

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5141**

Chapter 332, Laws of 1995

54th Legislature  
1995 Regular Session

DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

EFFECTIVE DATE: 9/1/95 - Except Sections 13 and 22 which become effective 5/11/95

Passed by the Senate April 23, 1995  
YEAS 44 NAYS 0

JOEL PRITCHARD

\_\_\_\_\_  
**President of the Senate**

Passed by the House April 23, 1995  
YEAS 94 NAYS 0

CLYDE BALLARD

\_\_\_\_\_  
**Speaker of the  
House of Representatives**

Approved May 11, 1995

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 5141** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

\_\_\_\_\_  
**Secretary**

FILED

May 11, 1995 - 1:24 p.m.

**Secretary of State  
State of Washington**



1 concentration or presence of any drug in his or her breath or blood if  
2 arrested for any offense where, at the time of the arrest, the  
3 arresting officer has reasonable grounds to believe the person had been  
4 driving or was in actual physical control of a motor vehicle while  
5 under the influence of intoxicating liquor or any drug or was in  
6 violation of RCW 46.20.309 (as recodified by this act).

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

28 (a) His or her license, permit, or privilege to drive will be  
29 revoked or denied if he or she refuses to submit to the test(~~(b)~~  
30 that))i

31 (b) His or her license, permit, or privilege to drive will be  
32 suspended, revoked, denied, or placed in probationary status if the  
33 test is administered and the test indicates the alcohol concentration  
34 of the person's breath or blood is 0.10 or more, in the case of a  
35 person age twenty-one or over, or 0.02 or more in the case of a person  
36 under age twenty-one; and

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

1 (3) Except as provided in this section, the test administered shall  
2 be of the breath only. If an individual is unconscious or is under  
3 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
4 or vehicular assault as provided in RCW 46.61.522, or if an individual  
5 is under arrest for the crime of driving while under the influence of  
6 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest  
7 results from an accident in which there has been serious bodily injury  
8 to another person (~~((has been injured and there is a reasonable~~  
9 ~~likelihood that such other person may die as a result of injuries~~  
10 ~~sustained in the accident))~~), a breath or blood test may be administered  
11 without the consent of the individual so arrested.

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

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

23 (6) If, after arrest and after the other applicable conditions and  
24 requirements of this section have been satisfied, a test or tests of  
25 the person's blood or breath is administered and the test results  
26 indicate that the alcohol concentration of the person's breath or blood  
27 is 0.10 or more if the person is age twenty-one or over, or is 0.02 or  
28 more if the person is under the age of twenty-one, or the person  
29 refuses to submit to a test, the arresting officer or other law  
30 enforcement officer at whose direction any test has been given, or the  
31 department, where applicable, if the arrest results in a test of the  
32 person's blood, shall:

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

37 (b) Serve notice in writing on the person on behalf of the  
38 department of his or her right to a hearing, specifying the steps he or

1 she must take to obtain a hearing as provided by subsection (8) of this  
2 section;

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

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

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

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

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

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

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

1 the person's license (~~(or)~~), permit, or privilege to drive or any  
2 nonresident operating privilege, as provided in section 3 of this act,  
3 such suspension, revocation, denial, or placement in probationary  
4 status to be effective beginning sixty days from the date of arrest or  
5 from the date notice has been given in the event notice is given by the  
6 department following a blood test, or when sustained at a hearing  
7 pursuant to subsection (8) of this section, whichever occurs first.

8 ~~((7) Upon revoking the license or permit to drive or the~~  
9 ~~nonresident operating privilege of any person, the department shall~~  
10 ~~immediately notify the person involved in writing by personal service~~  
11 ~~or by certified mail of its decision and the grounds therefor, and of~~  
12 ~~the person's right to a hearing, specifying the steps he or she must~~  
13 ~~take to obtain a hearing. Within fifteen days after the notice has~~  
14 ~~been 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 (8) A person receiving notification under subsection (6)(b) of this  
17 section may, within thirty days after the notice has been given,  
18 request in writing a formal hearing before the department. The person  
19 shall pay a fee of one hundred dollars as part of the request. If the  
20 request is mailed, it must be postmarked within thirty days after  
21 receipt of the notification. Upon timely receipt of such a request  
22 (~~and such fee~~) for a formal hearing, including receipt of the  
23 required one hundred dollar fee, the department shall afford the person  
24 an opportunity for a hearing (~~as provided in~~). Except as otherwise  
25 provided in this section, the hearing is subject to and shall be  
26 scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332.  
27 The hearing shall be conducted in the county of the arrest, except that  
28 all or part of the hearing may, at the discretion of the department, be  
29 conducted by telephone or other electronic means. The hearing shall be  
30 held within sixty days following the arrest or following the date  
31 notice has been given in the event notice is given by the department  
32 following a blood test, unless otherwise agreed to by the department  
33 and the person, in which case the action by the department shall be  
34 stayed, and any valid temporary license marked under subsection (6)(c)  
35 of this section extended, if the person is otherwise eligible for  
36 licensing. For the purposes of this section, the scope of (~~such~~) the  
37 hearing shall cover the issues of whether a law enforcement officer had  
38 reasonable grounds to believe the person had been driving or was in  
39 actual physical control of a motor vehicle within this state while

