probationary license in accordance with
14 section 8 of this act.

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

19 (4) Upon conviction under this section, the offender's driver's
20 license is deemed to be in a probationary status for five years from
21 the date of the issuance of a probationary license under section 8 of
22 this act. Being on probationary status does not authorize a person to
23 drive during any period of license suspension imposed as a penalty for
24 the infraction.

25 (5) An offender punishable under this section is subject to the
26 alcohol assessment and treatment provisions of section 9 of this act.

27 (6)(a) In addition to any nonsuspendable and nondeferrable jail
28 sentence required by this section, whenever the court imposes less than
29 one year in jail, the court shall also suspend but shall not defer a
30 period of confinement for a period not exceeding two years. The court
31 shall impose conditions of probation that include: (i) Not driving a
32 motor vehicle within this state without a valid license to drive and
33 proof of financial responsibility for the future; (ii) not driving a
34 motor vehicle within this state while having an alcohol concentration
35 of 0.08 or more within two hours after driving; and (iii) not refusing
36 to submit to a test of his or her breath or blood to determine alcohol
37 concentration upon request of a law enforcement officer who has
38 reasonable grounds to believe the person was driving or was in actual
39 physical control of a motor vehicle within this state while under the

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

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

10 (c) For each incident involving a violation of a mandatory
11 condition of probation imposed under this subsection, the license,
12 permit, or privilege to drive of the person shall be suspended by the
13 court for thirty days or, if such license, permit, or privilege to
14 drive already is suspended, revoked, or denied at the time the finding
15 of probation violation is made, the suspension, revocation, or denial
16 then in effect shall be extended by thirty days. The court shall
17 notify the department of any suspension, revocation, or denial or any
18 extension of a suspension, revocation, or denial imposed under this
19 subsection.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 46.61 RCW
21 to read as follows:

22 (1) A person whose driver's license is in a probationary status and
23 who violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an
24 alcohol concentration of at least 0.10 but less than 0.15 is guilty of
25 a gross misdemeanor and shall be punished as follows:

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

34 (b) 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

1 (c) By suspension of the offender's license or permit to drive, or
2 suspension of any nonresident privilege to drive, for a period of one
3 year. The court shall notify the department of the conviction, and
4 upon receiving notification the department shall suspend the offender's
5 license and shall issue the offender a probationary license in
6 accordance with section 8 of this act.

7 (2) A person whose driver's license is in a probationary status and
8 who either:

9 (a) Violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an
10 alcohol concentration of 0.15 or more; or

11 (b) Violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c)
12 and, because of the person's refusal to take a test offered pursuant to
13 RCW 46.20.308, there is no test result indicating the person's alcohol
14 concentration, is guilty of a gross misdemeanor and shall be punished
15 as follows:

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

24 (ii) By a fine of not less than seven hundred fifty dollars nor
25 more than five thousand dollars. Seven hundred fifty dollars of the
26 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 or
29 of any nonresident privilege to drive, for a period of four hundred
30 fifty days. The court shall notify the department of the conviction,
31 and upon receiving notification of the conviction the department shall
32 revoke the offender's license, and upon determining that the offender
33 is otherwise qualified in accordance with RCW 46.20.311, the department
34 shall issue the offender a probationary license in accordance with
35 section 8 of this act.

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

1 (4) An offender punishable under this section is subject to the
2 alcohol assessment and treatment provisions of section 9 of this act.
3 An offender punishable under subsection (1) or (2) of this section is
4 subject to the vehicle seizure and forfeiture provisions of RCW
5 46.61.511. No offender punishable under this section is eligible for
6 an occupational license under RCW 46.20.391.

7 (5)(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, alcohol or drug treatment,
22 supervised probation, or other conditions that may be appropriate. The
23 sentence may be imposed in whole or in part upon violation of a
24 condition of probation during the suspension period.

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

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

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 46.61 RCW
2 to read as follows:

3 (1) A person who violates RCW 46.61.502 or 46.61.504 and who either
4 has a driver's license in a suspended or revoked status or who has been
5 convicted under section 5 of this act or RCW 46.61.502 or 46.61.504 of
6 an offense that was committed within five years before the commission
7 of the current violation, is guilty of a gross misdemeanor and shall be
8 punished as follows:

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

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

21 (c) By revocation by the department of licensing of the offender's
22 license or permit to drive or of any nonresident privilege to drive,
23 for a period of two years. The court shall notify the department of
24 the conviction, and upon receiving notification of the conviction the
25 department shall revoke the offender's license. Following the
26 revocation and upon determining that the offender is otherwise
27 qualified in accordance with RCW 46.20.311, the department shall issue
28 the offender a probationary license in accordance with section 8 of
29 this act.

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

34 (3) An offender punishable under this section is subject to the
35 alcohol assessment and treatment provisions of section 9 of this act.
36 An offender punishable under this section is subject to the vehicle
37 seizure and forfeiture provisions of RCW 46.61.511. No offender
38 punishable under this section is eligible for an occupational license
39 under RCW 46.20.391.

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

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

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

33 NEW SECTION. **Sec. 7.** A new section is added to chapter 46.61 RCW
34 to read as follows:

35 (1)(a) In addition to penalties set forth in sections 4 through 6
36 of this act, a one hundred twenty-five dollar fee shall be assessed to
37 a person who is either convicted, sentenced to a lesser charge, or
38 given deferred prosecution, as a result of an arrest for violating RCW

1 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the
2 purpose of funding the Washington state toxicology laboratory and the
3 Washington state patrol breath test program.

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

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

14 (2) The fee assessed under subsection (1) of this section shall be
15 collected by the clerk of the court and distributed as follows:

16 (a) Forty percent shall be subject to distribution under RCW
17 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

18 (b) If the case involves a blood test by the state toxicology
19 laboratory, the remainder of the fee shall be forwarded to the state
20 treasurer for deposit in the death investigations account to be used
21 solely for funding the state toxicology laboratory blood testing
22 program.

23 (c) Otherwise, the remainder of the fee shall be forwarded to the
24 state treasurer for deposit in the state patrol highway account to be
25 used solely for funding the Washington state patrol breath test
26 program.

27

PART II - PROBATIONARY LICENSES

28 NEW SECTION. **Sec. 8.** A new section is added to chapter 46.61 RCW
29 to read as follows:

30 (1) Upon notification of a conviction under RCW 46.61.502 or
31 46.61.504 for which the issuance of a probationary driver's license is
32 required, or upon receipt of an abstract indicating a deferred
33 prosecution has been granted under RCW 10.05.060, the department of
34 licensing shall order the person to surrender his or her license. The
35 department shall revoke the license of any person who fails to
36 surrender it as required by this section.

1 (2) Upon receipt of the surrendered license, and following the
2 expiration of any period of license suspension or revocation, or
3 following receipt of a sworn statement under section 12 of this act
4 that requires issuance of a probationary license, the department shall
5 issue the person a probationary license if otherwise qualified. The
6 probationary license shall be renewed on the same cycle as the person's
7 regular license would have been renewed until five years after the date
8 of its issuance.

9 (3) For each issue or reissue of a license under this section, the
10 department may charge the fee authorized under RCW 46.20.311 for the
11 reissuance of a license following a revocation for a violation of RCW
12 46.61.502 or 46.61.504.

13 (4) A probationary license shall enable the department and law
14 enforcement personnel to determine that the person is on probationary
15 status, including the period of that status, for a violation of RCW
16 46.61.502 or 46.61.504 or section 12 of this act. That fact that a
17 person has been issued a probationary license shall not be a part of
18 the person's record that is available to insurance companies.

19 **PART III - ASSESSMENT AND TREATMENT**

20 NEW SECTION. **Sec. 9.** A new section is added to chapter 46.61 RCW
21 to read as follows:

22 (1) A person subject to alcohol assessment and treatment under
23 section 4, 5, or 6 of this act shall be required by the court to
24 complete a course in an alcohol information school approved by the
25 department of social and health services or to complete more intensive
26 treatment in a program approved by the department of social and health
27 services, as determined by the court. The court shall notify the
28 department of licensing whenever it orders a person to complete a
29 course or treatment program under this section.

30 (2) A diagnostic evaluation and treatment recommendation shall be
31 prepared under the direction of the court by an alcoholism agency
32 approved by the department of social and health services or a qualified
33 probation department approved by the department of social and health
34 services. A copy of the report shall be forwarded to the department of
35 licensing. Based on the diagnostic evaluation, the court shall
36 determine whether the person shall be required to complete a course in
37 an alcohol information school approved by the department of social and

1 health services or more intensive treatment in a program approved by
2 the department of social and health services.

3 (3) Standards for approval for alcohol treatment programs shall be
4 prescribed by the department of social and health services. The
5 department of social and health services shall periodically review the
6 costs of alcohol information schools and treatment programs.

