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HOUSE BILL 1750

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State of Washington                      54th Legislature                      1995 Regular Session

By Representatives Hickel, Appelwick, Padden, Robertson and Delvin

Read first time 02/07/95. Referred to Committee on Law & Justice.

1            AN ACT Relating to administratively suspending, revoking, denying,  
2 or placing in a probationary status a person's license, permit, or  
3 privilege to drive; amending RCW 46.20.309, 46.20.308, and 46.20.355;  
4 adding a new section to chapter 46.20 RCW; adding a new section to  
5 chapter 46.61 RCW; recodifying RCW 46.20.309; repealing RCW 46.20.365;  
6 prescribing penalties; and providing an effective date.

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

8            **Sec. 1.** RCW 46.20.309 and 1994 c 275 s 10 are each amended to read  
9 as follows:

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

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

1       ~~(3) A test or tests may be administered at the direction of a law~~  
2 ~~enforcement officer, who after stopping or detaining the driver, has~~  
3 ~~reasonable grounds to believe that the driver was driving or in actual~~  
4 ~~physical control of a motor vehicle while having alcohol in his or her~~  
5 ~~system.~~

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

10       ~~(5) If the person refuses testing, or submits to a test that~~  
11 ~~discloses an alcohol concentration of 0.02 or more, the law enforcement~~  
12 ~~officer shall:~~

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

16       ~~(b) Serve the person notice in writing on behalf of the department~~  
17 ~~of licensing of the person's right to a hearing, specifying the steps~~  
18 ~~required to obtain a hearing;~~

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

27       ~~(d) Notify the department of licensing of the traffic stop, and~~  
28 ~~transmit to the department any confiscated license or permit and a~~  
29 ~~sworn report stating:~~

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

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

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

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

38       ~~(6) Upon receipt of the sworn report of a law enforcement officer~~  
39 ~~under subsection (5) of this section, the department shall suspend or~~

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

34 ~~(7) The department shall suspend or revoke the driver's license or~~  
35 ~~driving privilege of a person as required by this section as follows:~~  
36 ~~(a) In the case of a person who has refused a test or tests:~~  
37 ~~(i) For a first refusal within five years, revocation for one year;~~  
38 ~~(ii) For a second or subsequent refusal within five years,~~  
39 ~~revocation or denial for two years.~~

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

3       ~~(i) For a first incident within five years, suspension for ninety~~  
4 ~~days;~~

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

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

11       **Sec. 2.** RCW 46.20.308 and 1994 c 275 s 13 are each amended to read  
12 as follows:

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

21       (b) A person under the age of twenty-one who drives or is in  
22 physical control of a motor vehicle within this state is deemed to have  
23 given consent, subject to the relevant portions of RCW 46.61.506, to be  
24 detained long enough, and be transported if necessary, to take a test  
25 or tests of that person's blood or breath for the purpose of  
26 determining the alcohol concentration in his or her system if requested  
27 or signaled to stop by a law enforcement officer pursuant to RCW  
28 46.20.309 where, at the time of the stop, the officer has reasonable  
29 grounds to believe the person is under the age of twenty-one and had  
30 been driving or was in actual physical control of a motor vehicle while  
31 having alcohol in a concentration of 0.02 or more in his or her system.

32       (2) The test or tests of breath shall be administered at the  
33 direction of a law enforcement officer having reasonable grounds to  
34 believe the person to have been driving or in actual physical control  
35 of a motor vehicle within this state while under the influence of  
36 intoxicating liquor or the person to have been driving or in actual  
37 physical control of a motor vehicle while having alcohol in a  
38 concentration of 0.02 or more in his or her system and being under the

1 age of twenty-one. However, in those instances where: (a) The person  
2 is incapable due to physical injury, physical incapacity, or other  
3 physical limitation, of providing a breath sample; or (b) ~~((as a result~~  
4 ~~of a traffic accident))~~ the person is being treated ~~((for a medical~~  
5 ~~condition))~~ in a hospital, clinic, doctor's office, or other similar  
6 facility in which a breath testing instrument is not present, a blood  
7 test shall be administered by a qualified person as provided in RCW  
8 46.61.506(4). The officer shall inform the person of his or her right  
9 to refuse the breath or blood test, and of his or her right to have  
10 additional tests administered by any qualified person of his or her  
11 choosing as provided in RCW 46.61.506. The officer shall warn the  
12 driver that ~~((a))~~ (i) his or her license, permit, or privilege to  
13 drive will be revoked or denied if he or she refuses to submit to the  
14 test, ~~((and (b) that))~~ (ii) if the person is age twenty-one or over,  
15 his or her license, permit, or privilege to drive will be revoked,  
16 denied, or placed in probationary status and the person will be subject  
17 to possible criminal penalties if the test is administered and the test  
18 indicates the alcohol concentration of the person's breath or blood is  
19 0.10 or more, (iii) if the person is under the age of twenty-one, his  
20 or her license, permit, or privilege to drive will be suspended,  
21 revoked, or denied and the person will be subject to possible criminal  
22 penalties if the test is administered and the test indicates the  
23 alcohol concentration of the person's breath or blood is 0.02 or more,  
24 and (iv) his or her refusal to take the test may be used in a criminal  
25 trial.