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

27 A hearing officer shall conduct the hearing, may issue subpoenas  
28 for the attendance of witnesses and the production of documents, and  
29 shall administer oaths to witnesses. The hearing officer shall not  
30 issue a subpoena for the attendance of a witness at the request of the  
31 person unless the request is accompanied by the fee required by RCW  
32 5.56.010 for a witness in district court. The sworn report or report  
33 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
34 officer and any other evidence accompanying the report shall be  
35 admissible without further evidentiary foundation and the  
36 certifications authorized by the criminal rules for courts of limited  
37 jurisdiction shall be admissible without further evidentiary  
38 foundation. The person may be represented by counsel, may question  
39 witnesses, may present evidence, and may testify. The department shall

1 order that the suspension, revocation, denial, or placement in  
2 probationary status either be rescinded or sustained. ~~((Any decision~~  
3 ~~by the department revoking a person's driving privilege shall be stayed~~  
4 ~~and shall not take effect while a formal hearing is pending as provided~~  
5 ~~in this section or during the pendency of a subsequent appeal to~~  
6 ~~superior court so long as there is no conviction for a moving violation~~  
7 ~~or no finding that the person has committed a traffic infraction that~~  
8 ~~is a moving violation during pendency of the hearing and appeal.~~

9 (8)) (9) If the suspension, revocation, denial, or placement in  
10 probationary status is sustained after such a hearing, the person whose  
11 license, privilege, or permit is suspended, revoked, denied, or placed  
12 in probationary status has the right to file a petition in the superior  
13 court of the county of arrest to review the final order of revocation  
14 by the department in the same manner ~~((provided in RCW 46.20.334))~~ as  
15 an appeal from a decision of a court of limited jurisdiction. The  
16 appellant must pay the costs associated with obtaining the record of  
17 the hearing before the hearing officer. The filing of the appeal does  
18 not stay the effective date of the suspension, revocation, denial, or  
19 placement in probationary status. A petition filed under this  
20 subsection must include the petitioner's grounds for requesting review.  
21 Upon granting petitioner's request for review, the court shall review  
22 the department's final order of suspension, revocation, denial, or  
23 placement in probationary status as expeditiously as possible. If  
24 judicial relief is sought for a stay or other temporary remedy from the  
25 department's action, the court shall not grant such relief unless the  
26 court finds that the appellant is likely to prevail in the appeal and  
27 that without a stay the appellant will suffer irreparable injury. If  
28 the court stays the suspension, revocation, denial, or placement in  
29 probationary status it may impose conditions on such stay.

30 (10) If a person whose driver's license, permit, or privilege to  
31 drive has been or will be suspended, revoked, denied, or placed in  
32 probationary status under subsection (7) of this section, other than as  
33 a result of a breath test refusal, and who has not committed an offense  
34 within the last five years for which he or she was granted a deferred  
35 prosecution under chapter 10.05 RCW, petitions a court for a deferred  
36 prosecution on criminal charges arising out of the arrest for which  
37 action has been or will be taken under subsection (7) of this section,  
38 the court may direct the department to stay any actual or proposed  
39 suspension, revocation, denial, or placement in probationary status for



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

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

22 ~~((+9))~~ (11) When it has been finally determined under the  
23 procedures of this section that a nonresident's privilege to operate a  
24 motor vehicle in this state has been suspended, revoked, or denied, the  
25 department shall give information in writing of the action taken to the  
26 motor vehicle administrator of the state of the person's residence and  
27 of any state in which he or she has a license.

28 **Sec. 2.** RCW 46.20.309 and 1994 c 275 s 10 are each amended to read  
29 as follows:

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

34 ~~(2) A person under the age of twenty one who drives or is in~~  
35 ~~physical control of a motor vehicle within this state is deemed to have~~  
36 ~~given consent, subject to the relevant portions of RCW 46.61.506, to be~~  
37 ~~detained long enough, and be transported if necessary, to take a test~~

1 ~~or tests of that person's blood or breath for the purpose of~~  
2 ~~determining the alcohol concentration in his or her system.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1       ~~(ii) For a second or subsequent refusal within five years,~~  
2 ~~revocation or denial for two years.~~

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

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

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

10       ~~(8) For purposes of this section, "alcohol concentration" means (a)~~  
11 ~~grams of alcohol per two hundred ten liters of a person's breath, or~~  
12 ~~(b) the percent by weight of alcohol in a person's blood)) is guilty of~~  
13 ~~driving a motor vehicle after consuming alcohol if the person operates~~  
14 ~~a motor vehicle within this state and the person:~~

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

16       ~~(b) Has, within two hours after operating the motor vehicle, an~~  
17 ~~alcohol concentration of 0.02 or more, as shown by analysis of the~~  
18 ~~person's breath or blood made under RCW 46.61.506.~~

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

29       ~~(3) Analyses of blood or breath samples obtained more than two~~  
30 ~~hours after the alleged driving may be used as evidence that within two~~  
31 ~~hours of the alleged driving, a person had an alcohol concentration of~~  
32 ~~0.02 or more in violation of subsection (1) of this section.~~

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

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

36       Pursuant to RCW 46.20.308, the department shall suspend, revoke, or  
37 deny the arrested person's license, permit, or privilege to drive as  
38 follows:

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

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

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

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

16 (a) For a first incident within five years, where there has not  
17 been a previous incident within five years that resulted in  
18 administrative action under this section, placement in probationary  
19 status as provided in RCW 46.20.355;

20 (b) For a second or subsequent incident within five years,  
21 revocation or denial for two years.