7 (4) Any agency that provides treatment ordered under section 4, 5,
8 or 6 of this act, shall immediately report to the appropriate probation
9 department where applicable, otherwise to the court, and to the
10 department of licensing any noncompliance by a person with the
11 conditions of his or her ordered treatment. The court shall notify the
12 department of licensing and the department of social and health
13 services of any failure by an agency to so report noncompliance. Any
14 agency with knowledge of noncompliance that fails to so report shall be
15 fined two hundred fifty dollars by the department of social and health
16 services. Upon three such failures by an agency within one year, the
17 department of social and health services shall revoke the agency's
18 approval under this section.

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

22 **PART IV - ADMINISTRATIVE REVOCATION**

23 NEW SECTION. **Sec. 10.** A new section is added to chapter 46.20 RCW
24 to read as follows:

25 (1) Notwithstanding any other provision of this title, a person
26 under the age of twenty-one may not drive, operate, or be in physical
27 control of a motor vehicle while having alcohol in his or her system in
28 a concentration of 0.02 or above.

29 (2) A person under the age of twenty-one who drives or is in
30 physical control of a motor vehicle within this state is deemed to have
31 given consent, subject to the relevant portions of RCW 46.61.506, to be
32 detained long enough, and be transported if necessary, to take a test
33 or tests of that person's blood or breath for the purpose of
34 determining the alcohol concentration in his or her system.

35 (3) A test or tests may be administered at the direction of a law
36 enforcement officer, who after stopping or detaining the driver, has
37 reasonable grounds to believe that the driver was driving or in actual

1 physical control of a motor vehicle while having alcohol in his or her
2 system.

3 (4) The law enforcement officer requesting the test or tests under
4 subsection (2) of this section shall warn the person requested to
5 submit to the test that a refusal to submit will result in that
6 person's driver's license or driving privilege being revoked.

7 (5) If the person refuses testing, or submits to a test that
8 discloses an alcohol concentration of 0.02 or more, the law enforcement
9 officer shall:

10 (a) Serve the person notice in writing on behalf of the department
11 of licensing of its intention to suspend, revoke, or deny the person's
12 license, permit, or privilege to drive;

13 (b) Serve the person notice in writing on behalf of the department
14 of licensing of the person's right to a hearing, specifying the steps
15 required to obtain a hearing;

16 (c) Confiscate the person's Washington state license or permit to
17 drive, if any, and issue a temporary license to replace any confiscated
18 license or permit. The temporary license shall be valid for thirty
19 days from the date of the traffic stop or until the suspension or
20 revocation of the person's license or permit is sustained at a hearing
21 as provided by subsection (7) of this section, whichever occurs first.
22 No temporary license is valid to any greater degree than the license or
23 permit it replaces;

24 (d) Notify the department of licensing of the traffic stop, and
25 transmit to the department any confiscated license or permit and a
26 sworn report stating:

27 (i) That the officer had reasonable grounds to believe the person
28 was driving or in actual physical control of a motor vehicle within
29 this state with alcohol in his or her system;

30 (ii) That pursuant to this section a test of the person's alcohol
31 concentration was administered or that the person refused to be tested;

32 (iii) If administered, that the test indicated the person's alcohol
33 concentration was 0.02 or higher; and

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

35 (6) Upon receipt of the sworn report of a law enforcement officer
36 under subsection (5) of this section, the department shall suspend or
37 revoke the driver's license or driving privilege beginning thirty days
38 from the date of the traffic stop or beginning when the suspension,
39 revocation, or denial is sustained at a hearing as provided by

1 subsection (7) of this section. Within fifteen days after notice of a
2 suspension or revocation has been given, the person may, in writing,
3 request a formal hearing. If such a request is not made within the
4 prescribed time the right to a hearing is waived. Upon receipt of such
5 request, the department shall afford the person an opportunity for a
6 hearing as provided in RCW 46.20.329 and 46.20.332. The hearing shall
7 be conducted in the county of the arrest. For the purposes of this
8 section, the hearing shall cover the issues of whether a law
9 enforcement officer had reasonable grounds to believe the person had
10 been driving or was in actual physical control of a motor vehicle
11 within this state while having alcohol in his or her system, whether
12 the person refused to submit to the test or tests upon request of the
13 officer after having been informed that the refusal would result in the
14 revocation of the person's driver's license or driving privilege, and,
15 if the test or tests of the person's breath or blood was administered,
16 whether the results indicated an alcohol concentration of 0.02 or more.
17 The department shall order that the suspension or revocation of the
18 person's driver's license or driving privilege either be rescinded or
19 sustained. Any decision by the department suspending or revoking a
20 person's driver's license or driving privilege is stayed and does not
21 take effect while a formal hearing is pending under this section or
22 during the pendency of a subsequent appeal to superior court so long as
23 there is no conviction for a moving violation or no finding that the
24 person has committed a traffic infraction that is a moving violation
25 during the pendency of the hearing and appeal. If the suspension or
26 revocation of the person's driver's license or driving privilege is
27 sustained after the hearing, the person may file a petition in the
28 superior court of the county of arrest to review the final order of
29 suspension or revocation by the department in the manner provided in
30 RCW 46.20.334.

31 (7) The department shall suspend or revoke the driver's license or
32 driving privilege of a person as required by this section as follows:

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

34 (i) For a first refusal within five years, revocation for one year;

35 (ii) For a second or subsequent refusal within five years,
36 revocation or denial for two years.

37 (b) In the case of an incident where a person has submitted to a
38 test or tests indicating an alcohol concentration of 0.02 or more:

1 (i) For a first incident within five years, suspension for ninety
2 days;

3 (ii) For a second or subsequent incident within five years,
4 revocation for one year or until the person reaches age twenty-one
5 whichever occurs later.

6 (8) For purposes of this section, "alcohol concentration" means (a)
7 grams of alcohol per two hundred ten liters of a person's breath, or
8 (b) the percent by weight of alcohol in a person's blood.

9 NEW SECTION. **Sec. 11.** A new section is added to chapter 46.61 RCW
10 to read as follows:

11 (1) Any person requested or signaled to stop by a law enforcement
12 officer pursuant to section 10 of this act has a duty to stop.

13 (2) Whenever any person is stopped pursuant to section 10 of this
14 act, the officer may detain that person for a reasonable period of time
15 necessary to: Identify the person; check the status of the person's
16 license, insurance identification card, and the vehicle's registration;
17 and transport the person, if necessary, to and administer a test or
18 tests to determine the alcohol concentration in the person's system.

19 (3) Any person requested to identify himself or herself to a law
20 enforcement officer pursuant to an investigation under section 10 of
21 this act has a duty to identify himself or herself, give his or her
22 current address, and sign an acknowledgement of receipt of the warning
23 required by section 10(4) of this act and receipt of the notice and
24 temporary license issued under section 10(5) of this act.

25 NEW SECTION. **Sec. 12.** A new section is added to chapter 46.61 RCW
26 to read as follows:

27 (1) This section applies to any person arrested for a violation of
28 RCW 46.61.502 or 46.61.504 who has an alcohol concentration of 0.10 or
29 higher as shown by a test administered under RCW 46.20.308.

30 (2) The arresting officer or other law enforcement officer at whose
31 direction the test was given shall:

32 (a) Serve the person notice in writing on behalf of the department
33 of licensing of its intention to suspend, revoke, or deny the person's
34 license, permit, or privilege to drive or to issue a probationary
35 license;

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

4 (c) Confiscate the person's Washington state license or permit to
5 drive, if any, and issue a temporary license to replace any confiscated
6 license or permit. The temporary license shall be valid for thirty
7 days from the date of arrest or until the suspension or revocation of
8 the person's license or permit, or the issuance of a probationary
9 license, is sustained at a hearing pursuant to subsection (5) of this
10 section, whichever occurs first. If the person has not within the
11 previous five years committed an offense for which he or she was
12 granted a deferred prosecution under chapter 10.05 RCW, and within
13 thirty days of the arrest the person petitions a court for a deferred
14 prosecution on criminal charges arising out of the arrest, the court
15 shall direct the department to extend the period of the temporary
16 license by at least an additional thirty days but not more than an
17 additional sixty days. If a deferred prosecution treatment plan is not
18 recommended in the report made under RCW 10.05.050, or if treatment is
19 rejected by the court, or if the person declines to accept an offered
20 treatment plan, then the court shall immediately direct the department
21 to cancel any period of extension of the temporary license. No
22 temporary license is valid to any greater degree than the license or
23 permit it replaces;

24 (d) Notify the department of the arrest, and transmit to the
25 department any confiscated license or permit and a sworn report
26 stating:

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

31 (ii) That pursuant to RCW 46.20.308 a test of the person's alcohol
32 concentration was administered;

33 (iii) That the test indicated that the person's alcohol
34 concentration was 0.10 or higher; and

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

36 (3) Upon receipt of a sworn statement under subsection (2) of this
37 section, the department shall suspend, revoke, or deny the person's
38 license, permit, or driving privilege, or shall issue a probationary
39 license, effective beginning thirty days from the date of the arrest or

1 beginning when the suspension, revocation, denial, or issuance is
2 sustained at a hearing pursuant to subsection (5) of this section,
3 whichever occurs first. The suspension, revocation, or denial, or
4 issuance of a probationary license, shall be as follows:

5 (a) Upon receipt of a first sworn statement, issuance of a
6 probationary license under section 8 of this act;

7 (b) Upon receipt of a second or subsequent statement indicating an
8 arrest date that is within five years of the arrest date indicated by
9 a previous statement, revocation for two years.