26 (3) Except as provided in this section, the test administered shall  
27 be of the breath only. If an individual is unconscious or is under  
28 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
29 or vehicular assault as provided in RCW 46.61.522, or if an individual  
30 is under arrest for the crime of driving while under the influence of  
31 intoxicating liquor or drugs as provided in RCW 46.61.502 or is under  
32 detention for driving with alcohol in his or her system as provided in  
33 RCW 46.20.309 (as recodified by this act), which arrest or detention  
34 results from an accident in which there has been serious bodily injury  
35 to another person ~~((has been injured and there is a reasonable~~  
36 likelihood that such other person may die as a result of injuries  
37 sustained in the accident)), a breath or blood test may be administered  
38 without the consent of the individual so arrested or detained.

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

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

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

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

27 (b) Serve notice in writing on the person on behalf of the  
28 department of his or her right to a hearing, specifying the steps he or  
29 she must take to obtain a hearing. Within fifteen days after the  
30 notice has been given, the person may, in writing, request a formal  
31 hearing as provided by subsection (8) of this section. If such request  
32 is made by mail it must be postmarked within fifteen days after the  
33 notice has been given. The person shall pay a fee of one hundred  
34 dollars, which is nonrefundable except as provided in subsection (9) of  
35 this section, as part of the request;

36 (c) Confiscate the person's Washington state driver's license or  
37 permit to drive, if any;

38 (d) Issue a citation and notice to appear that shall also serve as  
39 a temporary license to be effective twelve hours after the time of

1 arrest or detention and valid for forty-five days from the date of  
2 arrest or detention or from the date notice has been given in the event  
3 notice is given by the department following a blood test, or until the  
4 suspension, revocation, denial, or placement in probationary status of  
5 the person's license, permit, or privilege to drive is sustained at a  
6 hearing pursuant to subsection (8) of this section, whichever occurs  
7 first. No temporary license is valid to any greater degree than the  
8 license or permit that it replaces; and

9 (e) Immediately notify the department of the arrest or detention  
10 and transmit to the department within seventy-two hours, except as  
11 delayed as the result of a blood test, any confiscated license or  
12 permit and a sworn report or report under a declaration authorized by  
13 RCW 9A.72.085 that states:

14 (i) That the officer had reasonable grounds to believe the arrested  
15 or detained person had been driving or was in actual physical control  
16 of a motor vehicle within this state while under the influence of  
17 intoxicating liquor or drugs, or both, or had been driving or was in  
18 actual physical control of a motor vehicle within this state with  
19 alcohol in a concentration of 0.02 or more in his or her system and is  
20 under the age of twenty-one;

21 (ii) That after receipt of the warnings required by subsection (2)  
22 of this section the person refused to submit to a test of his or her  
23 blood or breath, or a test was administered and the results indicated  
24 that the alcohol concentration of the person's breath or blood was 0.10  
25 or more if the person is age twenty-one or over, or was 0.02 or more if  
26 the person is under the age of twenty-one; and

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

28 (7) The department of licensing, upon the receipt of a sworn report  
29 ((of the law enforcement officer that the officer had reasonable  
30 grounds to believe the arrested person had been driving or was in  
31 actual physical control of a motor vehicle within this state while  
32 under the influence of intoxicating liquor and that the person had  
33 refused to submit to the test or tests upon the request of the law  
34 enforcement officer after being informed that refusal would result in  
35 the revocation of the person's privilege to drive)) or report under a  
36 declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this  
37 section, shall suspend, revoke, deny, or place in probationary status  
38 the person's license ((or)), permit, or privilege to drive or any  
39 nonresident operating privilege, as provided in section 3 of this act,

1 such suspension, revocation, denial, or placement in probationary  
2 status to be effective beginning forty-five days from the date of  
3 arrest or detention or from the date notice has been given in the event  
4 notice is given by the department following a blood test, or when  
5 sustained at a hearing pursuant to subsection (8) of this section,  
6 whichever occurs first.