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

26 (a) For a first incident within five years, suspension or denial  
27 for ninety days;

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

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))~~ placing a license, permit, or privilege to drive in  
36 probationary status under section 3(2)(a) of this act, or upon receipt  
37 of an abstract indicating a deferred prosecution has been granted under  
38 RCW 10.05.060, the department of licensing shall order the person to

1 surrender ((his or her)) any Washington state driver's license that may  
2 be in his or her possession. The department shall revoke the license,  
3 permit, or privilege to drive of any person who fails to surrender it  
4 as required by this section for one year, unless the license has been  
5 previously surrendered to the department, a law enforcement officer, or  
6 a court, or the person has completed an affidavit of lost, stolen,  
7 destroyed, or previously surrendered license, such revocation to take  
8 effect thirty days after notice is given of the requirement for license  
9 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 or  
19 46.20.308 for a period of five years from the date the probationary  
20 status is required to go into effect.~~

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

33 (4) For each original issue or ((reissue)) renewal of a  
34 probationary license under this section, the department ((may)) shall  
35 charge ((the)) a fee ((authorized under RCW 46.20.311 for the  
36 reissuance of a license following a revocation for a violation of RCW  
37 46.61.502 or 46.61.504)) of fifty dollars in addition to any other  
38 licensing fees required. Except for when renewing a probationary  
39 license, the department shall waive the fifty-dollar fee if the person

1 has a probationary license in his or her possession at the time a new  
2 probationary license is required.

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

10

## PART II - CRIMINAL SANCTIONS

11 NEW SECTION. Sec. 5. A new section is added to chapter 46.61 RCW,  
12 to be codified between RCW 46.61.500 and 46.61.520, to read as follows:

13 (1) A person who is convicted of a violation of RCW 46.61.502 or  
14 46.61.504 and who has no prior offense within five years shall be  
15 punished as follows:

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

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

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

32 (iii) By suspension of the offender's license or permit to drive,  
33 or suspension of any nonresident privilege to drive, for a period of  
34 ninety days. The period of license, permit, or privilege suspension  
35 may not be suspended. The court shall notify the department of  
36 licensing of the conviction, and upon receiving notification of the

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

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

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

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

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

26 (2) A person who is convicted of a violation of RCW 46.61.502 or  
27 46.61.504 and who has one prior offense within five years shall be  
28 punished as follows:

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

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



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

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

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

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

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

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

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

37 (3) A person who is convicted of a violation of RCW 46.61.502 or  
38 46.61.504 and who has two or more prior offenses within five years  
39 shall be punished as follows:

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

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

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

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

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

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

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

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

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

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

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

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

36 (c) For each incident involving a violation of a mandatory  
37 condition of probation imposed under this subsection, the license,  
38 permit, or privilege to drive of the person shall be suspended by the  
39 court for thirty days or, if such license, permit, or privilege to

1 drive already is suspended, revoked, or denied at the time the finding  
2 of probation violation is made, the suspension, revocation, or denial  
3 then in effect shall be extended by thirty days. The court shall  
4 notify the department of any suspension, revocation, or denial or any  
5 extension of a suspension, revocation, or denial imposed under this  
6 subsection.

7 (7)(a) A "prior offense" means any of the following:

8 (i) A conviction for a violation of RCW 46.61.502 or an equivalent  
9 local ordinance;

10 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent  
11 local ordinance;

12 (iii) A conviction for a violation of RCW 46.61.520 committed while  
13 under the influence of intoxicating liquor or any drug;

14 (iv) A conviction for a violation of RCW 46.61.522 committed while  
15 under the influence of intoxicating liquor or any drug;

16 (v) An out-of-state conviction for a violation that would have been  
17 a violation of (a)(i), (ii), (iii), or (iv) of this subsection if  
18 committed in this state; or

19 (vi) A deferred prosecution under chapter 10.05 RCW granted in a  
20 prosecution for a violation of RCW 46.61.502, 46.61.504, or an  
21 equivalent local ordinance.

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

24 **Sec. 6.** RCW 46.61.5058 and 1994 c 139 s 1 are each amended to read  
25 as follows:

26 (1) Upon the arrest of a person or upon the filing of a complaint,  
27 citation, or information in a court of competent jurisdiction, based  
28 upon probable cause to believe that a person has violated RCW 46.61.502  
29 or 46.61.504 or any similar municipal ordinance, if such person has a  
30 (~~previous conviction for violation of either RCW 46.61.502 or~~  
31 ~~46.61.504 or other similar municipal ordinance, and where the offense~~  
32 ~~occurs within a five year period of the previous conviction)) prior  
33 offense within five years as defined in section 5 of this act, and  
34 where the person has been provided written notice that any transfer,  
35 sale, or encumbrance of such person's interest in the vehicle over  
36 which that person was actually driving or had physical control when the  
37 violation occurred, is unlawful pending either acquittal, dismissal,  
38 sixty days after conviction, or other termination of the charge, such~~

1 person shall be prohibited from encumbering, selling, or transferring  
2 his or her interest in such vehicle, except as otherwise provided in  
3 (a), (b), and (c) of this subsection, until either acquittal,  
4 dismissal, sixty days after conviction, or other termination of the  
5 charge. The prohibition against transfer of title shall not be stayed  
6 pending the determination of an appeal from the conviction.

