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**SUBSTITUTE HOUSE BILL 1942**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** House Committee on Law & Justice (originally sponsored by Representatives Robertson, Delvin, Smith, Brown, Ballasiotes, McMahan, Sheldon, L. Thomas, Padden, Mulliken, Mielke, Chappell, Campbell, Benton, Honeyford, Thompson, Schoesler and Mitchell)

Read first time 03/01/95.

1 AN ACT Relating to driving while under the influence of  
2 intoxicating liquor or any drug; amending RCW 46.20.308, 46.20.309,  
3 46.20.355, 46.61.502, 46.61.504, 46.61.5058, 3.62.090, 10.05.060,  
4 35.21.165, 36.32.127, 46.04.480, 46.20.311, 46.20.391, 46.61.5054,  
5 46.61.5056, 46.61.5151, 46.04.015, and 46.61.506; reenacting and  
6 amending RCW 46.63.020; adding a new section to chapter 46.20 RCW;  
7 adding new sections to chapter 46.61 RCW; adding a new section to  
8 chapter 46.04 RCW; recodifying RCW 46.20.309; repealing RCW 46.20.365,  
9 46.61.5051, 46.61.5052, and 46.61.5053; repealing 1994 c 275 s 44  
10 (uncodified); prescribing penalties; providing an effective date; and  
11 declaring an emergency.

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

13 **PART I - IMPLIED CONSENT AND ADMINISTRATIVE REVOCATION**

14 **Sec. 1.** RCW 46.20.308 and 1994 c 275 s 13 are each amended to read  
15 as follows:

16 (1)(a) Any person who operates a motor vehicle within this state is  
17 deemed to have given consent, subject to the provisions of RCW  
18 46.61.506, to a test or tests of his or her breath or blood for the

1 purpose of determining the alcoholic content of his or her breath or  
2 blood if 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.

6 (b) A person under the age of twenty-one who drives or is in  
7 physical control of a motor vehicle within this state is deemed to have  
8 given consent, subject to the relevant portions of RCW 46.61.506, to be  
9 detained long enough, and be transported if necessary, to take a test  
10 or tests of that person's blood or breath for the purpose of  
11 determining the alcohol concentration in his or her system if requested  
12 or signaled to stop by a law enforcement officer pursuant to RCW  
13 46.20.309 (as recodified by this act) where, at the time of the stop,  
14 the officer has reasonable grounds to believe the person is under the  
15 age of twenty-one and had been driving or was in actual physical  
16 control of a motor vehicle while having alcohol in a concentration of  
17 0.02 or more in his or her system.

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

1 (a) His or her license, permit, or privilege to drive will be  
2 revoked or denied if he or she refuses to submit to the test~~((, and (b)~~  
3 ~~that))~~;

4 (b) His or her license, permit, or privilege to drive will be  
5 suspended, revoked, denied, or placed in probationary status and the  
6 person will be subject to possible criminal penalties if the test is  
7 administered and the test indicates the alcohol concentration of the  
8 person's breath or blood is 0.10 or more, in the case of a person age  
9 twenty-one or over, or 0.02 in the case of a person under age twenty-  
10 one; and

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

13 (3) Except as provided in this section, the test administered shall  
14 be of the breath only. If an individual is unconscious or is under  
15 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
16 or vehicular assault as provided in RCW 46.61.522, or if an individual  
17 is under arrest for the crime of driving while under the influence of  
18 intoxicating liquor or drugs as provided in RCW 46.61.502 or is under  
19 detention for driving with alcohol in his or her system as provided in  
20 RCW 46.20.309 (as recodified by this act), which arrest or detention  
21 results from an accident in which there has been serious bodily injury  
22 to another person ~~((has been injured and there is a reasonable~~  
23 ~~likelihood that such other person may die as a result of injuries~~  
24 ~~sustained in the accident))~~, a breath or blood test may be administered  
25 without the consent of the individual so arrested or detained.

