

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 3070

55th Legislature
1998 Regular Session

Passed by the House March 9, 1998
Yeas 95 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate March 5, 1998
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 3070** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 3070

AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1998 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives McCune and Mulliken)

Read first time 02/07/98. Referred to Committee on .

1 AN ACT Relating to penalties for driving under the influence;
2 amending RCW 46.61.5058, 46.01.260, 46.20.285, 46.61.503, 46.20.308,
3 46.20.3101, and 46.20.391; reenacting and amending RCW 46.61.5055;
4 adding a new section to chapter 46.61 RCW; creating new sections;
5 prescribing penalties; and providing an effective date.

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

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

9 (1) A person who is convicted of a violation of RCW 46.61.502 or
10 46.61.504 and who has no prior offense within ((five)) seven years
11 shall be punished as follows:

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

16 (i) By imprisonment for not less than one day nor more than one
17 year. Twenty-four consecutive hours of the imprisonment may not be
18 suspended or deferred unless the court finds that the imposition of
19 this mandatory minimum sentence would impose a substantial risk to the

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

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

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

16 (b) In the case of a person whose alcohol concentration was at
17 least 0.15, or for whom by reason of the person's refusal to take a
18 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 two days nor more than one
21 year. Two consecutive days of the imprisonment may not be suspended or
22 deferred unless the court finds that the imposition of this mandatory
23 minimum sentence would impose a substantial risk to the offender's
24 physical or mental well-being. Whenever the mandatory minimum sentence
25 is suspended or deferred, the court shall state in writing the reason
26 for granting the suspension or deferral and the facts upon which the
27 suspension or deferral is based; and

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

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

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

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

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

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

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

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

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

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

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

12 (3) A person who is convicted of a violation of RCW 46.61.502 or
13 46.61.504 and who has two or more prior offenses within ((five)) seven
14 years shall be punished as follows:

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

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

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

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

38 (b) In the case of a person whose alcohol concentration was at
39 least 0.15, or for whom by reason of the person's refusal to take a

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

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

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

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

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

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

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

32 (7)(a) In addition to any nonsuspendable and nondeferrable jail
33 sentence required by this section, whenever the court imposes less than
34 one year in jail, the court shall also suspend but shall not defer a
35 period of confinement for a period not exceeding two years. The court
36 shall impose conditions of probation that include: (i) Not driving a
37 motor vehicle within this state without a valid license to drive and
38 proof of financial responsibility for the future; (ii) not driving a
39 motor vehicle within this state while having an alcohol concentration

1 of 0.08 or more within two hours after driving; and (iii) not refusing
2 to submit to a test of his or her breath or blood to determine alcohol
3 concentration upon request of a law enforcement officer who has
4 reasonable grounds to believe the person was driving or was in actual
5 physical control of a motor vehicle within this state while under the
6 influence of intoxicating liquor. The court may impose conditions of
7 probation that include nonrepetition, installation of an ignition
8 interlock or other biological or technical device on the probationer's
9 motor vehicle, alcohol or drug treatment, supervised probation, or
10 other conditions that may be appropriate. The sentence may be imposed
11 in whole or in part upon violation of a condition of probation during
12 the suspension period.

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

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

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

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

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

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

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

36 (v) A conviction for a violation of RCW 46.61.5249 or an equivalent
37 local ordinance, if the conviction is the result of a charge that was
38 originally filed as a violation of RCW 46.61.502 or 46.61.504, or an
39 equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

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

4 (vii) A deferred prosecution under chapter 10.05 RCW granted in a
5 prosecution for a violation of RCW 46.61.502, 46.61.504, or an
6 equivalent local ordinance; or

7 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
8 prosecution for a violation of RCW 46.61.5249, or an equivalent local
9 ordinance, if the charge under which the deferred prosecution was
10 granted was originally filed as a violation of RCW 46.61.502 or
11 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
12 46.61.522.

13 (b) "Within (~~five~~) seven years" means that the arrest for a prior
14 offense occurred within (~~five~~) seven years of the arrest for the
15 current offense.