7 (a) A vehicle encumbered by a bona fide security interest may be  
8 transferred to the secured party or to a person designated by the  
9 secured party;

10 (b) A leased or rented vehicle may be transferred to the lessor,  
11 rental agency, or to a person designated by the lessor or rental  
12 agency; and

13 (c) A vehicle may be transferred to a third party or a vehicle  
14 dealer who is a bona fide purchaser or may be subject to a bona fide  
15 security interest in the vehicle unless it is established that (i) in  
16 the case of a purchase by a third party or vehicle dealer, such party  
17 or dealer had actual notice that the vehicle was subject to the  
18 prohibition prior to the purchase, or (ii) in the case of a security  
19 interest, the holder of the security interest had actual notice that  
20 the vehicle was subject to the prohibition prior to the encumbrance of  
21 title.

22 (2) On ~~((a second or subsequent))~~ conviction for a violation of  
23 either RCW 46.61.502 or 46.61.504 or any similar municipal ordinance  
24 where ~~((such offense was committed within a five year period of the  
25 previous conviction))~~ the person convicted has a prior offense within  
26 five years as defined in section 5 of this act, the motor vehicle the  
27 person was driving or over which the person had actual physical control  
28 at the time of the offense, if the person has a financial interest in  
29 the vehicle, is subject to seizure and forfeiture pursuant to this  
30 section.

31 (3) A vehicle subject to forfeiture under this chapter may be  
32 seized by a law enforcement officer of this state upon process issued  
33 by a court of competent jurisdiction. Seizure of a vehicle may be made  
34 without process if the vehicle subject to seizure has been the subject  
35 of a prior judgment in favor of the state in a forfeiture proceeding  
36 based upon this section.

37 (4) Seizure under subsection (3) of this section automatically  
38 commences proceedings for forfeiture. The law enforcement agency under  
39 whose authority the seizure was made shall cause notice of the seizure

1 and intended forfeiture of the seized vehicle to be served within  
2 fifteen days after the seizure on the owner of the vehicle seized, on  
3 the person in charge of the vehicle, and on any person having a known  
4 right or interest in the vehicle, including a community property  
5 interest. The notice of seizure may be served by any method authorized  
6 by law or court rule, including but not limited to service by certified  
7 mail with return receipt requested. Service by mail is complete upon  
8 mailing within the fifteen-day period after the seizure. Notice of  
9 seizure in the case of property subject to a security interest that has  
10 been perfected on a certificate of title shall be made by service upon  
11 the secured party or the secured party's assignee at the address shown  
12 on the financing statement or the certificate of title.

13 (5) If no person notifies the seizing law enforcement agency in  
14 writing of the person's claim of ownership or right to possession of  
15 the seized vehicle within forty-five days of the seizure, the vehicle  
16 is deemed forfeited.

17 (6) If a person notifies the seizing law enforcement agency in  
18 writing of the person's claim of ownership or right to possession of  
19 the seized vehicle within forty-five days of the seizure, the law  
20 enforcement agency shall give the person or persons a reasonable  
21 opportunity to be heard as to the claim or right. The hearing shall be  
22 before the chief law enforcement officer of the seizing agency or the  
23 chief law enforcement officer's designee, except where the seizing  
24 agency is a state agency as defined in RCW 34.12.020, the hearing shall  
25 be before the chief law enforcement officer of the seizing agency or an  
26 administrative law judge appointed under chapter 34.12 RCW, except that  
27 any person asserting a claim or right may remove the matter to a court  
28 of competent jurisdiction. Removal may only be accomplished according  
29 to the rules of civil procedure. The person seeking removal of the  
30 matter must serve process against the state, county, political  
31 subdivision, or municipality that operates the seizing agency, and any  
32 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,  
33 within forty-five days after the person seeking removal has notified  
34 the seizing law enforcement agency of the person's claim of ownership  
35 or right to possession. The court to which the matter is to be removed  
36 shall be the district court when the aggregate value of the vehicle is  
37 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
38 before the seizing agency and any appeal therefrom shall be under Title  
39 34 RCW. In a court hearing between two or more claimants to the

1 vehicle involved, the prevailing party shall be entitled to a judgment  
2 for costs and reasonable attorneys' fees. The burden of producing  
3 evidence shall be upon the person claiming to be the legal owner or the  
4 person claiming to have the lawful right to possession of the vehicle.  
5 The seizing law enforcement agency shall promptly return the vehicle to  
6 the claimant upon a determination by the administrative law judge or  
7 court that the claimant is the present legal owner under Title 46 RCW  
8 or is lawfully entitled to possession of the vehicle.

9 (7) When a vehicle is forfeited under this chapter the seizing law  
10 enforcement agency may sell the vehicle, retain it for official use, or  
11 upon application by a law enforcement agency of this state release the  
12 vehicle to that agency for the exclusive use of enforcing this title;  
13 provided, however, that the agency shall first satisfy any bona fide  
14 security interest to which the vehicle is subject under subsection (1)  
15 (a) or (c) of this section.