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

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

38 (6) If, after arrest or detention and after the other applicable  
39 conditions and requirements of this section have been satisfied, a test

1 or tests of the person's blood or breath is administered and the test  
2 results indicate that the alcohol concentration of the person's breath  
3 or blood is 0.10 or more if the person is age twenty-one or over, or is  
4 0.02 or more if the person is under the age of twenty-one, or the  
5 person refuses to submit to a test, the arresting officer or other law  
6 enforcement officer at whose direction any test has been given, or the  
7 department, where applicable, if the arrest or detention results in a  
8 test of the person's blood, shall:

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

13 (b) Serve notice in writing on the person on behalf of the  
14 department of his or her right to a hearing, specifying the steps he or  
15 she must take to obtain a hearing. Within thirty days after the notice  
16 has been given, the person may, in writing, request a formal hearing as  
17 provided by subsection (8) of this section. If such request is made by  
18 mail it must be postmarked within thirty days after the notice has been  
19 given;

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

22 (d) Serve notice in writing that the marked license or permit, if  
23 any, is a temporary license that is valid for sixty days from the date  
24 of arrest or detention or from the date notice has been given in the  
25 event notice is given by the department following a blood test, or  
26 until the suspension, revocation, or denial of the person's license,  
27 permit, or privilege to drive is sustained at a hearing pursuant to  
28 subsection (8) of this section, whichever occurs first. No temporary  
29 license is valid to any greater degree than the license or permit that  
30 it replaces; and

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

35 (i) That the officer had reasonable grounds to believe the arrested  
36 or detained person had been driving or was in actual physical control  
37 of a motor vehicle within this state while under the influence of  
38 intoxicating liquor or drugs, or both;

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

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

8 (7) The department of licensing, upon the receipt of a sworn report  
9 ((of the law enforcement officer that the officer had reasonable  
10 grounds to believe the arrested person had been driving or was in  
11 actual physical control of a motor vehicle within this state while  
12 under the influence of intoxicating liquor and that the person had  
13 refused to submit to the test or tests upon the request of the law  
14 enforcement officer after being informed that refusal would result in  
15 the revocation of the person's privilege to drive)) or report under a  
16 declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this  
17 section, shall suspend, revoke, deny, or place in probationary status  
18 the person's license ((or)), permit, or privilege to drive or any  
19 nonresident operating privilege, as provided in section 3 of this act,  
20 such suspension, revocation, denial, or placement in probationary  
21 status to be effective beginning sixty days from the date of arrest or  
22 detention or from the date notice has been given in the event notice is  
23 given by the department following a blood test, or when sustained at a  
24 hearing pursuant to subsection (8) of this section, whichever occurs  
25 first.

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

34 (8) Upon timely receipt of ((such)) a request ((and such fee)) for  
35 a formal hearing, the department shall afford the person an opportunity  
36 for a hearing ((as provided in)). Except as otherwise provided in this  
37 section, the hearing is subject to and shall be scheduled and conducted  
38 in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be  
39 conducted in the county of the arrest or detention, except that all or

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

1 A hearing officer shall conduct the hearing, may issue subpoenas  
2 for the attendance of witnesses and the production of documents, and  
3 shall administer oaths to witnesses. The hearing officer shall not  
4 issue a subpoena for the attendance of a witness at the request of the  
5 person unless the request is accompanied by the fee required by RCW  
6 5.56.010 for a witness in district court. The sworn report or report  
7 under a declaration authorized by RCW 9A.72.085 of the law enforcement  
8 officer and any other evidence accompanying the report shall be  
9 admissible without further evidentiary foundation and the  
10 certifications authorized by the criminal rules for courts of limited  
11 jurisdiction shall be admissible without further evidentiary  
12 foundation. The person may be represented by counsel, may question  
13 witnesses, may present evidence, and may testify. The department shall  
14 order that the suspension, revocation, denial, or placement in  
15 probationary status either be rescinded or sustained. ((Any decision  
16 by the department revoking a person's driving privilege shall be stayed  
17 and shall not take effect while a formal hearing is pending as provided  
18 in this section or during the pendency of a subsequent appeal to  
19 superior court so long as there is no conviction for a moving violation  
20 or no finding that the person has committed a traffic infraction that  
21 is a moving violation during pendency of the hearing and appeal.

22 (8)) (9) If the suspension, revocation, denial, or placement in  
23 probationary status is sustained after such a hearing, the person whose  
24 license, privilege, or permit is suspended, revoked, denied, or placed  
25 in probationary status has the right to file a petition in the superior  
26 court of the county of arrest or detention to review the final order of  
27 revocation by the department in the same manner ((provided in RCW  
28 46.20.334)) as an appeal from a decision of a court of limited  
29 jurisdiction. The appellant must pay the costs associated with  
30 obtaining the record of the hearing before the hearing officer plus an  
31 additional one hundred dollars to the department. The filing of the  
32 appeal does not stay the effective date of the suspension, revocation,  
33 denial, or placement in probationary status. A petition filed under  
34 this subsection must include the petitioner's grounds for requesting  
35 review. Upon granting petitioner's request for review, the court shall  
36 review the department's final order of suspension, revocation, denial,  
37 or placement in probationary status as expeditiously as possible. If  
38 judicial relief is sought for a stay or other temporary remedy from the  
39 department's action, the court shall not grant such relief unless the

1 court finds that the appellant is likely to prevail in the appeal and  
2 that without a stay the appellant will suffer irreparable injury. If  
3 the court stays the suspension, revocation, denial, or placement in  
4 probationary status it may impose conditions on such stay.