10 (4) A person receiving notification under subsection (2) of this
11 section may, within five days after his or her arrest, request a
12 hearing before the department under subsection (5) of this section.
13 The request shall be in writing. The person shall pay a fee of one
14 hundred dollars as part of the request. If the request is mailed, it
15 must be postmarked within five days after the arrest.

16 (5) Upon timely receipt of a request and a one hundred dollar fee
17 under subsection (4) of this section, the department shall afford the
18 person an opportunity for a hearing. Except as otherwise provided in
19 this section, the hearing is subject to and shall be scheduled and
20 conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing
21 shall be conducted in the county of arrest, except that all or part of
22 the hearing may, at the discretion of the department, be conducted by
23 telephone or other electronic means. The hearing shall be held within
24 thirty days following the arrest, unless otherwise agreed to by the
25 department and the person. The hearing shall cover the issues of:

26 (a) Whether the law enforcement officer had reasonable grounds to
27 believe the person was driving or in actual physical control of a motor
28 vehicle within this state while under the influence of intoxicating
29 liquor;

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

32 (c) Whether the test indicated that the person's alcohol
33 concentration was 0.10 or higher.

34 (6) The period of any suspension, revocation, or denial imposed
35 under this section shall run consecutively to the period of any
36 suspension, revocation, or denial imposed pursuant to a criminal
37 conviction arising out of the same incident. A suspension, revocation,
38 or denial imposed under this section shall be stayed if the person is
39 accepted for deferred prosecution as provided in chapter 10.05 RCW for

1 the incident upon which the suspension, revocation, or denial is based.
2 If the deferred prosecution is terminated, the stay shall be lifted and
3 the suspension, revocation, or denial reinstated. If the deferred
4 prosecution is completed, the stay shall be lifted and the suspension,
5 revocation, or denial canceled.

6 (7) If the suspension, revocation, denial, or issuance is sustained
7 after such a hearing, the person whose license, privilege, or permit is
8 suspended, revoked, or denied, or who has been issued a probationary
9 license, has the right to file a petition in the superior court of the
10 county of arrest in the same manner as an appeal from a decision of a
11 court of limited jurisdiction. The appellant must pay the costs
12 associated with obtaining the record of the hearing before the hearing
13 officer. A court may stay the suspension, revocation, or denial if it
14 finds that the appellant is likely to prevail in the appeal and that
15 without a stay the appellant will suffer irreparable injury. If the
16 court stays the suspension, revocation, or denial, it may impose
17 conditions on such stay.

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

24

PART V - IMPLIED CONSENT

25 **Sec. 13.** RCW 46.20.308 and 1989 c 337 s 8 are each amended to read
26 as follows:

27 (1) Any person who operates a motor vehicle within this state is
28 deemed to have given consent, subject to the provisions of RCW
29 46.61.506, to a test or tests of his or her breath or blood for the
30 purpose of determining the alcoholic content of his or her breath or
31 blood if arrested for any offense where, at the time of the arrest, the
32 arresting officer has reasonable grounds to believe the person had been
33 driving or was in actual physical control of a motor vehicle while
34 under the influence of intoxicating liquor.

35 (2) The test or tests of breath shall be administered at the
36 direction of a law enforcement officer having reasonable grounds to
37 believe the person to have been driving or in actual physical control

1 of a motor vehicle within this state while under the influence of
2 intoxicating liquor. However, in those instances where: (a) The
3 person is incapable due to physical injury, physical incapacity, or
4 other physical limitation, of providing a breath sample; or (b) as a
5 result of a traffic accident the person is being treated for a medical
6 condition in a hospital, clinic, doctor's office, or other similar
7 facility in which a breath testing instrument is not present, a blood
8 test shall be administered by a qualified person as provided in RCW
9 46.61.506(4). The officer shall inform the person of his or her right
10 to refuse the breath or blood test, and of his or her right to have
11 additional tests administered by any qualified person of his or her
12 choosing as provided in RCW 46.61.506. The officer shall warn the
13 driver that (a) his or her privilege to drive will be revoked or denied
14 if he or she refuses to submit to the test, and (b) that his or her
15 refusal to take the test may be used in a criminal trial.

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

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

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

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

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

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

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

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

7 **PART VI - DRIVING RECORDS**

8 **Sec. 14.** RCW 46.01.260 and 1984 c 241 s 1 are each amended to read
9 as follows:

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

19 (2)(a) The director shall not, within ten years from the date of
20 conviction, adjudication, or entry of deferred prosecution, destroy
21 records of the following:

22 (i) Convictions or adjudications of the following offenses: RCW
23 46.61.502, 46.61.504, 46.61.520(1)(a), or 46.61.522(1)(b);

24 (ii) If the offense was originally charged as one of the offenses
25 designated in (a)(i) of this subsection, convictions or adjudications
26 of the following offenses: RCW 46.61.500 or 46.61.525, or any other
27 violation that was originally charged as one of the offenses designated
28 in (a)(i) of this subsection; or

29 (iii) Deferred prosecutions granted under RCW 10.05.120.

30 (b) For purposes of RCW 46.52.100 and 46.52.130, offenses subject
31 to this subsection shall be considered "alcohol-related" offenses.

32 **Sec. 15.** RCW 46.52.100 and 1991 c 363 s 123 are each amended to
33 read as follows:

34 Every district court, municipal court, and clerk of superior court
35 shall keep or cause to be kept a record of every traffic complaint,
36 traffic citation, notice of infraction, or other legal form of traffic

1 charge deposited with or presented to the court or a traffic violations
2 bureau, and shall keep a record of every official action by ((said))
3 the court or its traffic violations bureau in reference thereto,
4 including but not limited to a record of every conviction, forfeiture
5 of bail, judgment of acquittal, finding that a traffic infraction has
6 been committed, dismissal of a notice of infraction, and the amount of
7 fine, forfeiture, or penalty resulting from every ((said)) traffic
8 complaint, citation, or notice of infraction deposited with or
9 presented to the district court, municipal court, superior court, or
10 traffic violations bureau.

11 The Monday following the conviction, forfeiture of bail, or finding
12 that a traffic infraction was committed for violation of any provisions
13 of this chapter or other law regulating the operating of vehicles on
14 highways, every ((said)) magistrate of the court or clerk of the court
15 of record in which such conviction was had, bail was forfeited, or the
16 finding made shall prepare and immediately forward to the director of
17 licensing at Olympia an abstract of the record of ((said)) the court
18 covering the case, which abstract must be certified by the person so
19 required to prepare the same to be true and correct. Report need not
20 be made of any finding involving the illegal parking or standing of a
21 vehicle.

22 ((Said)) The abstract must be made upon a form furnished by the
23 director and shall include the name and address of the party charged,
24 the number, if any, of the party's driver's or chauffeur's license, the
25 registration number of the vehicle involved, the nature of the offense,
26 the date of hearing, the plea, the judgment, whether the offense was an
27 alcohol-related offense as defined in RCW 46.01.260(2), whether bail
28 forfeited, whether the determination that a traffic infraction was
29 committed was contested, and the amount of the fine, forfeiture, or
30 penalty as the case may be.

31 Every court of record shall also forward a like report to the
32 director upon the conviction of any person of manslaughter or other
33 felony in the commission of which a vehicle was used.

34 The failure of any such judicial officer to comply with any of the
35 requirements of this section shall constitute misconduct in office and
36 shall be grounds for removal therefrom.

37 The director shall keep all abstracts received hereunder at the
38 director's office in Olympia and the same shall be open to public
39 inspection during reasonable business hours.

1 Venue in all district courts shall be before one of the two nearest
2 district judges in incorporated cities and towns nearest to the point
3 the violation allegedly occurred: PROVIDED, That in counties with
4 populations of one hundred twenty-five thousand or more such cases may
5 be tried in the county seat at the request of the defendant.

6 It shall be the duty of the officer, prosecuting attorney, or city
7 attorney signing the charge or information in any case involving a
8 charge of driving under the influence of intoxicating liquor or any
9 drug immediately to make request to the director for an abstract of
10 convictions and forfeitures which the director shall furnish.