7 ~~((7) Upon revoking the license or permit to drive or the~~  
8 ~~nonresident operating privilege of any person, the department shall~~  
9 ~~immediately notify the person involved in writing by personal service~~  
10 ~~or by certified mail of its decision and the grounds therefor, and of~~  
11 ~~the person's right to a hearing, specifying the steps he or she must~~  
12 ~~take to obtain a hearing. Within fifteen days after the notice has~~  
13 ~~been given, the person may, in writing, request a formal hearing. The~~  
14 ~~person shall pay a fee of one hundred dollars as part of the request.))~~

15 (8) Upon timely receipt of ((such)) a request for a formal hearing  
16 and ((such)) payment of the required fee, the department shall afford  
17 the person an opportunity for a hearing ((as provided in)). Except as  
18 otherwise provided in this section, the hearing is subject to and shall  
19 be scheduled and conducted in accordance with RCW 46.20.329 and  
20 46.20.332. The hearing shall be conducted in the county of the arrest  
21 or detention, except that all or part of the hearing may, at the  
22 discretion of the department, be conducted by telephone or other  
23 electronic means. The hearing shall be held within forty-five days  
24 following the arrest or detention or following the date notice has been  
25 given in the event notice is given by the department following a blood  
26 test, unless otherwise agreed to by the department and the person, in  
27 which case the action by the department shall be stayed, and any valid  
28 temporary license issued under subsection (6)(d) of this section  
29 extended, if the person is otherwise eligible for licensing. For the  
30 purposes of this section, the scope of ((such)) the hearing shall cover  
31 the issues of whether a law enforcement officer had reasonable grounds  
32 to believe the person had been driving or was in actual physical  
33 control of a motor vehicle within this state while under the influence  
34 of intoxicating liquor or had been driving or was in actual physical  
35 control of a motor vehicle within this state while having alcohol in  
36 his or her system and was under the age of twenty-one, whether the  
37 person was placed under arrest or detention, and (a) whether the person  
38 refused to submit to the test or tests upon request of the officer  
39 after having been informed that such refusal would result in the



1 revocation of the person's license, permit, or privilege to drive, or  
2 (b) if a test or tests were administered, whether the applicable  
3 requirements of this section were satisfied before the administration  
4 of the test or tests, whether the person submitted to the test or  
5 tests, or whether a test was administered without express consent as  
6 permitted under this section, and whether the test or tests indicated  
7 that the alcohol concentration of the person's breath or blood was 0.10  
8 or more if the person was age twenty-one or over at the time of the  
9 arrest, or was 0.02 or more if the person was under the age of twenty-  
10 one at the time of the arrest or detention. The sworn report or report  
11 under a declaration authorized by RCW 9A.72.085 submitted by a law  
12 enforcement officer is prima facie evidence that the officer had  
13 reasonable grounds to believe the person had been driving or was in  
14 actual physical control of a motor vehicle within this state while  
15 under the influence of intoxicating liquor or drugs, or both, or the  
16 person had been driving or was in actual physical control of a motor  
17 vehicle within this state while having alcohol in his or her system and  
18 was under the age of twenty-one, and that the officer complied with the  
19 requirements of this section.

20 A hearing officer shall conduct the hearing, may issue subpoenas  
21 for the attendance of witnesses and the production of documents, and  
22 shall administer oaths to witnesses. The hearing officer shall not  
23 issue a subpoena for the attendance of a witness at the request of the  
24 person unless the request is accompanied by the fee required by RCW  
25 5.56.010 for a witness in district court. The sworn report or report  
26 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
27 officer and any other evidence accompanying the report shall be  
28 admissible without further evidentiary foundation and the  
29 certifications authorized by the criminal rules for courts of limited  
30 jurisdiction shall be admissible without further evidentiary  
31 foundation. The person may be represented by counsel, may question  
32 witnesses, may present evidence, and may testify. The department shall  
33 order that the suspension, revocation, denial, or placement in  
34 probationary status either be rescinded or sustained. ((Any decision  
35 by the department revoking a person's driving privilege shall be stayed  
36 and shall not take effect while a formal hearing is pending as provided  
37 in this section or during the pendency of a subsequent appeal to  
38 superior court so long as there is no conviction for a moving violation

1 ~~or no finding that the person has committed a traffic infraction that~~  
2 ~~is a moving violation during pendency of the hearing and appeal.~~

3 ~~(8))~~ (9) Failure of the person to request a hearing or pay the  
4 required fee within the time limit established by subsection (6) of  
5 this section, or failure to appear or participate in such a hearing,  
6 constitutes a default and results in the loss of that person's right to  
7 a hearing. The department shall not refund any fee paid by the person  
8 requesting a hearing unless the department lacks proper jurisdiction in  
9 the case or denies the request due to a late filing, or unless the  
10 person withdraws the request no later than three days prior to the  
11 scheduled hearing date as established by the department.