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

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

36 ((+9+)) (11) When it has been finally determined under the  
37 procedures of this section that a nonresident's privilege to operate a  
38 motor vehicle in this state has been suspended, revoked, or denied, the  
39 department shall give information in writing of the action taken to the

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

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

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

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

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

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

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

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

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

33 ~~(c) Confiscate the person's Washington state license or permit to~~  
34 ~~drive, if any, and issue a temporary license to replace any confiscated~~  
35 ~~license or permit. The temporary license shall be valid for thirty~~  
36 ~~days from the date of the traffic stop or until the suspension or~~  
37 ~~revocation of the person's license or permit is sustained at a hearing~~  
38 ~~as provided by subsection (7) of this section, whichever occurs first.~~

1 ~~No temporary license is valid to any greater degree than the license or~~  
2 ~~permit it replaces;~~

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

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

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

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

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

14 ~~(6) Upon receipt of the sworn report of a law enforcement officer~~  
15 ~~under subsection (5) of this section, the department shall suspend or~~  
16 ~~revoke the driver's license or driving privilege beginning thirty days~~  
17 ~~from the date of the traffic stop or beginning when the suspension,~~  
18 ~~revocation, or denial is sustained at a hearing as provided by~~  
19 ~~subsection (7) of this section. Within fifteen days after notice of a~~  
20 ~~suspension or revocation has been given, the person may, in writing,~~  
21 ~~request a formal hearing. If such a request is not made within the~~  
22 ~~prescribed time the right to a hearing is waived. Upon receipt of such~~  
23 ~~request, the department shall afford the person an opportunity for a~~  
24 ~~hearing as provided in RCW 46.20.329 and 46.20.332. The hearing shall~~  
25 ~~be conducted in the county of the arrest. For the purposes of this~~  
26 ~~section, the hearing shall cover the issues of whether a law~~  
27 ~~enforcement officer had reasonable grounds to believe the person had~~  
28 ~~been driving or was in actual physical control of a motor vehicle~~  
29 ~~within this state while having alcohol in his or her system, whether~~  
30 ~~the person refused to submit to the test or tests upon request of the~~  
31 ~~officer after having been informed that the refusal would result in the~~  
32 ~~revocation of the person's driver's license or driving privilege, and,~~  
33 ~~if the test or tests of the person's breath or blood was administered,~~  
34 ~~whether the results indicated an alcohol concentration of 0.02 or more.~~  
35 ~~The department shall order that the suspension or revocation of the~~  
36 ~~person's driver's license or driving privilege either be rescinded or~~  
37 ~~sustained. Any decision by the department suspending or revoking a~~  
38 ~~person's driver's license or driving privilege is stayed and does not~~  
39 ~~take effect while a formal hearing is pending under this section or~~

1 during the pendency of a subsequent appeal to superior court so long as  
2 there is no conviction for a moving violation or no finding that the  
3 person has committed a traffic infraction that is a moving violation  
4 during the pendency of the hearing and appeal. If the suspension or  
5 revocation of the person's driver's license or driving privilege is  
6 sustained after the hearing, the person may file a petition in the  
7 superior court of the county of arrest to review the final order of  
8 suspension or revocation by the department in the manner provided in  
9 RCW 46.20.334.

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

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

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

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

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

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

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

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

26 NEW SECTION. **Sec. 3.** A new section is added to chapter 46.20 RCW  
27 to read as follows:

28 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or  
29 deny the arrested or detained person's license, permit, or privilege to  
30 drive as follows:

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

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

35 (b) For a second or subsequent refusal within five years, or for a  
36 first refusal where there has been one or more previous incidents  
37 within five years that have resulted in administrative action under  
38 this section, revocation or denial for two years or until the person

1 reaches age twenty-one, whichever is longer. A revocation imposed  
2 under this subsection (1)(b) shall run consecutively to the period of  
3 any suspension, revocation, or denial imposed pursuant to a criminal  
4 conviction arising out of the same incident.