16 (8) When a vehicle is forfeited, the seizing agency shall keep a  
17 record indicating the identity of the prior owner, if known, a  
18 description of the vehicle, the disposition of the vehicle, the value  
19 of the vehicle at the time of seizure, and the amount of proceeds  
20 realized from disposition of the vehicle.

21 (9) Each seizing agency shall retain records of forfeited vehicles  
22 for at least seven years.

23 (10) Each seizing agency shall file a report including a copy of  
24 the records of forfeited vehicles with the state treasurer each  
25 calendar quarter.

26 (11) The quarterly report need not include a record of a forfeited  
27 vehicle that is still being held for use as evidence during the  
28 investigation or prosecution of a case or during the appeal from a  
29 conviction.

30 (12) By January 31st of each year, each seizing agency shall remit  
31 to the state treasurer an amount equal to ten percent of the net  
32 proceeds of vehicles forfeited during the preceding calendar year.  
33 Money remitted shall be deposited in the public safety and education  
34 account.

35 (13) The net proceeds of a forfeited vehicle is the value of the  
36 forfeitable interest in the vehicle after deducting the cost of  
37 satisfying a bona fide security interest to which the vehicle is  
38 subject at the time of seizure; and in the case of a sold vehicle,

1 after deducting the cost of sale, including reasonable fees or  
2 commissions paid to independent selling agents.

3 (14) The value of a sold forfeited vehicle is the sale price. The  
4 value of a retained forfeited vehicle is the fair market value of the  
5 vehicle at the time of seizure, determined when possible by reference  
6 to an applicable commonly used index, such as the index used by the  
7 department of licensing. A seizing agency may, but need not, use an  
8 independent qualified appraiser to determine the value of retained  
9 vehicles. If an appraiser is used, the value of the vehicle appraised  
10 is net of the cost of the appraisal.

11 **PART III - TECHNICAL AMENDMENTS**

12 **Sec. 7.** RCW 3.62.090 and 1994 c 275 s 34 are each amended to read  
13 as follows:

14 (1) There shall be assessed and collected in addition to any fines,  
15 forfeitures, or penalties assessed, other than for parking infractions,  
16 by all courts organized under Title 3 or 35 RCW a public safety and  
17 education assessment equal to sixty percent of such fines, forfeitures,  
18 or penalties, which shall be remitted as provided in chapters 3.46,  
19 3.50, 3.62, and 35.20 RCW. The assessment required by this section  
20 shall not be suspended or waived by the court.

21 (2) There shall be assessed and collected in addition to any fines,  
22 forfeitures, or penalties assessed, other than for parking infractions  
23 and for fines levied under ((RCW ~~46.61.5051~~, ~~46.61.5052~~, and  
24 ~~46.61.5053~~)) section 5 of this act, and in addition to the public  
25 safety and education assessment required under subsection (1) of this  
26 section, by all courts organized under Title 3 or 35 RCW, an additional  
27 public safety and education assessment equal to fifty percent of the  
28 public safety and education assessment required under subsection (1) of  
29 this section, which shall be remitted to the state treasurer and  
30 deposited as provided in RCW 43.08.250. The additional assessment  
31 required by this subsection shall not be suspended or waived by the  
32 court.

33 **Sec. 8.** RCW 35.21.165 and 1994 c 275 s 36 are each amended to read  
34 as follows:

35 Except as limited by the maximum penalties authorized by law, no  
36 city or town may establish a penalty for an act that constitutes the



1 crime of driving while under the influence of intoxicating liquor or  
2 any drug, as provided in RCW 46.61.502, or the crime of being in actual  
3 physical control of a motor vehicle while under the influence of  
4 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is  
5 less than the penalties prescribed for those crimes in ((RCW  
6 ~~46.61.5051, 46.61.5052, and 46.61.5053~~)) section 5 of this act.

7 **Sec. 9.** RCW 36.32.127 and 1994 c 275 s 37 are each amended to read  
8 as follows:

9 No county may establish a penalty for an act that constitutes the  
10 crime of driving while under the influence of intoxicating liquor or  
11 any drug, as provided for in RCW 46.61.502, or the crime of being in  
12 actual physical control of a motor vehicle while under the influence of  
13 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is  
14 less than the penalties prescribed for those crimes in ((RCW  
15 ~~46.61.5051, 46.61.5052, and 46.61.5053~~)) section 5 of this act.

16 **Sec. 10.** RCW 46.04.480 and 1994 c 275 s 38 are each amended to  
17 read as follows:

18 "Revoke," in all its forms, means the invalidation for a period of  
19 one calendar year and thereafter until reissue: PROVIDED, That under  
20 the provisions of RCW 46.20.285, 46.20.311, 46.20.265, ((~~46.61.5051,~~  
21 ~~46.61.5052, or 46.61.5053~~)) or section 5 of this act, and chapter 46.65  
22 RCW the invalidation may last for a period other than one calendar  
23 year.