12 (10) If the suspension, revocation, denial, or placement in  
13 probationary status is sustained after such a hearing, the person whose  
14 license, privilege, or permit is suspended, revoked, denied, or placed  
15 in probationary status has the right to file a petition in the superior  
16 court of the county of arrest or detention to review the final order of  
17 revocation by the department in the same manner ((provided in RCW  
18 46.20.334)) as an appeal from a decision of a court of limited  
19 jurisdiction. The appellant must pay the costs associated with  
20 obtaining the record of the hearing before the hearing officer. The  
21 filing of the appeal does not stay the effective date of the  
22 suspension, revocation, denial, or placement in probationary status.  
23 A petition filed under this subsection must include the petitioner's  
24 grounds for requesting review. Upon granting petitioner's request for  
25 review, the court shall review the department's final order of  
26 suspension, revocation, denial, or placement in probationary status as  
27 expeditiously as possible. If judicial relief is sought for a stay or  
28 other temporary remedy from the department's action, the court shall  
29 not grant such relief unless the court finds that the appellant is  
30 likely to prevail in the appeal and that without a stay the appellant  
31 will suffer irreparable injury. If the court stays the suspension,  
32 revocation, denial, or placement in probationary status, it may impose  
33 conditions on such stay.

34 (11) If a person whose driver's license, permit, or privilege to  
35 drive has been or will be suspended, revoked, or denied under  
36 subsection (7) of this section, other than as a result of a breath test  
37 refusal, and who has not committed an offense within the last five  
38 years for which he or she was granted a deferred prosecution under  
39 chapter 10.05 RCW, petitions a court for a deferred prosecution on

1 criminal charges arising out of the arrest for which action has been or  
2 will be taken under subsection (7) of this section, the court may  
3 direct the department to stay any actual or proposed suspension,  
4 revocation, or denial for at least forty-five days but not more than  
5 ninety days. If the court stays the suspension, revocation, or denial,  
6 it may impose conditions on such stay. If the person is otherwise  
7 eligible for licensing, the department shall issue a temporary license,  
8 or extend any valid temporary license issued under subsection (6) of  
9 this section, for the period of the stay. If a deferred prosecution  
10 treatment plan is not recommended in the report made under RCW  
11 10.05.050, or if treatment is rejected by the court, or if the person  
12 declines to accept an offered treatment plan, or if the person violates  
13 any condition imposed by the court, then the court shall immediately  
14 direct the department to cancel the stay and any temporary license or  
15 extension of a temporary license issued under this subsection.

16 A suspension, revocation, or denial imposed under this section,  
17 other than as a result of a breath test refusal, shall be stayed if the  
18 person is accepted for deferred prosecution as provided in chapter  
19 10.05 RCW for the incident upon which the suspension, revocation, or  
20 denial is based. If the deferred prosecution is terminated, the stay  
21 shall be lifted and the suspension, revocation, or denial reinstated.  
22 If the deferred prosecution is completed, the stay shall be lifted and  
23 the suspension, revocation, or denial canceled.

24 ((+9)) (12) When it has been finally determined under the  
25 procedures of this section that a nonresident's privilege to operate a  
26 motor vehicle in this state has been suspended, revoked, or denied,  
27 the department shall give information in writing of the action taken to the  
28 motor vehicle administrator of the state of the person's residence and  
29 of any state in which he or she has a license.

30 NEW SECTION. Sec. 3. A new section is added to chapter 46.20 RCW  
31 to read as follows:

32 (1) Pursuant to RCW 46.20.308, the department shall suspend,  
33 revoke, deny, or place in probationary status the arrested or detained  
34 person's license, permit to drive, driving privilege, or any  
35 nonresident privilege as follows:

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

1 (i) For a first refusal within five years, where there has not been  
2 a previous incident within five years that resulted in administrative  
3 action under this section, revocation or denial for one year;

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

12 (b) In the case of an incident where a person has submitted to or  
13 been administered a test or tests indicating that the alcohol  
14 concentration of the person's breath or blood was 0.10 or more:

15 (i) For a first incident within five years, placement in  
16 probationary status as provided in RCW 46.20.355;

17 (ii) For a second or subsequent incident within five years,  
18 revocation or denial for two years.