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

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

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

14 (3) In the case of an incident where a person under age twenty-one  
15 has submitted to or been administered a test or tests indicating that  
16 the alcohol concentration of the person's breath or blood was more than  
17 0.02:

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

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

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

25 (1) Upon (~~notification of a conviction under RCW 46.61.502 or~~  
26 ~~46.61.504 for which the issuance of a probationary driver's license is~~  
27 ~~required~~) receipt of a sworn report or report under a declaration  
28 authorized by RCW 9A.72.085 under RCW 46.20.308, or upon receipt of an  
29 abstract indicating a deferred prosecution has been granted under RCW  
30 10.05.060, the department of licensing shall order the person to  
31 surrender ((his or her)) any Washington state driver's license that may  
32 be in his or her possession. The department shall revoke the license,  
33 permit, or privilege to drive of any person who fails to surrender it  
34 as required by this section for one year, unless the license has been  
35 previously surrendered to the department, a law enforcement officer, or  
36 a court, or the person has completed an affidavit of lost, stolen,  
37 destroyed, or previously surrendered license, such revocation to take

1 effect thirty days after notice is given of the requirement for license  
2 surrender.

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

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

26 (4) For each original issue or ~~((reissue))~~ renewal of a  
27 probationary license under this section, the department ((may)) shall  
28 charge ((the)) a fee ((authorized under RCW 46.20.311 for the  
29 reissuance of a license following a revocation for a violation of RCW  
30 46.61.502 or 46.61.504)) of fifty dollars in addition to any other  
31 licensing fees required. Except for when renewing a probationary  
32 license, the department shall waive the fifty-dollar fee if the person  
33 has a probationary license in his or her possession at the time a new  
34 probationary license is required.

35 ~~((4))~~ (5) A probationary license shall enable the department and  
36 law enforcement personnel to determine that the person is on  
37 probationary status((, including the period of that status, for a  
38 violation of RCW 46.61.502 or 46.61.504 or 46.20.365)). ((That)) The  
39 fact that a person's driving privilege is in probationary status or

1 that the person has been issued a probationary license shall not be a  
2 part of the person's record that is available to insurance companies.

3 **PART II - CRIMINAL SANCTIONS**

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

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

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

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

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

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

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

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

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

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

3 (i) A conviction for a violation of this section or an equivalent  
4 local ordinance;

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

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

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

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

14 (vi) A deferred prosecution under chapter 10.05 RCW granted in a  
15 prosecution for a violation of this section, RCW 46.61.504, or an  
16 equivalent local ordinance.

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

19 **Sec. 6.** RCW 46.61.504 and 1994 c 275 s 3 are each amended to read  
20 as follows:

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

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

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

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

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

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

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

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

21 (6) The terms "prior offense" and "within five years" have the same  
22 meaning as defined in RCW 46.61.502.

23 NEW SECTION. Sec. 7. A new section is added to chapter 46.61 RCW,  
24 to be codified between RCW 46.61.500 and 46.61.520, to read as follows:

25 (1) A person who is convicted of a violation of RCW 46.61.502 or  
26 46.61.504 and who has no prior offense within five years as defined in  
27 RCW 46.61.502 shall be punished as follows:

28 (a) By imprisonment for not less than one day nor more than one  
29 year. Twenty-four consecutive hours of the imprisonment may not be  
30 suspended or deferred unless the court finds that the imposition of  
31 this mandatory minimum sentence would impose a substantial risk to the  
32 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 (b) By a fine of not less than three hundred fifty dollars nor more  
37 than five thousand dollars. Three hundred fifty dollars of the fine

1 may not be suspended or deferred unless the court finds the offender to  
2 be indigent; and

3 (c) By suspension of the offender's license or permit to drive, or  
4 suspension of any nonresident privilege to drive, for a period of  
5 ninety days. The court may suspend all or part of the ninety-day  
6 period of suspension. The court shall notify the department of  
7 licensing of the conviction and of any period of license, permit, or  
8 privilege suspension and shall notify the department of the person's  
9 completion of any such period of suspension.