11 **Sec. 16.** RCW 46.52.130 and 1991 c 243 s 1 are each amended to read
12 as follows:

13 A certified abstract of the driving record shall be furnished only
14 to the individual named in the abstract, an employer, the insurance
15 carrier that has insurance in effect covering the employer or a
16 prospective employer, the insurance carrier that has insurance in
17 effect covering the named individual, the insurance carrier to which
18 the named individual has applied, ~~((or))~~ an alcohol/drug assessment or
19 treatment agency approved by the department of social and health
20 services, to which the named individual has applied or been assigned
21 for evaluation or treatment, or city and county prosecuting attorneys.
22 City attorneys and county prosecuting attorneys may provide the driving
23 record to alcohol/drug assessment or treatment agencies approved by the
24 department of social and health services to which the named individual
25 has applied or been assigned for evaluation or treatment. The
26 director, upon proper request, shall furnish a certified abstract
27 covering the period of not more than the last three years to insurance
28 companies ~~((and))~~. Upon proper request, the director shall furnish a
29 certified abstract covering a period of not more than the last five
30 years to state approved alcohol/drug assessment or treatment agencies,
31 except that the certified abstract shall also include records of
32 alcohol-related offenses as defined in RCW 46.01.260(2) covering a
33 period of not more than the last ten years. Upon proper request, a
34 certified abstract of the full driving record maintained by the
35 department shall be furnished to a city or county prosecuting attorney,
36 to the individual ~~((s-and))~~ named in the abstract or to an employer ~~((s))~~
37 or prospective employer ~~((s))~~ of the named individual. The abstract,
38 whenever possible, shall include an enumeration of motor vehicle

1 accidents in which the person was driving; the total number of vehicles
2 involved; whether the vehicles were legally parked or moving; whether
3 the vehicles were occupied at the time of the accident; any reported
4 convictions, forfeitures of bail, or findings that an infraction was
5 committed based upon a violation of any motor vehicle law; and the
6 status of the person's driving privilege in this state. The
7 enumeration shall include any reports of failure to appear in response
8 to a traffic citation or failure to respond to a notice of infraction
9 served upon the named individual by an arresting officer. Certified
10 abstracts furnished to prosecutors and alcohol/drug assessment or
11 treatment agencies shall also indicate whether a recorded violation is
12 an alcohol-related offense as defined in RCW 46.01.260(2) that was
13 originally charged as one of the alcohol-related offenses designated in
14 RCW 46.01.260(2)(a)(i).

15 The abstract provided to the insurance company shall exclude any
16 information, except that related to the commission of misdemeanors or
17 felonies by the individual, pertaining to law enforcement officers or
18 fire fighters as defined in RCW 41.26.030, or any officer of the
19 Washington state patrol, while driving official vehicles in the
20 performance of occupational duty. The abstract provided to the
21 insurance company shall exclude any deferred prosecution under RCW
22 10.05.060, except that if a person is removed from a deferred
23 prosecution under RCW 10.05.090, the abstract shall show the deferred
24 prosecution as well as the removal.

25 The director shall collect for each abstract the sum of four
26 dollars and fifty cents which shall be deposited in the highway safety
27 fund.

28 Any insurance company or its agent receiving the certified abstract
29 shall use it exclusively for its own underwriting purposes and shall
30 not divulge any of the information contained in it to a third party.
31 No policy of insurance may be canceled, nonrenewed, denied, or have the
32 rate increased on the basis of such information unless the policyholder
33 was determined to be at fault. No insurance company or its agent for
34 underwriting purposes relating to the operation of commercial motor
35 vehicles may use any information contained in the abstract relative to
36 any person's operation of motor vehicles while not engaged in such
37 employment, nor may any insurance company or its agent for underwriting
38 purposes relating to the operation of noncommercial motor vehicles use

1 any information contained in the abstract relative to any person's
2 operation of commercial motor vehicles.

3 Any employer or prospective employer receiving the certified
4 abstract shall use it exclusively for his or her own purpose to
5 determine whether the licensee should be permitted to operate a
6 commercial vehicle or school bus upon the public highways of this state
7 and shall not divulge any information contained in it to a third party.

8 Any alcohol/drug assessment or treatment agency approved by the
9 department of social and health services receiving the certified
10 abstract shall use it exclusively for the purpose of assisting its
11 employees in making a determination as to what level of treatment, if
12 any, is appropriate. The agency, or any of its employees, shall not
13 divulge any information contained in the abstract to a third party.

14 Any violation of this section is a gross misdemeanor.

15 **PART VII - DEFERRED PROSECUTION**

16 **Sec. 17.** RCW 10.05.060 and 1990 c 250 s 13 are each amended to
17 read as follows:

18 If the report recommends treatment, the court shall examine the
19 treatment plan. If it approves the plan and the petitioner agrees to
20 comply with its terms and conditions and agrees to pay the cost
21 thereof, if able to do so, or arrange for the treatment, an entry shall
22 be made upon the person's court docket showing that the person has been
23 accepted for deferred prosecution. A copy of the treatment plan shall
24 be attached to the docket, which shall then be removed from the regular
25 court dockets and filed in a special court deferred prosecution file.
26 If the charge be one that an abstract of the docket showing the charge,
27 the date of the violation for which the charge was made, and the date
28 of petitioner's acceptance is required to be sent to the department of
29 licensing, an abstract shall be sent, and the department of licensing
30 shall make an entry of the charge and of the petitioner's acceptance
31 for deferred prosecution on the department's driving record of the
32 petitioner. The entry is not a conviction for purposes of Title 46
33 RCW. Upon receipt of the abstract of the docket, the department shall
34 issue the petitioner a probationary license in accordance with section
35 8 of this act, and the petitioner's driver's license shall be on
36 probationary status for five years from the date of the violation that
37 gave rise to the charge. The department shall maintain the record for

1 ((five)) ten years from date of entry of the order granting deferred
2 prosecution.

3 **Sec. 18.** RCW 10.05.090 and 1985 c 352 s 12 are each amended to
4 read as follows:

5 If a petitioner, who has been accepted for a deferred prosecution,
6 fails or neglects to carry out and fulfill any term or condition of the
7 petitioner's treatment plan, the facility, center, institution, or
8 agency administering the treatment shall immediately report such breach
9 to the court, the prosecutor, and the petitioner or petitioner's
10 attorney of record, together with its recommendation. The court upon
11 receiving such a report shall hold a hearing to determine whether the
12 petitioner should be removed from the deferred prosecution program. At
13 the hearing, evidence shall be taken of the petitioner's alleged
14 failure to comply with the treatment plan and the petitioner shall have
15 the right to present evidence on his or her own behalf. The court
16 shall either order that the petitioner continue on the treatment plan
17 or be removed from deferred prosecution. If removed from deferred
18 prosecution, the court shall enter judgment pursuant to RCW 10.05.020
19 and, if the charge for which the deferred prosecution was granted was
20 a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the
21 department of licensing of the removal and entry of judgment.

22 **Sec. 19.** RCW 10.05.120 and 1985 c 352 s 15 are each amended to
23 read as follows:

24 Upon proof of successful completion of the two-year treatment
25 program, the court shall dismiss the charges pending against the
26 petitioner.

27 ~~((Five years from the date of the court's approval of a deferred
28 prosecution program for an individual petitioner, those entries that
29 remain in the department of licensing records relating to such
30 petitioner shall be removed. A deferred prosecution may be considered
31 for enhancement purposes when imposing mandatory penalties and
32 suspensions under RCW 46.61.515 for subsequent offenses within a five-
33 year period.))~~

34 **PART VIII - VEHICULAR HOMICIDE**

1 **Sec. 20.** RCW 9.94A.320 and 1992 c 145 s 4 and 1992 c 75 s 3 are
2 each reenacted and amended to read as follows:

3 TABLE 2

4 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

- 5 XV Aggravated Murder 1 (RCW 10.95.020)
- 6 XIV Murder 1 (RCW 9A.32.030)
- 7 Homicide by abuse (RCW 9A.32.055)
- 8 XIII Murder 2 (RCW 9A.32.050)
- 9 XII Assault 1 (RCW 9A.36.011)
- 10 Assault of a Child 1 (RCW 9A.36.120)
- 11 XI Rape 1 (RCW 9A.44.040)
- 12 Rape of a Child 1 (RCW 9A.44.073)
- 13 X Kidnapping 1 (RCW 9A.40.020)
- 14 Rape 2 (RCW 9A.44.050)
- 15 Rape of a Child 2 (RCW 9A.44.076)
- 16 Child Molestation 1 (RCW 9A.44.083)
- 17 Damaging building, etc., by explosion with
- 18 threat to human being (RCW
- 19 70.74.280(1))
- 20 Over 18 and deliver heroin or narcotic
- 21 from Schedule I or II to someone
- 22 under 18 (RCW 69.50.406)
- 23 Leading Organized Crime (RCW
- 24 9A.82.060(1)(a))
- 25 IX Assault of a Child 2 (RCW 9A.36.130)
- 26 Robbery 1 (RCW 9A.56.200)
- 27 Manslaughter 1 (RCW 9A.32.060)
- 28 Explosive devices prohibited (RCW
- 29 70.74.180)
- 30 Indecent Liberties (with forcible
- 31 compulsion) (RCW 9A.44.100(1)(a))
- 32 Endangering life and property by
- 33 explosives with threat to human being
- 34 (RCW 70.74.270)