24 **Sec. 11.** RCW 46.20.311 and 1994 c 275 s 27 are each amended to  
25 read as follows:

26 (1) The department shall not suspend a driver's license or  
27 privilege to drive a motor vehicle on the public highways for a fixed  
28 period of more than one year, except as specifically permitted under  
29 RCW 46.20.342 or other provision of law. Except for a suspension under  
30 RCW 46.20.289 and 46.20.291(5), whenever the license or driving  
31 privilege of any person is suspended by reason of a conviction, a  
32 finding that a traffic infraction has been committed, pursuant to  
33 chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the  
34 suspension shall remain in effect until the person gives and thereafter  
35 maintains proof of financial responsibility for the future as provided  
36 in chapter 46.29 RCW. If the suspension is the result of a violation

1 of RCW 46.61.502 or 46.61.504, the department shall determine the  
2 person's eligibility for licensing based upon the reports provided by  
3 the alcoholism agency or probation department designated under RCW  
4 46.61.5056 and shall deny reinstatement until enrollment and  
5 participation in an approved program has been established and the  
6 person is otherwise qualified. The department shall not issue to the  
7 person a new, duplicate, or renewal license until the person pays a  
8 reissue fee of twenty dollars. If the suspension is the result of a  
9 violation of RCW 46.61.502 or 46.61.504, or is the result of  
10 administrative action under RCW 46.20.308, the reissue fee shall be  
11 fifty dollars.

12 (2) Any person whose license or privilege to drive a motor vehicle  
13 on the public highways has been revoked, unless the revocation was for  
14 a cause which has been removed, is not entitled to have the license or  
15 privilege renewed or restored until: (a) After the expiration of one  
16 year from the date the license or privilege to drive was revoked; (b)  
17 after the expiration of the applicable revocation period provided by  
18 ~~((RCW 46.20.308 or 46.61.5052, 46.61.5053, or 46.20.365))~~ section 3 or  
19 5 of this act; (c) after the expiration of two years for persons  
20 convicted of vehicular homicide; or (d) after the expiration of the  
21 applicable revocation period provided by RCW 46.20.265. After the  
22 expiration of the appropriate period, the person may make application  
23 for a new license as provided by law together with a reissue fee in the  
24 amount of twenty dollars, but if the revocation is the result of a  
25 violation of RCW 46.20.308, 46.61.502, or 46.61.504 ~~((or is the result~~  
26 ~~of administrative action under RCW 46.20.365))~~, the reissue fee shall  
27 be fifty dollars. If the revocation is the result of a violation of  
28 RCW 46.61.502 or 46.61.504, the department shall determine the person's  
29 eligibility for licensing based upon the reports provided by the  
30 alcoholism agency or probation department designated under RCW  
31 46.61.5056 and shall deny reissuance of a license, permit, or privilege  
32 to drive until enrollment and participation in an approved program has  
33 been established and the person is otherwise qualified. Except for a  
34 revocation under RCW 46.20.265, the department shall not then issue a  
35 new license unless it is satisfied after investigation of the driving  
36 ability of the person that it will be safe to grant the privilege of  
37 driving a motor vehicle on the public highways, and until the person  
38 gives and thereafter maintains proof of financial responsibility for  
39 the future as provided in chapter 46.29 RCW. For a revocation under

1 RCW 46.20.265, the department shall not issue a new license unless it  
2 is satisfied after investigation of the driving ability of the person  
3 that it will be safe to grant that person the privilege of driving a  
4 motor vehicle on the public highways.

5 (3) Whenever the driver's license of any person is suspended  
6 pursuant to Article IV of the nonresident violators compact or RCW  
7 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue  
8 to the person any new or renewal license until the person pays a  
9 reissue fee of twenty dollars. If the suspension is the result of a  
10 violation of the laws of this or any other state, province, or other  
11 jurisdiction involving (a) the operation or physical control of a motor  
12 vehicle upon the public highways while under the influence of  
13 intoxicating liquor or drugs, or (b) the refusal to submit to a  
14 chemical test of the driver's blood alcohol content, the reissue fee  
15 shall be fifty dollars.

16 **Sec. 12.** RCW 46.20.391 and 1994 c 275 s 29 are each amended to  
17 read as follows:

18 (1) Any person licensed under this chapter who is convicted of an  
19 offense relating to motor vehicles for which suspension or revocation  
20 of the driver's license is mandatory, other than vehicular homicide or  
21 vehicular assault, may submit to the department an application for an  
22 occupational driver's license. The department, upon receipt of the  
23 prescribed fee and upon determining that the petitioner is engaged in  
24 an occupation or trade that makes it essential that the petitioner  
25 operate a motor vehicle, may issue an occupational driver's license and  
26 may set definite restrictions as provided in RCW 46.20.394. No person  
27 may petition for, and the department shall not issue, an occupational  
28 driver's license that is effective during the first thirty days of any  
29 suspension or revocation imposed for a violation of RCW 46.61.502 or  
30 46.61.504. (~~No person may petition for, and the department shall not  
31 issue, an occupational driver's license if the person is ineligible for  
32 such a license under RCW 46.61.5052 or 46.61.5053.~~) A person  
33 aggrieved by the decision of the department on the application for an  
34 occupational driver's license may request a hearing as provided by rule  
35 of the department.