10 (2) A person who is convicted of a violation of RCW 46.61.502 or  
11 46.61.504 and who has one prior offense within five years as defined in  
12 RCW 46.61.502 shall be punished as follows:

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

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

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

31 (3) A person who is convicted of a violation of RCW 46.61.502 or  
32 46.61.504 and who has two or more prior offenses within five years as  
33 defined in RCW 46.61.502 shall be punished as follows:

34 (a) By imprisonment of not less than ninety days nor more than one  
35 year. Ninety days of the imprisonment may not be suspended or deferred  
36 unless the court finds that the imposition of this mandatory minimum  
37 sentence would impose a substantial risk to the offender's physical or  
38 mental well-being. Whenever the mandatory minimum sentence is  
39 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 (b) By a fine of not less than one thousand dollars nor more than  
4 five thousand dollars. One thousand dollars of the fine may not be  
5 suspended or deferred unless the court finds the offender to be  
6 indigent; and

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

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

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

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

37 (b) For each violation of mandatory conditions of probation under  
38 (a) (i) and (ii) or (a) (i) and (iii) of this subsection, the court

1 shall order the convicted person to be confined for thirty days, which  
2 shall not be suspended or deferred.

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

13 **Sec. 8.** RCW 46.61.5058 and 1994 c 139 s 1 are each amended to read  
14 as follows:

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

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

27 (4) Seizure under subsection (3) of this section automatically  
28 commences proceedings for forfeiture. The law enforcement agency under  
29 whose authority the seizure was made shall cause notice of the seizure  
30 and intended forfeiture of the seized vehicle to be served within  
31 fifteen days after the seizure on the owner of the vehicle seized, on  
32 the person in charge of the vehicle, and on any person having a known  
33 right or interest in the vehicle, including a community property  
34 interest. The notice of seizure may be served by any method authorized  
35 by law or court rule, including but not limited to service by certified  
36 mail with return receipt requested. Service by mail is complete upon  
37 mailing within the fifteen-day period after the seizure. Notice of  
38 seizure in the case of property subject to a security interest that has  
39 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.

PART III - TECHNICAL AMENDMENTS

**Sec. 9.** RCW 3.62.090 and 1994 c 275 s 34 are each amended to read as follows:

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

(2) There shall be assessed and collected in addition to any fines, forfeitures, or penalties assessed, other than for parking infractions and for fines levied under ((RCW ~~46.61.5051~~, ~~46.61.5052~~, and ~~46.61.5053~~)) section 7 of this act, and in addition to the public safety and education assessment required under subsection (1) of this section, by all courts organized under Title 3 or 35 RCW, an additional public safety and education assessment equal to fifty percent of the public safety and education assessment required under subsection (1) of this section, which shall be remitted to the state treasurer and deposited as provided in RCW 43.08.250. The additional assessment required by this subsection shall not be suspended or waived by the court.

**Sec. 10.** RCW 10.05.060 and 1994 c 275 s 17 are each amended to read as follows:

If the report recommends treatment, the court shall examine the treatment plan. If it approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the person's court docket showing that the person has been accepted for deferred prosecution. A copy of the treatment plan shall be attached to the docket, which shall then be removed from the regular court dockets and filed in a special court deferred prosecution file. If the charge be one that an abstract of the docket showing the charge, the date of the violation for which the charge was made, and the date of petitioner's acceptance is required to be sent to the department of licensing, an abstract shall be sent, and the department of licensing shall make an entry of the charge and of the petitioner's acceptance

1 for deferred prosecution on the department's driving record of the  
2 petitioner. The entry is not a conviction for purposes of Title 46  
3 RCW. (~~Upon receipt of the abstract of the docket, the department shall~~  
4 ~~issue the petitioner a probationary license in accordance with RCW~~  
5 ~~46.20.355, and the petitioner's driver's license shall be on~~  
6 ~~probationary status for five years from the date of the violation that~~  
7 ~~gave rise to the charge.)) The department shall maintain the record  
8 for ten years from date of entry of the order granting deferred  
9 prosecution.~~

10 **Sec. 11.** RCW 35.21.165 and 1994 c 275 s 36 are each amended to  
11 read as follows:

12 Except as limited by the maximum penalties authorized by law, no  
13 city or town may establish a penalty for an act that constitutes the  
14 crime of driving while under the influence of intoxicating liquor or  
15 any drug, as provided in RCW 46.61.502, or the crime of being in actual  
16 physical control of a motor vehicle while under the influence of  
17 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is  
18 less than the penalties prescribed for those crimes in ((RCW  
19 ~~46.61.5051, 46.61.5052, and 46.61.5053~~)) section 7 of this act.

20 **Sec. 12.** RCW 36.32.127 and 1994 c 275 s 37 are each amended to  
21 read as follows:

22 No county may establish a penalty for an act that constitutes the  
23 crime of driving while under the influence of intoxicating liquor or  
24 any drug, as provided for in RCW 46.61.502, or the crime of being in  
25 actual physical control of a motor vehicle while under the influence of  
26 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is  
27 less than the penalties prescribed for those crimes in ((RCW  
28 ~~46.61.5051, 46.61.5052, and 46.61.5053~~)) section 7 of this act.