16 **Sec. 2.** RCW 46.61.5058 and 1995 c 332 s 6 are each amended to read
17 as follows:

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

34 (a) A vehicle encumbered by a bona fide security interest may be
35 transferred to the secured party or to a person designated by the
36 secured party;

1 (b) A leased or rented vehicle may be transferred to the lessor,
2 rental agency, or to a person designated by the lessor or rental
3 agency; and

4 (c) A vehicle may be transferred to a third party or a vehicle
5 dealer who is a bona fide purchaser or may be subject to a bona fide
6 security interest in the vehicle unless it is established that (i) in
7 the case of a purchase by a third party or vehicle dealer, such party
8 or dealer had actual notice that the vehicle was subject to the
9 prohibition prior to the purchase, or (ii) in the case of a security
10 interest, the holder of the security interest had actual notice that
11 the vehicle was subject to the prohibition prior to the encumbrance of
12 title.

13 (2) On conviction for a violation of either RCW 46.61.502 or
14 46.61.504 or any similar municipal ordinance where the person convicted
15 has a prior offense within (~~five~~) seven years as defined in RCW
16 46.61.5055, the motor vehicle the person was driving or over which the
17 person had actual physical control at the time of the offense, if the
18 person has a financial interest in the vehicle, is subject to seizure
19 and forfeiture pursuant to this section.

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

26 (4) Seizure under subsection (3) of this section automatically
27 commences proceedings for forfeiture. The law enforcement agency under
28 whose authority the seizure was made shall cause notice of the seizure
29 and intended forfeiture of the seized vehicle to be served within
30 fifteen days after the seizure on the owner of the vehicle seized, on
31 the person in charge of the vehicle, and on any person having a known
32 right or interest in the vehicle, including a community property
33 interest. The notice of seizure may be served by any method authorized
34 by law or court rule, including but not limited to service by certified
35 mail with return receipt requested. Service by mail is complete upon
36 mailing within the fifteen-day period after the seizure. Notice of
37 seizure in the case of property subject to a security interest that has
38 been perfected on a certificate of title shall be made by service upon

1 the secured party or the secured party's assignee at the address shown
2 on the financing statement or the certificate of title.

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

7 (6) If a person notifies the seizing law enforcement agency in
8 writing of the person's claim of ownership or right to possession of
9 the seized vehicle within forty-five days of the seizure, the law
10 enforcement agency shall give the person or persons a reasonable
11 opportunity to be heard as to the claim or right. The hearing shall be
12 before the chief law enforcement officer of the seizing agency or the
13 chief law enforcement officer's designee, except where the seizing
14 agency is a state agency as defined in RCW 34.12.020, the hearing shall
15 be before the chief law enforcement officer of the seizing agency or an
16 administrative law judge appointed under chapter 34.12 RCW, except that
17 any person asserting a claim or right may remove the matter to a court
18 of competent jurisdiction. Removal may only be accomplished according
19 to the rules of civil procedure. The person seeking removal of the
20 matter must serve process against the state, county, political
21 subdivision, or municipality that operates the seizing agency, and any
22 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
23 within forty-five days after the person seeking removal has notified
24 the seizing law enforcement agency of the person's claim of ownership
25 or right to possession. The court to which the matter is to be removed
26 shall be the district court when the aggregate value of the vehicle is
27 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
28 before the seizing agency and any appeal therefrom shall be under Title
29 34 RCW. In a court hearing between two or more claimants to the
30 vehicle involved, the prevailing party shall be entitled to a judgment
31 for costs and reasonable attorneys' fees. The burden of producing
32 evidence shall be upon the person claiming to be the legal owner or the
33 person claiming to have the lawful right to possession of the vehicle.
34 The seizing law enforcement agency shall promptly return the vehicle to
35 the claimant upon a determination by the administrative law judge or
36 court that the claimant is the present legal owner under Title 46 RCW
37 or is lawfully entitled to possession of the vehicle.

38 (7) When a vehicle is forfeited under this chapter the seizing law
39 enforcement agency may sell the vehicle, retain it for official use, or

1 upon application by a law enforcement agency of this state release the
2 vehicle to that agency for the exclusive use of enforcing this title;
3 provided, however, that the agency shall first satisfy any bona fide
4 security interest to which the vehicle is subject under subsection (1)
5 (a) or (c) of this section.

6 (8) When a vehicle is forfeited, the seizing agency shall keep a
7 record indicating the identity of the prior owner, if known, a
8 description of the vehicle, the disposition of the vehicle, the value
9 of the vehicle at the time of seizure, and the amount of proceeds
10 realized from disposition of the vehicle.

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

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

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

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

25 (13) The net proceeds of a forfeited vehicle is the value of the
26 forfeitable interest in the vehicle after deducting the cost of
27 satisfying a bona fide security interest to which the vehicle is
28 subject at the time of seizure; and in the case of a sold vehicle,
29 after deducting the cost of sale, including reasonable fees or
30 commissions paid to independent selling agents.