1 Over 18 and deliver narcotic from Schedule
2 III, IV, or V or a nonnarcotic from
3 Schedule I-V to someone under 18 and
4 3 years junior (RCW 69.50.406)
5 Controlled Substance Homicide (RCW
6 69.50.415)
7 Sexual Exploitation (RCW 9.68A.040)
8 Inciting Criminal Profiteering (RCW
9 9A.82.060(1)(b))
10 Vehicular Homicide, by being under the
11 influence of intoxicating liquor or
12 any drug (RCW 46.61.520)
13 VIII Arson 1 (RCW 9A.48.020)
14 Promoting Prostitution 1 (RCW 9A.88.070)
15 Selling for profit (controlled or
16 counterfeit) any controlled substance
17 (RCW 69.50.410)
18 Manufacture, deliver, or possess with
19 intent to deliver heroin or cocaine
20 (RCW 69.50.401(a)(1)(i))
21 Manufacture, deliver, or possess with
22 intent to deliver methamphetamine
23 (RCW 69.50.401(a)(1)(ii))
24 Vehicular Homicide, (~~by being under the~~
25 ~~influence of intoxicating liquor or~~
26 ~~any drug or~~) by the operation of any
27 vehicle in a reckless manner (RCW
28 46.61.520)
29 VII Burglary 1 (RCW 9A.52.020)
30 Vehicular Homicide, by disregard for the
31 safety of others (RCW 46.61.520)
32 Introducing Contraband 1 (RCW 9A.76.140)
33 Indecent Liberties (without forcible
34 compulsion) (RCW 9A.44.100(1) (b) and
35 (c))
36 Child Molestation 2 (RCW 9A.44.086)

1 Dealing in depictions of minor engaged in
2 sexually explicit conduct (RCW
3 9.68A.050)
4 Sending, bringing into state depictions of
5 minor engaged in sexually explicit
6 conduct (RCW 9.68A.060)
7 Involving a minor in drug dealing (RCW
8 69.50.401(f))

9 VI Bribery (RCW 9A.68.010)
10 Manslaughter 2 (RCW 9A.32.070)
11 Rape of a Child 3 (RCW 9A.44.079)
12 Intimidating a Juror/Witness (RCW
13 9A.72.110, 9A.72.130)
14 Damaging building, etc., by explosion with
15 no threat to human being (RCW
16 70.74.280(2))
17 Endangering life and property by
18 explosives with no threat to human
19 being (RCW 70.74.270)
20 Incest 1 (RCW 9A.64.020(1))
21 Manufacture, deliver, or possess with
22 intent to deliver narcotics from
23 Schedule I or II (except heroin or
24 cocaine) (RCW 69.50.401(a)(1)(i))
25 Intimidating a Judge (RCW 9A.72.160)
26 Bail Jumping with Murder 1 (RCW
27 9A.76.170(2)(a))

28 V Criminal Mistreatment 1 (RCW 9A.42.020)
29 Rape 3 (RCW 9A.44.060)
30 Sexual Misconduct with a Minor 1 (RCW
31 9A.44.093)
32 Child Molestation 3 (RCW 9A.44.089)
33 Kidnapping 2 (RCW 9A.40.030)
34 Extortion 1 (RCW 9A.56.120)
35 Incest 2 (RCW 9A.64.020(2))
36 Perjury 1 (RCW 9A.72.020)
37 Extortionate Extension of Credit (RCW
38 9A.82.020)

1 Advancing money or property for
2 extortionate extension of credit (RCW
3 9A.82.030)
4 Extortionate Means to Collect Extensions
5 of Credit (RCW 9A.82.040)
6 Rendering Criminal Assistance 1 (RCW
7 9A.76.070)
8 Bail Jumping with class A Felony (RCW
9 9A.76.170(2)(b))
10 Delivery of imitation controlled substance
11 by person eighteen or over to person
12 under eighteen (RCW 69.52.030(2))

13 IV Residential Burglary (RCW 9A.52.025)
14 Theft of Livestock 1 (RCW 9A.56.080)
15 Robbery 2 (RCW 9A.56.210)
16 Assault 2 (RCW 9A.36.021)
17 Escape 1 (RCW 9A.76.110)
18 Arson 2 (RCW 9A.48.030)
19 Bribing a Witness/Bribe Received by
20 Witness (RCW 9A.72.090, 9A.72.100)
21 Malicious Harassment (RCW 9A.36.080)
22 Threats to Bomb (RCW 9.61.160)
23 Willful Failure to Return from Furlough
24 (RCW 72.66.060)
25 Hit and Run « Injury Accident (RCW
26 46.52.020(4))
27 Vehicular Assault (RCW 46.61.522)
28 Manufacture, deliver, or possess with
29 intent to deliver narcotics from
30 Schedule III, IV, or V or
31 nonnarcotics from Schedule I-V
32 (except marijuana or
33 methamphetamines) (RCW
34 69.50.401(a)(1)(ii) through (iv))
35 Influencing Outcome of Sporting Event (RCW
36 9A.82.070)

1 Use of Proceeds of Criminal Profiteering
2 (RCW 9A.82.080 (1) and (2))
3 Knowingly Trafficking in Stolen Property
4 (RCW 9A.82.050(2))

5 III Criminal mistreatment 2 (RCW 9A.42.030)
6 Extortion 2 (RCW 9A.56.130)
7 Unlawful Imprisonment (RCW 9A.40.040)
8 Assault 3 (RCW 9A.36.031)
9 Assault of a Child 3 (RCW 9A.36.140)
10 Custodial Assault (RCW 9A.36.100)
11 Unlawful possession of firearm or pistol by felon (RCW
12 9.41.040)
13 Harassment (RCW 9A.46.020)
14 Promoting Prostitution 2 (RCW 9A.88.080)
15 Willful Failure to Return from Work
16 Release (RCW 72.65.070)
17 Burglary 2 (RCW 9A.52.030)
18 Introducing Contraband 2 (RCW 9A.76.150)
19 Communication with a Minor for Immoral
20 Purposes (RCW 9.68A.090)
21 Patronizing a Juvenile Prostitute (RCW
22 9.68A.100)
23 Escape 2 (RCW 9A.76.120)
24 Perjury 2 (RCW 9A.72.030)
25 Bail Jumping with class B or C Felony (RCW
26 9A.76.170(2)(c))
27 Intimidating a Public Servant (RCW
28 9A.76.180)
29 Tampering with a Witness (RCW 9A.72.120)
30 Manufacture, deliver, or possess with
31 intent to deliver marijuana (RCW
32 69.50.401(a)(1)(ii))
33 Delivery of a material in lieu of a
34 controlled substance (RCW
35 69.50.401(c))
36 Manufacture, distribute, or possess with
37 intent to distribute an imitation
38 controlled substance (RCW
39 69.52.030(1))

1 Recklessly Trafficking in Stolen Property
2 (RCW 9A.82.050(1))
3 Theft of livestock 2 (RCW 9A.56.080)
4 Securities Act violation (RCW 21.20.400)

5 II Malicious Mischief 1 (RCW 9A.48.070)
6 Possession of Stolen Property 1 (RCW
7 9A.56.150)
8 Theft 1 (RCW 9A.56.030)
9 Possession of controlled substance that is
10 either heroin or narcotics from
11 Schedule I or II (RCW 69.50.401(d))
12 Possession of phencyclidine (PCP) (RCW
13 69.50.401(d))
14 Create, deliver, or possess a counterfeit
15 controlled substance (RCW
16 69.50.401(b))
17 Computer Trespass 1 (RCW 9A.52.110)
18 Reckless Endangerment 1 (RCW 9A.36.045)
19 Escape from Community Custody (RCW
20 72.09.310)

21 I Theft 2 (RCW 9A.56.040)
22 Possession of Stolen Property 2 (RCW
23 9A.56.160)
24 Forgery (RCW 9A.60.020)
25 Taking Motor Vehicle Without Permission
26 (RCW 9A.56.070)
27 Vehicle Prowl 1 (RCW 9A.52.095)
28 Attempting to Elude a Pursuing Police
29 Vehicle (RCW 46.61.024)
30 Malicious Mischief 2 (RCW 9A.48.080)
31 Reckless Burning 1 (RCW 9A.48.040)
32 Unlawful Issuance of Checks or Drafts (RCW
33 9A.56.060)
34 Unlawful Use of Food Stamps (RCW 9.91.140
35 (2) and (3))
36 False Verification for Welfare (RCW
37 74.08.055)
38 Forged Prescription (RCW 69.41.020)