29 **Sec. 13.** RCW 46.04.480 and 1994 c 275 s 38 are each amended to  
30 read as follows:

31 "Revoke," in all its forms, means the invalidation for a period of  
32 one calendar year and thereafter until reissue: PROVIDED, That under  
33 the provisions of RCW 46.20.285, 46.20.311, 46.20.265, ((~~46.61.5051,~~  
34 ~~46.61.5052, or 46.61.5053~~)) or section 7 of this act, and chapter 46.65  
35 RCW the invalidation may last for a period other than one calendar  
36 year.

1       **Sec. 14.** RCW 46.20.311 and 1994 c 275 s 27 are each amended to  
2 read as follows:

3       (1) The department shall not suspend a driver's license or  
4 privilege to drive a motor vehicle on the public highways for a fixed  
5 period of more than one year, except as specifically permitted under  
6 RCW 46.20.342 or other provision of law. Except for a suspension under  
7 RCW 46.20.289 and 46.20.291(5), whenever the license or driving  
8 privilege of any person is suspended by reason of a conviction, a  
9 finding that a traffic infraction has been committed, pursuant to  
10 chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the  
11 suspension shall remain in effect until the person gives and thereafter  
12 maintains proof of financial responsibility for the future as provided  
13 in chapter 46.29 RCW. If the suspension is the result of a violation  
14 of RCW 46.61.502 or 46.61.504, the department shall determine the  
15 person's eligibility for licensing based upon the reports provided by  
16 the alcoholism agency or probation department designated under RCW  
17 46.61.5056 and shall deny reinstatement until enrollment and  
18 participation in an approved program has been established and the  
19 person is otherwise qualified. The department shall not issue to the  
20 person a new, duplicate, or renewal license until the person pays a  
21 reissue fee of twenty dollars. If the suspension is the result of a  
22 violation of RCW 46.61.502 or 46.61.504, or is the result of  
23 administrative action under RCW 46.20.308, the reissue fee shall be  
24 fifty dollars.

25       (2) Any person whose license or privilege to drive a motor vehicle  
26 on the public highways has been revoked, unless the revocation was for  
27 a cause which has been removed, is not entitled to have the license or  
28 privilege renewed or restored until: (a) After the expiration of one  
29 year from the date the license or privilege to drive was revoked; (b)  
30 after the expiration of the applicable revocation period provided by  
31 ~~((RCW 46.20.308 or 46.61.5052, 46.61.5053, or 46.20.365))~~ section 3 or  
32 7 of this act; (c) after the expiration of two years for persons  
33 convicted of vehicular homicide; or (d) after the expiration of the  
34 applicable revocation period provided by RCW 46.20.265. After the  
35 expiration of the appropriate period, the person may make application  
36 for a new license as provided by law together with a reissue fee in the  
37 amount of twenty dollars, but if the revocation is the result of a  
38 violation of RCW 46.20.308, 46.61.502, or 46.61.504 ~~((or is the result~~  
39 ~~of administrative action under RCW 46.20.365))~~, the reissue fee shall

1 be fifty dollars. If the revocation is the result of a violation of  
2 RCW 46.61.502 or 46.61.504, the department shall determine the person's  
3 eligibility for licensing based upon the reports provided by the  
4 alcoholism agency or probation department designated under RCW  
5 46.61.5056 and shall deny reissuance of a license, permit, or privilege  
6 to drive until enrollment and participation in an approved program has  
7 been established and the person is otherwise qualified. Except for a  
8 revocation under RCW 46.20.265, the department shall not then issue a  
9 new license unless it is satisfied after investigation of the driving  
10 ability of the person that it will be safe to grant the privilege of  
11 driving a motor vehicle on the public highways, and until the person  
12 gives and thereafter maintains proof of financial responsibility for  
13 the future as provided in chapter 46.29 RCW. For a revocation under  
14 RCW 46.20.265, the department shall not issue a new license unless it  
15 is satisfied after investigation of the driving ability of the person  
16 that it will be safe to grant that person the privilege of driving a  
17 motor vehicle on the public highways.