31 (14) The value of a sold forfeited vehicle is the sale price. The
32 value of a retained forfeited vehicle is the fair market value of the
33 vehicle at the time of seizure, determined when possible by reference
34 to an applicable commonly used index, such as the index used by the
35 department of licensing. A seizing agency may, but need not, use an
36 independent qualified appraiser to determine the value of retained
37 vehicles. If an appraiser is used, the value of the vehicle appraised
38 is net of the cost of the appraisal.

1 **Sec. 3.** RCW 46.01.260 and 1997 c 66 s 11 are each amended to read
2 as follows:

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

12 (2)(a) The director shall not destroy records of convictions or
13 adjudications of RCW 46.61.520 and 46.61.522 or records of deferred
14 prosecutions granted under RCW 10.05.120 and shall maintain such
15 records permanently on file.

16 (b) The director shall not, within (~~ten~~) fifteen years from the
17 date of conviction(~~(,)~~) or adjudication(~~(, or entry of deferred~~
18 ~~prosecution)~~), destroy records of the following:

19 (i) Convictions or adjudications of the following offenses: RCW
20 46.61.502 or 46.61.504; or

21 (ii) If the offense was originally charged as one of the offenses
22 designated in (a) or (b)(i) of this subsection, convictions or
23 adjudications of the following offenses: RCW 46.61.500 or 46.61.5249
24 or any other violation that was originally charged as one of the
25 offenses designated in (a) or (b)(i) of this subsection(~~(, or~~

26 ~~(iii) Deferred prosecutions granted under RCW 10.05.120)~~).

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

29 **Sec. 4.** RCW 46.20.285 and 1996 c 199 s 5 are each amended to read
30 as follows:

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

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

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

3 (3) Driving a motor vehicle while under the influence of
4 intoxicating liquor or a narcotic drug, or under the influence of any
5 other drug to a degree which renders the driver incapable of safely
6 driving a motor vehicle, (~~upon a showing by the department's records~~
7 ~~that the conviction is the second such conviction for the driver within~~
8 ~~a period of five years. Upon a showing that the conviction is the~~
9 ~~third such conviction for the driver within a period of five years, the~~
10 ~~period of revocation shall be two years~~) for the period prescribed in
11 RCW 46.61.5055;

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

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

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

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

23 **Sec. 5.** RCW 46.61.503 and 1995 c 332 s 2 are each amended to read
24 as follows:

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

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

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

33 (2) It is an affirmative defense to a violation of subsection (1)
34 of this section which the defendant must prove by a preponderance of
35 the evidence that the defendant consumed a sufficient quantity of
36 alcohol after the time of driving and before the administration of an
37 analysis of the person's breath or blood to cause the defendant's
38 alcohol concentration to be (~~0.02 or more~~) in violation of subsection

1 (1) of this section within two hours after driving. The court shall
2 not admit evidence of this defense unless the defendant notifies the
3 prosecution prior to the earlier of: (a) Seven days prior to trial; or
4 (b) the omnibus or pretrial hearing in the case of the defendant's
5 intent to assert the affirmative defense.

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

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

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

13 (1) A defendant who is arrested for an offense involving driving
14 while under the influence as defined in RCW 46.61.502, driving under
15 age twenty-one after consuming alcohol as defined in RCW 46.61.503, or
16 being in physical control of a vehicle while under the influence as
17 defined in RCW 46.61.504, shall be required to appear in person before
18 a magistrate within one judicial day after the arrest.

19 (2) A defendant who is charged by citation, complaint, or
20 information with an offense involving driving while under the influence
21 as defined in RCW 46.61.502, driving under age twenty-one after
22 consuming alcohol as defined in RCW 46.61.503, or being in physical
23 control of a vehicle while under the influence as defined in RCW
24 46.61.504, and who is not arrested, shall appear in court for
25 arraignment in person as soon as practicable, but in no event later
26 than fourteen days after the next day on which court is in session
27 following the issuance of the citation or the filing of the complaint
28 or information.

29 (3) At the time of an appearance required by this section, the
30 court shall determine the necessity of imposing conditions of pretrial
31 release according to the procedures established by court rule for a
32 preliminary appearance or an arraignment.

33 (4) Appearances required by this section are mandatory and may not
34 be waived.