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

1 (a) Within one year immediately preceding the date of the offense  
2 that gave rise to the present conviction, the applicant has not  
3 committed ((of)) any (~~{committed any}~~) offense relating to motor  
4 vehicles for which suspension or revocation of a driver's license is  
5 mandatory; and

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

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

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

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

23 **Sec. 13.** RCW 46.61.5054 and 1994 c 275 s 7 are each amended to  
24 read as follows:

25 (1)(a) In addition to penalties set forth in RCW 46.61.5051 through  
26 46.61.5053 until September 1, 1995, and section 5 of this act  
27 thereafter, a one hundred twenty-five dollar fee shall be assessed to  
28 a person who is either convicted, sentenced to a lesser charge, or  
29 given deferred prosecution, as a result of an arrest for violating RCW  
30 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the  
31 purpose of funding the Washington state toxicology laboratory and the  
32 Washington state patrol breath test program.

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

36 (c) When a minor has been adjudicated a juvenile offender for an  
37 offense which, if committed by an adult, would constitute a violation  
38 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall

1 assess the one hundred twenty-five dollar fee under (a) of this  
2 subsection. Upon a verified petition by a minor assessed the fee, the  
3 court may suspend payment of all or part of the fee if it finds that  
4 the minor does not have the ability to pay the fee.

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

7 (a) Forty percent shall be subject to distribution under RCW  
8 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

9 (b) If the case involves a blood test by the state toxicology  
10 laboratory, the remainder of the fee shall be forwarded to the state  
11 treasurer for deposit in the death investigations account to be used  
12 solely for funding the state toxicology laboratory blood testing  
13 program.

14 (c) Otherwise, the remainder of the fee shall be forwarded to the  
15 state treasurer for deposit in the state patrol highway account to be  
16 used solely for funding the Washington state patrol breath test  
17 program.

18 (3) This section applies to any offense committed on or after July  
19 1, 1993.

20 **Sec. 14.** RCW 46.61.5056 and 1994 c 275 s 9 are each amended to  
21 read as follows:

22 (1) A person subject to alcohol assessment and treatment under  
23 (~~RCW 46.61.5051, 46.61.5052, or 46.61.5053~~) section 5 of this act  
24 shall be required by the court to complete a course in an alcohol  
25 information school approved by the department of social and health  
26 services or to complete more intensive treatment in a program approved  
27 by the department of social and health services, as determined by the  
28 court. The court shall notify the department of licensing whenever it  
29 orders a person to complete a course or treatment program under this  
30 section.

31 (2) A diagnostic evaluation and treatment recommendation shall be  
32 prepared under the direction of the court by an alcoholism agency  
33 approved by the department of social and health services or a qualified  
34 probation department approved by the department of social and health  
35 services. A copy of the report shall be forwarded to the department of  
36 licensing. Based on the diagnostic evaluation, the court shall  
37 determine whether the person shall be required to complete a course in  
38 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 ((RCW  
8 46.61.5051, 46.61.5052, or 46.61.5053)) section 5 of this act, shall  
9 immediately report to the appropriate probation department where  
10 applicable, otherwise to the court, and to the department of licensing  
11 any noncompliance by a person with the conditions of his or her ordered  
12 treatment. The court shall notify the department of licensing and the  
13 department of social and health services of any failure by an agency to  
14 so report noncompliance. Any agency with knowledge of noncompliance  
15 that fails to so report shall be fined two hundred fifty dollars by the  
16 department of social and health services. Upon three such failures by  
17 an agency within one year, the department of social and health services  
18 shall revoke the agency's 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 **Sec. 15.** RCW 46.61.5151 and 1994 c 275 s 39 are each amended to  
23 read as follows:

24 A sentencing court may allow persons convicted of violating RCW  
25 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in  
26 ((RCW 46.61.5051, 46.61.5052, or 46.61.5053)) section 5 of this act in  
27 nonconsecutive or intermittent time periods. However, any mandatory  
28 minimum sentence under ((RCW 46.61.5051, 46.61.5052, or 46.61.5053))  
29 section 5 of this act shall be served consecutively unless suspended or  
30 deferred as otherwise provided by law.

31 **Sec. 16.** RCW 46.63.020 and 1994 c 275 s 33 and 1994 c 141 s 2 are  
32 each reenacted and amended to read as follows:

33 Failure to perform any act required or the performance of any act  
34 prohibited by this title or an equivalent administrative regulation or  
35 local law, ordinance, regulation, or resolution relating to traffic  
36 including parking, standing, stopping, and pedestrian offenses, is  
37 designated as a traffic infraction and may not be classified as a

1 criminal offense, except for an offense contained in the following  
2 provisions of this title or a violation of an equivalent administrative  
3 regulation or local law, ordinance, regulation, or resolution:

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

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

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

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

12 (5) Chapter 46.12 RCW relating to certificates of ownership and  
13 registration;

14 (6) RCW 46.16.010 relating to initial registration of motor  
15 vehicles;

16 (7) RCW 46.16.011 relating to permitting unauthorized persons to  
17 drive;

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

19 (9) RCW 46.16.381 (6) or (9) relating to unauthorized use or  
20 acquisition of a special placard or license plate for disabled persons'  
21 parking;

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

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

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

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

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

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

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

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

36 (18) RCW 46.30.040 relating to providing false evidence of  
37 financial responsibility;