1 Forged Prescription for a Controlled
2 Substance (RCW 69.50.403)
3 Possess Controlled Substance that is a
4 Narcotic from Schedule III, IV, or V
5 or Non-narcotic from Schedule I-V
6 (except phencyclidine) (RCW
7 69.50.401(d))

8 **PART IX - INTERLOCK**

9 **Sec. 21.** RCW 46.20.710 and 1987 c 247 s 1 are each amended to read
10 as follows:

11 The legislature finds and declares:

12 (1) There is a need to reduce the incidence of drivers on the
13 highways and roads of this state who, because of their use,
14 consumption, or possession of alcohol, pose a danger to the health and
15 safety of other drivers;

16 (2) One method of dealing with the problem of drinking drivers is
17 to discourage the use of motor vehicles by persons who possess or have
18 consumed alcoholic beverages;

19 (3) The installation of an ignition interlock breath alcohol device
20 or other biological or technical device will provide a means of
21 deterring the use of motor vehicles by persons who have consumed
22 alcoholic beverages;

23 (4) Ignition interlock and other biological and technical devices
24 are designed to supplement other methods of punishment that prevent
25 drivers from using a motor vehicle after using, possessing, or
26 consuming alcohol;

27 (5) It is economically and technically feasible to have an ignition
28 interlock or other biological or technical device installed in a motor
29 vehicle in such a manner that the vehicle will not start if the
30 operator has recently consumed alcohol.

31 **Sec. 22.** RCW 46.20.720 and 1987 c 247 s 2 are each amended to read
32 as follows:

33 The court may order any person convicted of any offense involving
34 the use, consumption, or possession of alcohol while operating a motor
35 vehicle to drive only a motor vehicle equipped with a functioning

1 ignition interlock or other biological or technical device, and the
2 restriction shall be for a period of not less than six months.

3 The court shall establish a specific calibration setting at which
4 the ignition interlock or other biological or technical device will
5 prevent the motor vehicle from being started and the period of time
6 that the person shall be subject to the restriction.

7 For purposes of this section, "convicted" means being found guilty
8 of an offense or being placed on a deferred prosecution program under
9 chapter 10.05 RCW.

10 **Sec. 23.** RCW 46.20.730 and 1987 c 247 s 3 are each amended to read
11 as follows:

12 For the purposes of RCW 46.20.720, 46.20.740, and 46.20.750,
13 "ignition interlock device" means breath alcohol analyzed ignition
14 equipment, certified by the state commission on equipment, designed to
15 prevent a motor vehicle from being operated by a person who has
16 consumed an alcoholic beverage, and "other biological or technical
17 device" means any device meeting the standards of the national highway
18 traffic safety administration or the state commission on equipment,
19 designed to prevent the operation of a motor vehicle by a person who is
20 impaired by alcohol or drugs. The commission shall by rule provide
21 standards for the certification, installation, repair, and removal of
22 the devices.

23 **Sec. 24.** RCW 46.20.740 and 1987 c 247 s 4 are each amended to read
24 as follows:

25 The department shall attach or imprint a notation on the driver's
26 license of any person restricted under RCW 46.20.720 stating that the
27 person may operate only a motor vehicle equipped with an ignition
28 interlock or other biological or technical device.

29 **Sec. 25.** RCW 46.20.750 and 1987 c 247 s 5 are each amended to read
30 as follows:

31 A person who knowingly assists another person who is restricted to
32 the use of an ignition interlock or other biological or technical
33 device to start and operate that vehicle in violation of a court order
34 is guilty of a gross misdemeanor.

35 The provisions of this section do not apply if the starting of a
36 motor vehicle, or the request to start a motor vehicle, equipped with

1 an ignition interlock or other biological or technical device is done
2 for the purpose of safety or mechanical repair of the device or the
3 vehicle and the person subject to the court order does not operate the
4 vehicle.

5 **PART X - MISCELLANEOUS**

6 **Sec. 26.** RCW 46.61.506 and 1987 c 373 s 4 are each amended to read
7 as follows:

8 (1) Upon the trial of any civil or criminal action or proceeding
9 arising out of acts alleged to have been committed by any person while
10 driving or in actual physical control of a vehicle while under the
11 influence of intoxicating liquor or any drug, if the ~~((amount of~~
12 ~~alcohol in the person's blood or breath at the time alleged as shown by~~
13 ~~analysis of his blood or breath is less than 0.10 percent by weight of~~
14 ~~alcohol in his blood or 0.10 grams of alcohol per two hundred ten~~
15 ~~liters of the person's breath))~~ person's alcohol concentration is less
16 than 0.10, it is evidence that may be considered with other competent
17 evidence in determining whether the person was under the influence of
18 intoxicating liquor or any drug.

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

24 (3) Analysis of the person's blood or breath to be considered valid
25 under the provisions of this section or RCW 46.61.502 or 46.61.504
26 shall have been performed according to methods approved by the state
27 toxicologist and by an individual possessing a valid permit issued by
28 the state toxicologist for this purpose. The state toxicologist is
29 directed to approve satisfactory techniques or methods, to supervise
30 the examination of individuals to ascertain their qualifications and
31 competence to conduct such analyses, and to issue permits which shall
32 be subject to termination or revocation at the discretion of the state
33 toxicologist.

34 (4) When a blood test is administered under the provisions of RCW
35 46.20.308, the withdrawal of blood for the purpose of determining its
36 alcoholic content may be performed only by a physician, a registered

1 nurse, or a qualified technician. This limitation shall not apply to
2 the taking of breath specimens.

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

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

14 **Sec. 27.** RCW 46.20.311 and 1993 c 501 s 5 are each amended to read
15 as follows:

16 (1) The department shall not suspend a driver's license or
17 privilege to drive a motor vehicle on the public highways for a fixed
18 period of more than one year, except as specifically permitted under
19 RCW 46.20.342 or (~~(46.61.515)~~) other provision of law. Except for a
20 suspension under RCW 46.20.289 and 46.20.291(5), whenever the license
21 or driving privilege of any person is suspended by reason of a
22 conviction, a finding that a traffic infraction has been committed,
23 pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291, the
24 suspension shall remain in effect until the person gives and thereafter
25 maintains proof of financial responsibility for the future as provided
26 in chapter 46.29 RCW. The department shall not issue to the person a
27 new, duplicate, or renewal license until the person pays a reissue fee
28 of twenty dollars. If the suspension is the result of a violation of
29 RCW 46.61.502 or 46.61.504, the reissue fee shall be fifty dollars.

30 (2) Any person whose license or privilege to drive a motor vehicle
31 on the public highways has been revoked, unless the revocation was for
32 a cause which has been removed, is not entitled to have the license or
33 privilege renewed or restored until: (a) After the expiration of one
34 year from the date the license or privilege to drive was revoked; (b)
35 after the expiration of the applicable revocation period provided by
36 RCW (~~(46.61.515(3) (b) or (c))~~) 46.20.308 or section 5, 6, or 12 of
37 this act; (c) after the expiration of two years for persons convicted
38 of vehicular homicide; or (d) (~~(after the expiration of one year in~~

1 cases of revocation for the first refusal within five years to submit
2 to a chemical test under RCW 46.20.308; (e) after the expiration of two
3 years in cases of revocation for the second or subsequent refusal
4 within five years to submit to a chemical test under RCW 46.20.308; or
5 (f)) after the expiration of the applicable revocation period provided
6 by RCW 46.20.265. After the expiration of the appropriate period, the
7 person may make application for a new license as provided by law
8 together with a reissue fee in the amount of twenty dollars, but if the
9 revocation is the result of a violation of RCW 46.20.308, 46.61.502, or
10 46.61.504 or is the result of administrative action under section 12 of
11 this act, the reissue fee shall be fifty dollars. Except for a
12 revocation under RCW 46.20.265, the department shall not then issue a
13 new license unless it is satisfied after investigation of the driving
14 ability of the person that it will be safe to grant the privilege of
15 driving a motor vehicle on the public highways, and until the person
16 gives and thereafter maintains proof of financial responsibility for
17 the future as provided in chapter 46.29 RCW. For a revocation under
18 RCW 46.20.265, the department shall not issue a new license unless it
19 is satisfied after investigation of the driving ability of the person
20 that it will be safe to grant that person the privilege of driving a
21 motor vehicle on the public highways.

22 (3) Whenever the driver's license of any person is suspended
23 pursuant to Article IV of the nonresident violators compact or RCW
24 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue
25 to the person any new or renewal license until the person pays a
26 reissue fee of twenty dollars. If the suspension is the result of a
27 violation of the laws of this or any other state, province, or other
28 jurisdiction involving (a) the operation or physical control of a motor
29 vehicle upon the public highways while under the influence of
30 intoxicating liquor or drugs, or (b) the refusal to submit to a
31 chemical test of the driver's blood alcohol content, the reissue fee
32 shall be fifty dollars.