35 **Sec. 7.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read
36 as follows:

1 (1) Any person who operates a motor vehicle within this state is
2 deemed to have given consent, subject to the provisions of RCW
3 46.61.506, to a test or tests of his or her breath or blood for the
4 purpose of determining the alcohol concentration or presence of any
5 drug in his or her breath or blood if arrested for any offense where,
6 at the time of the arrest, the arresting officer has reasonable grounds
7 to believe the person had been driving or was in actual physical
8 control of a motor vehicle while under the influence of intoxicating
9 liquor or any drug or was in violation of RCW 46.61.503.

10 (2) The test or tests of breath shall be administered at the
11 direction of a law enforcement officer having reasonable grounds to
12 believe the person to have been driving or in actual physical control
13 of a motor vehicle within this state while under the influence of
14 intoxicating liquor or the person to have been driving or in actual
15 physical control of a motor vehicle while having alcohol in a
16 concentration (~~(of 0.02 or more)~~) in violation of RCW 46.61.503 in his
17 or her system and being under the age of twenty-one. However, in those
18 instances where the person is incapable due to physical injury,
19 physical incapacity, or other physical limitation, of providing a
20 breath sample or where the person is being treated in a hospital,
21 clinic, doctor's office, emergency medical vehicle, ambulance, or other
22 similar facility in which a breath testing instrument is not present or
23 where the officer has reasonable grounds to believe that the person is
24 under the influence of a drug, a blood test shall be administered by a
25 qualified person as provided in RCW 46.61.506(4). The officer shall
26 inform the person of his or her right to refuse the breath or blood
27 test, and of his or her right to have additional tests administered by
28 any qualified person of his or her choosing as provided in RCW
29 46.61.506. The officer shall warn the driver that:

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

32 (b) His or her license, permit, or privilege to drive will be
33 suspended, revoked, denied, or placed in probationary status if the
34 test is administered and the test indicates the alcohol concentration
35 of the person's breath or blood is 0.10 or more, in the case of a
36 person age twenty-one or over, or (~~0.02 or more~~) in violation of RCW
37 46.61.502, 46.61.503, or 46.61.504 in the case of a person under age
38 twenty-one; and

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

3 (3) Except as provided in this section, the test administered shall
4 be of the breath only. If an individual is unconscious or is under
5 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
6 or vehicular assault as provided in RCW 46.61.522, or if an individual
7 is under arrest for the crime of driving while under the influence of
8 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
9 results from an accident in which there has been serious bodily injury
10 to another person, a breath or blood test may be administered without
11 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~~
28 ~~or more~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the
29 person is under the age of twenty-one, or the person refuses to submit
30 to a test, the arresting officer or other law enforcement officer at
31 whose direction any test has been given, or the department, where
32 applicable, if the arrest results in a test of the person's blood,
33 shall:

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

38 (b) Serve notice in writing on the person on behalf of the
39 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~~) in violation
23 of RCW 46.61.503;

24 (ii) That after receipt of the warnings required by subsection (2)
25 of this section the person refused to submit to a test of his or her
26 blood or breath, or a test was administered and the results indicated
27 that the alcohol concentration of the person's breath or blood was 0.10
28 or more if the person is age twenty-one or over, or was (~~0.02 or~~
29 ~~more~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504 if the
30 person is under the age of twenty-one; and

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

32 (7) The department of licensing, upon the receipt of a sworn report
33 or report under a declaration authorized by RCW 9A.72.085 under
34 subsection (6)(e) of this section, shall suspend, revoke, deny, or
35 place in probationary status the person's license, permit, or privilege
36 to drive or any nonresident operating privilege, as provided in RCW
37 46.20.3101, such suspension, revocation, denial, or placement in
38 probationary status to be effective beginning sixty days from the date
39 of arrest or from the date notice has been given in the event notice is

1 given by the department following a blood test, or when sustained at a
2 hearing pursuant to subsection (8) of this section, whichever occurs
3 first.

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

1 section, and whether the test or tests indicated that the alcohol
2 concentration of the person's breath or blood was 0.10 or more if the
3 person was age twenty-one or over at the time of the arrest, or was
4 (~~0.02 or more~~) in violation of RCW 46.61.502, 46.61.503, or 46.61.504
5 if the person was under the age of twenty-one at the time of the
6 arrest. The sworn report or report under a declaration authorized by
7 RCW 9A.72.085 submitted by a law enforcement officer is prima facie
8 evidence that the officer had reasonable grounds to believe the person
9 had been driving or was in actual physical control of a motor vehicle
10 within this state while under the influence of intoxicating liquor or
11 drugs, or both, or the person had been driving or was in actual
12 physical control of a motor vehicle within this state while having
13 alcohol in his or her system in a concentration (~~of 0.02 or more~~) in
14 violation of RCW 46.61.503 and was under the age of twenty-one and that
15 the officer complied with the requirements of this section.