19 (c) In the case of an incident where a person under age twenty-one  
20 has submitted to or been administered a test or tests indicating that  
21 the alcohol concentration of the person's breath or blood was less than  
22 0.10 but more than 0.02:

23 (i) For a first incident within five years, suspension or denial  
24 for ninety days;

25 (ii) For a second or subsequent incident within five years,  
26 revocation or denial for one year or until the person reaches age  
27 twenty-one, whichever is longer.

28 (2) Upon completion of any suspension, revocation, or denial period  
29 imposed under this section, the department shall place the person's  
30 privilege to drive in probationary status as provided in RCW 46.20.355.

31 **Sec. 4.** RCW 46.20.355 and 1994 c 275 s 8 are each amended to read  
32 as follows:

33 (1) Upon notification of a conviction under RCW 46.61.502 or  
34 46.61.504 for which the issuance of a probationary driver's license is  
35 required, or upon receipt of a sworn report or report under a  
36 declaration authorized by RCW 9A.72.085 under RCW 46.20.308, or upon  
37 receipt of an abstract indicating a deferred prosecution has been  
38 granted under RCW 10.05.060, the department of licensing shall order

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

10 (2) ~~((Upon receipt of the surrendered license, and following the~~  
11 ~~expiration of any period of license suspension or revocation, or~~  
12 ~~following receipt of a sworn statement under RCW 46.20.365 that~~  
13 ~~requires issuance of a probationary license, the department shall issue~~  
14 ~~the person a probationary license if otherwise qualified. The~~  
15 ~~probationary license shall be renewed on the same cycle as the person's~~  
16 ~~regular license would have been renewed until five years after the date~~  
17 ~~of its issuance.))~~ The department shall place a person's driving  
18 privilege in probationary status as required by RCW 10.05.060,  
19 46.20.308, section 3 of this act, or 46.61.5053 for a period of five  
20 years from the date the probationary status is required to go into  
21 effect.

22 (3) Following the expiration of any period of suspension,  
23 revocation, or denial after which placement in probationary status is  
24 required, or following receipt of an abstract indicating a deferred  
25 prosecution has been granted under RCW 10.05.060, or following receipt  
26 of a sworn report under RCW 46.20.308 that requires immediate placement  
27 in probationary status under section 3(1)(b)(i) of this act, the  
28 department shall require the person to obtain a probationary license in  
29 order to operate a motor vehicle in the state of Washington, except as  
30 otherwise exempt under RCW 46.20.025. The department shall not issue  
31 the probationary license unless the person is otherwise qualified for  
32 licensing, and must be renewed on the same cycle as the person's  
33 regular license would have been renewed until the expiration of the  
34 five-year probationary status period imposed under subsection (2) of  
35 this section.

36 (4) For each original issue or ((reissue)) renewal of a  
37 probationary license under this section, the department ((may)) shall  
38 charge ((the)) a fee ((authorized under RCW 46.20.311 for the  
39 reissuance of a license following a revocation for a violation of RCW

1 ~~46.61.502 or 46.61.504~~) of fifty dollars in addition to any other  
2 licensing fees required. Except for when renewing a probationary  
3 license, the department shall waive the fifty-dollar fee if the person  
4 has a probationary license in his or her possession at the time a new  
5 probationary license is required.

6 ((~~4~~)) (5) A probationary license shall enable the department and  
7 law enforcement personnel to determine that the person is on  
8 probationary status(~~(, including the period of that status,)~~) for a  
9 violation of RCW 46.61.502 or 46.61.504 (~~(or 46.20.365)~~), or as  
10 required under RCW 10.05.060, 46.20.308, or section 3 of this act.  
11 ((That)) The fact that a person's driving privilege is in probationary  
12 status or that the person has been issued a probationary license shall  
13 not be a part of the person's record that is available to insurance  
14 companies.

15 NEW SECTION. Sec. 5. RCW 46.20.309 is recodified as a section in  
16 chapter 46.61 RCW.

17 NEW SECTION. Sec. 6. RCW 46.20.365 and 1994 c 275 s 12 are each  
18 repealed.

19 NEW SECTION. Sec. 7. If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

23 NEW SECTION. Sec. 8. This act shall take effect September 1,  
24 1995.

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