18 (3) Whenever the driver's license of any person is suspended  
19 pursuant to Article IV of the nonresident violators compact or RCW  
20 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue  
21 to the person any new or renewal license until the person pays a  
22 reissue fee of twenty dollars. If the suspension is the result of a  
23 violation of the laws of this or any other state, province, or other  
24 jurisdiction involving (a) the operation or physical control of a motor  
25 vehicle upon the public highways while under the influence of  
26 intoxicating liquor or drugs, or (b) the refusal to submit to a  
27 chemical test of the driver's blood alcohol content, the reissue fee  
28 shall be fifty dollars.

29 **Sec. 15.** RCW 46.20.391 and 1994 c 275 s 29 are each amended to  
30 read as follows:

31 (1) Any person licensed under this chapter who is convicted of an  
32 offense relating to motor vehicles for which suspension or revocation  
33 of the driver's license is mandatory, other than vehicular homicide or  
34 vehicular assault, may submit to the department an application for an  
35 occupational driver's license. The department, upon receipt of the  
36 prescribed fee and upon determining that the petitioner is engaged in  
37 an occupation or trade that makes it essential that the petitioner  
38 operate a motor vehicle, may issue an occupational driver's license and

1 may set definite restrictions as provided in RCW 46.20.394. No person  
2 may petition for, and the department shall not issue, an occupational  
3 driver's license that is effective during the first thirty days of any  
4 suspension or revocation imposed for a violation of RCW 46.61.502 or  
5 46.61.504. (~~No person may petition for, and the department shall not  
6 issue, an occupational driver's license if the person is ineligible for  
7 such a license under RCW 46.61.5052 or 46.61.5053.~~) A person  
8 aggrieved by the decision of the department on the application for an  
9 occupational driver's license may request a hearing as provided by rule  
10 of the department.

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

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

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

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

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

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

35 **Sec. 16.** RCW 46.61.5054 and 1994 c 275 s 7 are each amended to  
36 read as follows:

37 (1)(a) In addition to penalties set forth in RCW 46.61.5051 through  
38 46.61.5053 until September 1, 1995, and section 7 of this act

1 thereafter, a one hundred twenty-five dollar fee shall be assessed to  
2 a person who is either convicted, sentenced to a lesser charge, or  
3 given deferred prosecution, as a result of an arrest for violating RCW  
4 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the  
5 purpose of funding the Washington state toxicology laboratory and the  
6 Washington state patrol breath test program.

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

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

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

19 (a) Forty percent shall be subject to distribution under RCW  
20 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

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

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

30 (3) This section applies to any offense committed on or after July  
31 1, 1993.

32 **Sec. 17.** RCW 46.61.5056 and 1994 c 275 s 9 are each amended to  
33 read as follows:

34 (1) A person subject to alcohol assessment and treatment under  
35 (~~RCW 46.61.5051, 46.61.5052, or 46.61.5053~~) section 7 of this act  
36 shall be required by the court to complete a course in an alcohol  
37 information school approved by the department of social and health  
38 services or to complete more intensive treatment in a program approved

1 by the department of social and health services, as determined by the  
2 court. The court shall notify the department of licensing whenever it  
3 orders a person to complete a course or treatment program under this  
4 section.

5 (2) A diagnostic evaluation and treatment recommendation shall be  
6 prepared under the direction of the court by an alcoholism agency  
7 approved by the department of social and health services or a qualified  
8 probation department approved by the department of social and health  
9 services. A copy of the report shall be forwarded to the department of  
10 licensing. Based on the diagnostic evaluation, the court shall  
11 determine whether the person shall be required to complete a course in  
12 an alcohol information school approved by the department of social and  
13 health services or more intensive treatment in a program approved by  
14 the department of social and health services.

15 (3) Standards for approval for alcohol treatment programs shall be  
16 prescribed by the department of social and health services. The  
17 department of social and health services shall periodically review the  
18 costs of alcohol information schools and treatment programs.

19 (4) Any agency that provides treatment ordered under ((RCW  
20 46.61.5051, 46.61.5052, or 46.61.5053)) section 7 of this act, shall  
21 immediately report to the appropriate probation department where  
22 applicable, otherwise to the court, and to the department of licensing  
23 any noncompliance by a person with the conditions of his or her ordered  
24 treatment. The court shall notify the department of licensing and the  
25 department of social and health services of any failure by an agency to  
26 so report noncompliance. Any agency with knowledge of noncompliance  
27 that fails to so report shall be fined two hundred fifty dollars by the  
28 department of social and health services. Upon three such failures by  
29 an agency within one year, the department of social and health services  
30 shall revoke the agency's approval under this section.