16 A hearing officer shall conduct the hearing, may issue subpoenas
17 for the attendance of witnesses and the production of documents, and
18 shall administer oaths to witnesses. The hearing officer shall not
19 issue a subpoena for the attendance of a witness at the request of the
20 person unless the request is accompanied by the fee required by RCW
21 5.56.010 for a witness in district court. The sworn report or report
22 under a declaration authorized by RCW 9A.72.085 of the law enforcement
23 officer and any other evidence accompanying the report shall be
24 admissible without further evidentiary foundation and the
25 certifications authorized by the criminal rules for courts of limited
26 jurisdiction shall be admissible without further evidentiary
27 foundation. The person may be represented by counsel, may question
28 witnesses, may present evidence, and may testify. The department shall
29 order that the suspension, revocation, denial, or placement in
30 probationary status either be rescinded or sustained.

31 (9) If the suspension, revocation, denial, or placement in
32 probationary status is sustained after such a hearing, the person whose
33 license, privilege, or permit is suspended, revoked, denied, or placed
34 in probationary status has the right to file a petition in the superior
35 court of the county of arrest to review the final order of revocation
36 by the department in the same manner as an appeal from a decision of a
37 court of limited jurisdiction. The appellant must pay the costs
38 associated with obtaining the record of the hearing before the hearing
39 officer. The filing of the appeal does not stay the effective date of

1 the suspension, revocation, denial, or placement in probationary
2 status. A petition filed under this subsection must include the
3 petitioner's grounds for requesting review. Upon granting petitioner's
4 request for review, the court shall review the department's final order
5 of suspension, revocation, denial, or placement in probationary status
6 as expeditiously as possible. If judicial relief is sought for a stay
7 or other temporary remedy from the department's action, the court shall
8 not grant such relief unless the court finds that the appellant is
9 likely to prevail in the appeal and that without a stay the appellant
10 will suffer irreparable injury. If the court stays the suspension,
11 revocation, denial, or placement in probationary status it may impose
12 conditions on such stay.

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

36 A suspension, revocation, or denial imposed under this section,
37 other than as a result of a breath test refusal, shall be stayed if the
38 person is accepted for deferred prosecution as provided in chapter
39 10.05 RCW for the incident upon which the suspension, revocation, or

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

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

11 **Sec. 8.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to read
12 as follows:

13 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
14 deny the arrested person's license, permit, or privilege to drive as
15 follows:

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

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

21 (b) For a second or subsequent refusal within ((five)) seven years,
22 or for a first refusal where there has been one or more previous
23 incidents within ((five)) seven years that have resulted in
24 administrative action under this section, revocation or denial for two
25 years or until the person reaches age twenty-one, whichever is longer.
26 A revocation imposed under this subsection (1)(b) shall run
27 consecutively to the period of any suspension, revocation, or denial
28 imposed pursuant to a criminal conviction arising out of the same
29 incident.

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

33 (a) For a first incident within ((five)) seven years, where there
34 has not been a previous incident within ((five)) seven years that
35 resulted in administrative action under this section, placement in
36 probationary status as provided in RCW 46.20.355;

37 (b) For a second or subsequent incident within ((five)) seven
38 years, revocation or denial for two years.

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

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

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

10 **Sec. 9.** RCW 46.20.391 and 1995 c 332 s 12 are each amended to read
11 as follows:

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

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

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

33 (b) Within (~~five~~) seven years immediately preceding the date of
34 the offense that gave rise to the present conviction, the applicant has
35 not committed any of the following offenses: (i) Driving or being in
36 actual physical control of a motor vehicle while under the influence of
37 intoxicating liquor; (ii) vehicular homicide under RCW 46.61.520; or
38 (iii) vehicular assault under RCW 46.61.522; and

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

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

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

12 NEW SECTION. **Sec. 10.** If specific funding for the purposes of
13 this act, referencing this act by bill or chapter number, is not
14 provided by June 30, 1998, in the omnibus appropriations act, this act
15 is null and void.

16 NEW SECTION. **Sec. 11.** If this act mandates an increased level of
17 service by local governments, the local government may, under RCW
18 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the
19 legislature. The claims shall be subject to verification by the office
20 of financial management.

21 NEW SECTION. **Sec. 12.** This act takes effect January 1, 1999.

--- END ---