33 **Sec. 28.** RCW 46.04.580 and 1990 c 250 s 22 are each amended to
34 read as follows:

35 "Suspend," in all its forms and unless a different period is
36 specified, means invalidation for any period less than one calendar
37 year and thereafter until reinstatement. ((However, under RCW
38 46.61.515 the invalidation may last for more than one calendar year.))

1 **Sec. 29.** RCW 46.20.391 and 1985 c 407 s 5 are each amended to read
2 as follows:

3 (1) Any person licensed under this chapter who is convicted of an
4 offense relating to motor vehicles for which suspension or revocation
5 of the driver's license is mandatory, other than vehicular homicide or
6 vehicular assault, may submit to the department an application for an
7 occupational driver's license. The department, upon receipt of the
8 prescribed fee and upon determining that the petitioner is engaged in
9 an occupation or trade that makes it essential that the petitioner
10 operate a motor vehicle, may issue an occupational driver's license and
11 may set definite restrictions as provided in RCW 46.20.394. No person
12 may petition for, and the department shall not issue, an occupational
13 driver's license that is effective during the first thirty days of any
14 suspension or revocation imposed (~~under RCW 46.61.515~~) for a
15 violation of RCW 46.61.502 or 46.61.504. No person may petition for,
16 and the department shall not issue, an occupational driver's license if
17 the person is ineligible for such a license under section 5 or 6 of
18 this act. A person aggrieved by the decision of the department on the
19 application for an occupational driver's license may request a hearing
20 as provided by rule of the department.

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

23 (a) Within one year immediately preceding the date of the offense
24 that gave rise to the present conviction, the applicant has not (~~been~~
25 ~~convicted~~) committed of any offense relating to motor vehicles for
26 which suspension or revocation of a driver's license is mandatory; and

27 (b) Within five years immediately preceding the date of the offense
28 that gave rise to the present conviction, the applicant has not (~~been~~
29 ~~convicted of~~) committed any of the following offenses: (i) Driving or
30 being in actual physical control of a motor vehicle while under the
31 influence of intoxicating liquor (~~under RCW 46.61.502 or 46.61.504,~~
32 ~~of~~); (ii) vehicular homicide under RCW 46.61.520(~~, or of~~); or (iii)
33 vehicular assault under RCW 46.61.522; and

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

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

38 (3) The director shall cancel an occupational driver's license upon
39 receipt of notice that the holder thereof has been convicted of

1 operating a motor vehicle in violation of its restrictions, or of an
2 offense that pursuant to chapter 46.20 RCW would warrant suspension or
3 revocation of a regular driver's license. The cancellation is
4 effective as of the date of the conviction, and continues with the same
5 force and effect as any suspension or revocation under this title.

6 **Sec. 30.** RCW 5.40.060 and 1987 c 212 s 1001 are each amended to
7 read as follows:

8 (1) Except as provided in subsection (2) of this section, it is a
9 complete defense to an action for damages for personal injury or
10 wrongful death that the person injured or killed was under the
11 influence of intoxicating liquor or any drug at the time of the
12 occurrence causing the injury or death and that such condition was a
13 proximate cause of the injury or death and the trier of fact finds such
14 person to have been more than fifty percent at fault. The standard for
15 determining whether a person was under the influence of intoxicating
16 liquor or drugs shall be the same standard established for criminal
17 convictions under RCW 46.61.502, and evidence that a person was under
18 the influence of intoxicating liquor or drugs under the standard
19 established by RCW 46.61.502 shall be conclusive proof that such person
20 was under the influence of intoxicating liquor or drugs.

21 (2) In an action for damages for personal injury or wrongful death
22 that is brought against the driver of a motor vehicle who was under the
23 influence of intoxicating liquor or any drug at the time of the
24 occurrence causing the injury or death and whose condition was a
25 proximate cause of the injury or death, subsection (1) of this section
26 does not create a defense against the action notwithstanding that the
27 person injured or killed was also under the influence so long as such
28 person's condition was not a proximate cause of the occurrence causing
29 the injury or death.

30 NEW SECTION. **Sec. 31.** Section 30 of this act is remedial in
31 nature and shall apply retroactively.

32 **Sec. 32.** RCW 46.55.113 and 1987 c 311 s 10 are each amended to
33 read as follows:

34 Whenever the driver of a vehicle is arrested for a violation of RCW
35 46.61.502 or 46.61.504, the arresting officer may take custody of the
36 vehicle and provide for its prompt removal to a place of safety. In

1 addition, a police officer may take custody of a vehicle and provide
2 for its prompt removal to a place of safety under any of the following
3 circumstances:

4 (1) Whenever a police officer finds a vehicle standing upon the
5 roadway in violation of any of the provisions of RCW 46.61.560, the
6 officer may provide for the removal of the vehicle or require the
7 driver or other person in charge of the vehicle to move the vehicle to
8 a position off the roadway;

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

12 (3) Whenever a police officer finds an unattended vehicle at the
13 scene of an accident or when the driver of a vehicle involved in an
14 accident is physically or mentally incapable(~~(, or too intoxicated, to~~
15 ~~decide)) of deciding upon steps to be taken to protect his or her
16 property;~~

17 (4) Whenever the driver of a vehicle is arrested and taken into
18 custody by a police officer(~~(, and the driver, because of intoxication~~
19 ~~or otherwise, is mentally incapable of deciding upon steps to be taken~~
20 ~~to safeguard his or her property))~~);

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

23 (6) Whenever a vehicle without a special license plate, card, or
24 decal indicating that the vehicle is being used to transport a disabled
25 person under RCW 46.16.381 is parked in a stall or space clearly and
26 conspicuously marked under RCW 46.61.581 which space is provided on
27 private property without charge or on public property.

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

32 **PART XI - TECHNICAL**

33 **Sec. 33.** RCW 46.63.020 and 1993 c 501 s 8 are each amended to read
34 as follows:

35 Failure to perform any act required or the performance of any act
36 prohibited by this title or an equivalent administrative regulation or
37 local law, ordinance, regulation, or resolution relating to traffic

1 including parking, standing, stopping, and pedestrian offenses, is
2 designated as a traffic infraction and may not be classified as a
3 criminal offense, except for an offense contained in the following
4 provisions of this title or a violation of an equivalent administrative
5 regulation or local law, ordinance, regulation, or resolution:

6 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
7 vehicle while under the influence of intoxicating liquor or a
8 controlled substance;

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

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

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

14 (5) Chapter 46.12 RCW relating to certificates of ownership and
15 registration;

16 (6) RCW 46.16.010 relating to initial registration of motor
17 vehicles;

18 (7) RCW 46.16.011 relating to permitting unauthorized persons to
19 drive;

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

21 (9) RCW 46.16.381 (6) or (~~(+8)~~) (9) relating to unauthorized use
22 or acquisition of a special placard or license plate for disabled
23 persons' parking;

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

26 (11) RCW 46.20.336 relating to the unlawful possession and use of
27 a driver's license;

28 (12) RCW 46.20.342 relating to driving with a suspended or revoked
29 license or status;

30 (13) RCW 46.20.410 relating to the violation of restrictions of an
31 occupational driver's license;

32 (14) RCW 46.20.420 relating to the operation of a motor vehicle
33 with a suspended or revoked license;

34 (15) RCW 46.20.750 relating to assisting another person to start a
35 vehicle equipped with an ignition interlock device;

36 (16) RCW 46.25.170 relating to commercial driver's licenses;

37 (17) Chapter 46.29 RCW relating to financial responsibility;

38 (18) RCW 46.30.040 relating to providing false evidence of
39 financial responsibility;

1 (19) RCW 46.37.435 relating to wrongful installation of
2 sunscreening material;
3 (20) RCW 46.44.180 relating to operation of mobile home pilot
4 vehicles;
5 (21) RCW 46.48.175 relating to the transportation of dangerous
6 articles;
7 (22) RCW 46.52.010 relating to duty on striking an unattended car
8 or other property;
9 (23) RCW 46.52.020 relating to duty in case of injury to or death
10 of a person or damage to an attended vehicle;
11 (24) RCW 46.52.090 relating to reports by repairmen, storagemen,
12 and appraisers;
13 (25) RCW 46.52.100 relating to driving under the influence of
14 liquor or drugs;
15 (26) RCW 46.52.130 relating to confidentiality of the driving
16 record to be furnished to an insurance company, an employer, and an
17 alcohol/drug assessment or treatment agency;
18 (27) RCW 46.55.020 relating to engaging in the activities of a
19 registered tow truck operator without a registration certificate;
20 (28) RCW 46.55.035 relating to prohibited practices by tow truck
21 operators;
22 (29) RCW 46.61.015 relating to obedience to police officers,
23 flagmen, or fire fighters;
24 (30) RCW 46.61.020 relating to refusal to give information to or
25 cooperate with an officer;
26 (31) RCW 46.61.022 relating to failure to stop and give
27 identification to an officer;
28 (32) RCW 46.61.024 relating to attempting to elude pursuing police
29 vehicles;
30 (33) RCW 46.61.500 relating to reckless driving;
31 (34) RCW 46.61.502 and 46.61.504 and sections 4, 5, and 6 of this
32 act relating to persons under the influence of intoxicating liquor or
33 drugs;
34 (35) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
35 (36) RCW 46.61.522 relating to vehicular assault;
36 (37) RCW 46.61.525 relating to negligent driving;
37 (38) RCW 46.61.530 relating to racing of vehicles on highways;
38 (39) RCW 46.61.685 relating to leaving children in an unattended
39 vehicle with the motor running;