38 (19) RCW 46.37.435 relating to wrongful installation of  
39 sunscreening material;

1 (20) RCW 46.44.180 relating to operation of mobile home pilot  
2 vehicles;

3 (21) RCW 46.48.175 relating to the transportation of dangerous  
4 articles;

5 (22) RCW 46.52.010 relating to duty on striking an unattended car  
6 or other property;

7 (23) RCW 46.52.020 relating to duty in case of injury to or death  
8 of a person or damage to an attended vehicle;

9 (24) RCW 46.52.090 relating to reports by repairmen, storagemen,  
10 and appraisers;

11 (25) RCW 46.52.100 relating to driving under the influence of  
12 liquor or drugs;

13 (26) RCW 46.52.130 relating to confidentiality of the driving  
14 record to be furnished to an insurance company, an employer, and an  
15 alcohol/drug assessment or treatment agency;

16 (27) RCW 46.55.020 relating to engaging in the activities of a  
17 registered tow truck operator without a registration certificate;

18 (28) RCW 46.55.035 relating to prohibited practices by tow truck  
19 operators;

20 (29) RCW 46.61.015 relating to obedience to police officers,  
21 flagmen, or fire fighters;

22 (30) RCW 46.61.020 relating to refusal to give information to or  
23 cooperate with an officer;

24 (31) RCW 46.61.022 relating to failure to stop and give  
25 identification to an officer;

26 (32) RCW 46.61.024 relating to attempting to elude pursuing police  
27 vehicles;

28 (33) RCW 46.61.500 relating to reckless driving;

29 (34) RCW 46.61.502((~~7~~)) and 46.61.504((~~7~~, ~~46.61.5051~~, ~~46.61.5052~~,  
30 ~~and~~ ~~46.61.5053~~)) relating to persons under the influence of  
31 intoxicating liquor or drugs;

32 (35) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

33 (36) RCW 46.61.522 relating to vehicular assault;

34 (37) RCW 46.61.525 relating to negligent driving;

35 (38) RCW 46.61.527(4) relating to reckless endangerment of roadway  
36 workers;

37 (39) RCW 46.61.530 relating to racing of vehicles on highways;

38 (40) RCW 46.61.685 relating to leaving children in an unattended  
39 vehicle with the motor running;



1 (41) RCW 46.64.010 relating to unlawful cancellation of or attempt  
2 to cancel a traffic citation;

3 (42) RCW 46.64.048 relating to attempting, aiding, abetting,  
4 coercing, and committing crimes;

5 (43) Chapter 46.65 RCW relating to habitual traffic offenders;

6 (44) 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 (45) Chapter 46.72 RCW relating to the transportation of passengers  
10 in for hire vehicles;

11 (46) Chapter 46.80 RCW relating to motor vehicle wreckers;

12 (47) Chapter 46.82 RCW relating to driver's training schools;

13 (48) 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 (49) RCW 46.87.290 relating to operation of an unregistered or  
17 unlicensed vehicle under chapter 46.87 RCW.

18 **Sec. 17.** RCW 46.04.015 and 1994 c 275 s 1 are each amended to read  
19 as follows:

20 "Alcohol concentration" means (1) grams of alcohol per two hundred  
21 ten liters of a person's breath, or (2) ~~((the percent by weight of~~  
22 ~~alcohol in))~~ grams of alcohol per one hundred milliliters of a person's  
23 blood.

24 **Sec. 18.** RCW 46.61.506 and 1994 c 275 s 26 are each amended to  
25 read as follows:

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

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

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

11 (4) When a blood test is administered under the provisions of RCW  
12 46.20.308, the withdrawal of blood for the purpose of determining its  
13 alcoholic or drug content may be performed only by a physician, a  
14 registered nurse, or a qualified technician. This limitation shall not  
15 apply to the taking of breath specimens.

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

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

27 NEW SECTION. **Sec. 19.** A new section is added to chapter 46.04 RCW  
28 to read as follows:

29 "Reasonable grounds," when used in the context of a law enforcement  
30 officer's decision to make an arrest, means probable cause.

31 NEW SECTION. **Sec. 20.** RCW 46.20.309 is recodified as a section in  
32 chapter 46.61 RCW.

33 NEW SECTION. **Sec. 21.** The following acts or parts of acts are  
34 each repealed:

35 (1) RCW 46.20.365 and 1994 c 275 s 12;

36 (2) RCW 46.61.5051 and 1994 c 275 s 4;

1 (3) RCW 46.61.5052 and 1994 c 275 s 5; and  
2 (4) RCW 46.61.5053 and 1994 c 275 s 6.

3 NEW SECTION. **Sec. 22.** 1994 c 275 s 44 (uncodified) is hereby  
4 repealed.

5 NEW SECTION. **Sec. 23.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9 NEW SECTION. **Sec. 24.** This act shall take effect September 1,  
10 1995, except for sections 13 and 22 of this act which are necessary for  
11 the immediate preservation of the public peace, health, or safety, or  
12 support of the state government and its existing public institutions,  
13 and shall take effect immediately.

Passed the Senate April 23, 1995.

Passed the House April 23, 1995.

Approved by the Governor May 11, 1995.

Filed in Office of Secretary of State May 11, 1995.