- 1 (40) RCW 46.64.010 relating to unlawful cancellation of or attempt
2 to cancel a traffic citation;
- 3 (41) RCW 46.64.048 relating to attempting, aiding, abetting,
4 coercing, and committing crimes;
- 5 (42) Chapter 46.65 RCW relating to habitual traffic offenders;
- 6 (43) Chapter 46.70 RCW relating to unfair motor vehicle business
7 practices, except where that chapter provides for the assessment of
8 monetary penalties of a civil nature;
- 9 (44) Chapter 46.72 RCW relating to the transportation of passengers
10 in for hire vehicles;
- 11 (45) Chapter 46.80 RCW relating to motor vehicle wreckers;
- 12 (46) Chapter 46.82 RCW relating to driver's training schools;
- 13 (47) RCW 46.87.260 relating to alteration or forgery of a cab card,
14 letter of authority, or other temporary authority issued under chapter
15 46.87 RCW;
- 16 (48) RCW 46.87.290 relating to operation of an unregistered or
17 unlicensed vehicle under chapter 46.87 RCW.

18 **Sec. 34.** RCW 3.62.090 and 1986 c 98 s 4 are each amended to read
19 as follows:

20 (1) There shall be assessed and collected in addition to any fines,
21 forfeitures, or penalties assessed, other than for parking infractions,
22 by all courts organized under Title 3 or 35 RCW a public safety and
23 education assessment equal to sixty percent of such fines, forfeitures,
24 or penalties, which shall be remitted as provided in chapters 3.46,
25 3.50, 3.62, and 35.20 RCW. The assessment required by this section
26 shall not be suspended or waived by the court.

27 (2) There shall be assessed and collected in addition to any fines,
28 forfeitures, or penalties assessed, other than for parking infractions
29 and for fines levied under (~~RCW 46.61.515~~) sections 4, 5, and 6 of
30 this act, and in addition to the public safety and education assessment
31 required under subsection (1) of this section, by all courts organized
32 under Title 3 or 35 RCW, an additional public safety and education
33 assessment equal to fifty percent of the public safety and education
34 assessment required under subsection (1) of this section, which shall
35 be remitted to the state treasurer and deposited as provided in RCW
36 43.08.250. The additional assessment required by this subsection shall
37 not be suspended or waived by the court.

1 ***Sec. 35.** RCW 10.05.120 and 1985 c 352 s 15 are each amended to
2 read as follows:

3 *Upon proof of successful completion of the two-year treatment*
4 *program, the court shall dismiss the charges pending against the*
5 *petitioner.*

6 *Five years from the date of the court's approval of a deferred*
7 *prosecution program for an individual petitioner, those entries that*
8 *remain in the department of licensing records relating to such*
9 *petitioner shall be removed. A deferred prosecution may be considered*
10 *for enhancement purposes when imposing mandatory penalties and*
11 *suspensions under ((RCW 46.61.515)) sections 4, 5, and 6 of this act*
12 *for subsequent offenses within a five-year period.*

13 ***Sec. 35** was vetoed, see message at end of chapter.

14 **Sec. 36.** RCW 35.21.165 and 1983 c 165 s 40 are each amended to
15 read as follows:

16 Except as limited by the maximum penalties authorized by law, no
17 city or town may establish a penalty for an act that constitutes the
18 crime of driving while under the influence of intoxicating liquor or
19 any drug, as provided in RCW 46.61.502, or the crime of being in actual
20 physical control of a motor vehicle while under the influence of
21 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is
22 less than the penalties prescribed for those crimes in ((RCW
23 46.61.515)) sections 4, 5, and 6 of this act.

24 **Sec. 37.** RCW 36.32.127 and 1983 c 165 s 41 are each amended to
25 read as follows:

26 No county may establish a penalty for an act that constitutes the
27 crime of driving while under the influence of intoxicating liquor or
28 any drug, as provided for in RCW 46.61.502, or the crime of being in
29 actual physical control of a motor vehicle while under the influence of
30 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is
31 less than the penalties prescribed for those crimes in ((RCW
32 46.61.515)) sections 4, 5, and 6 of this act.

33 **Sec. 38.** RCW 46.04.480 and 1988 c 148 s 8 are each amended to read
34 as follows:

35 "Revoke," in all its forms, means the invalidation for a period of
36 one calendar year and thereafter until reissue: PROVIDED, That under

1 the provisions of RCW 46.20.285, 46.20.311, 46.20.265, (~~or 46.61.515~~)
2 section 4, 5, or 6 of this act, and chapter 46.65 RCW the invalidation
3 may last for a period other than one calendar year.

4 **Sec. 39.** RCW 46.61.5151 and 1983 c 165 s 33 are each amended to
5 read as follows:

6 A sentencing court may allow persons convicted of violating RCW
7 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in
8 (~~RCW 46.61.515 (1) or (2)~~) section 4, 5, or 6 of this act in
9 nonconsecutive or intermittent time periods. However, (~~the first~~
10 ~~twenty-four hours of any sentence under RCW 46.61.515(1) and the first~~
11 ~~forty-eight hours of any sentence under RCW 46.61.515(2)~~) any
12 mandatory minimum sentence under section 4, 5, or 6 of this act shall
13 be served consecutively unless suspended or deferred as otherwise
14 provided by law.

15 **Sec. 40.** RCW 46.61.5152 and 1992 c 64 s 1 are each amended to read
16 as follows:

17 In addition to penalties that may be imposed under (~~RCW~~
18 ~~46.61.515~~) section 4, 5, or 6 of this act, the court may require a
19 person who is convicted of a violation of RCW 46.61.502 or 46.61.504 or
20 who enters a deferred prosecution program under RCW 10.05.020 based on
21 a violation of RCW 46.61.502 or 46.61.504, to attend an educational
22 program focusing on the emotional, physical, and financial suffering of
23 victims who were injured by persons convicted of driving while under
24 the influence of intoxicants.

25 NEW SECTION. **Sec. 41.** The sum of one million five hundred sixty-
26 three thousand five hundred eighty-nine dollars, or as much thereof as
27 may be necessary, is appropriated for the biennium ending June 30,
28 1995, from the highway safety fund to the department of licensing for
29 the purposes of implementing this act.

30 NEW SECTION. **Sec. 42.** The following acts or parts of acts are
31 each repealed:

32 (1) RCW 46.61.515 and 1993 c 501 s 7, 1993 c 239 s 1, 1985 c 352 s
33 1, 1984 c 258 s 328, 1983 c 165 s 21, 1983 c 150 s 1, 1982 1st ex.s. c
34 47 s 27, 1979 ex.s. c 176 s 6, 1977 ex.s. c 3 s 3, 1975 1st ex.s. c 287

1 s 2, 1974 ex.s. c 130 s 1, 1971 ex.s. c 284 s 1, 1967 c 32 s 68, & 1965
2 ex.s. c 155 s 62; and
3 (2) 1993 c 239 s 3 (uncodified).

4 NEW SECTION. **Sec. 43.** This act shall be known as the "1994
5 Omnibus Drunk Driving Act."

6 NEW SECTION. **Sec. 44.** Section 7 of this act shall expire June 30,
7 1995.

8 NEW SECTION. **Sec. 45.** Part headings and the table of contents as
9 used in this act do not constitute any part of the law.

10 NEW SECTION. **Sec. 46.** This act shall take effect July 1, 1994.
Passed the Senate March 10, 1994.
Passed the House March 10, 1994.
Approved by the Governor April 1, 1994, with the exception of
certain items which were vetoed.
Filed in Office of Secretary of State April 1, 1994.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 35,
3 Substitute Senate Bill No. 6047 entitled:

4 "AN ACT relating to crimes involving alcohol, drugs, or mental
5 problems;"

6 Section 35 of Substitute Senate Bill No. 6047 is in conflict with
7 section 19 of the same bill and contradicts the intent of the bill to
8 maintain records for deferred prosecution for ten years.

9 With the exception of section 35, Substitute Senate Bill No. 6047
10 is approved."