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

34 **Sec. 18.** RCW 46.61.5151 and 1994 c 275 s 39 are each amended to  
35 read as follows:

36 A sentencing court may allow persons convicted of violating RCW  
37 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in  
38 ((RCW 46.61.5051, 46.61.5052, or 46.61.5053)) section 7 of this act in

1 nonconsecutive or intermittent time periods. However, any mandatory  
2 minimum sentence under ((RCW 46.61.5051, 46.61.5052, or 46.61.5053))  
3 section 7 of this act shall be served consecutively unless suspended or  
4 deferred as otherwise provided by law.

5 **Sec. 19.** RCW 46.63.020 and 1994 c 275 s 33 and 1994 c 141 s 2 are  
6 each reenacted and amended to read as follows:

7 Failure to perform any act required or the performance of any act  
8 prohibited by this title or an equivalent administrative regulation or  
9 local law, ordinance, regulation, or resolution relating to traffic  
10 including parking, standing, stopping, and pedestrian offenses, is  
11 designated as a traffic infraction and may not be classified as a  
12 criminal offense, except for an offense contained in the following  
13 provisions of this title or a violation of an equivalent administrative  
14 regulation or local law, ordinance, regulation, or resolution:

15 (1) RCW 46.09.120(2) relating to the operation of a nonhighway  
16 vehicle while under the influence of intoxicating liquor or a  
17 controlled substance;

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

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

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

23 (5) Chapter 46.12 RCW relating to certificates of ownership and  
24 registration;

25 (6) RCW 46.16.010 relating to initial registration of motor  
26 vehicles;

27 (7) RCW 46.16.011 relating to permitting unauthorized persons to  
28 drive;

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

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

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

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

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

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

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

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

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

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

9 (18) RCW 46.30.040 relating to providing false evidence of  
10 financial responsibility;

11 (19) RCW 46.37.435 relating to wrongful installation of  
12 sunscreening material;

13 (20) RCW 46.44.180 relating to operation of mobile home pilot  
14 vehicles;

15 (21) RCW 46.48.175 relating to the transportation of dangerous  
16 articles;

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

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

21 (24) RCW 46.52.090 relating to reports by repairmen, storagemen,  
22 and appraisers;

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

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

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

30 (28) RCW 46.55.035 relating to prohibited practices by tow truck  
31 operators;

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

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

36 (31) RCW 46.61.022 relating to failure to stop and give  
37 identification to an officer;

38 (32) RCW 46.61.024 relating to attempting to elude pursuing police  
39 vehicles;

- 1 (33) RCW 46.61.500 relating to reckless driving;
- 2 (34) RCW 46.61.502(~~(7)~~) and 46.61.504(~~(7, 46.61.5051, 46.61.5052,~~
- 3 ~~and 46.61.5053))~~) relating to persons under the influence of
- 4 intoxicating liquor or drugs;
- 5 (35) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
- 6 (36) RCW 46.61.522 relating to vehicular assault;
- 7 (37) RCW 46.61.525 relating to negligent driving;
- 8 (38) RCW 46.61.527(4) relating to reckless endangerment of roadway
- 9 workers;
- 10 (39) RCW 46.61.530 relating to racing of vehicles on highways;
- 11 (40) RCW 46.61.685 relating to leaving children in an unattended
- 12 vehicle with the motor running;
- 13 (41) RCW 46.64.010 relating to unlawful cancellation of or attempt
- 14 to cancel a traffic citation;
- 15 (42) RCW 46.64.048 relating to attempting, aiding, abetting,
- 16 coercing, and committing crimes;
- 17 (43) Chapter 46.65 RCW relating to habitual traffic offenders;
- 18 (44) Chapter 46.70 RCW relating to unfair motor vehicle business
- 19 practices, except where that chapter provides for the assessment of
- 20 monetary penalties of a civil nature;
- 21 (45) Chapter 46.72 RCW relating to the transportation of passengers
- 22 in for hire vehicles;
- 23 (46) Chapter 46.80 RCW relating to motor vehicle wreckers;
- 24 (47) Chapter 46.82 RCW relating to driver's training schools;
- 25 (48) RCW 46.87.260 relating to alteration or forgery of a cab card,
- 26 letter of authority, or other temporary authority issued under chapter
- 27 46.87 RCW;
- 28 (49) RCW 46.87.290 relating to operation of an unregistered or
- 29 unlicensed vehicle under chapter 46.87 RCW.

30 **Sec. 20.** RCW 46.04.015 and 1994 c 275 s 1 are each amended to read

31 as follows:

32 "Alcohol concentration" means (1) grams of alcohol per two hundred

33 ten liters of a person's breath, or (2) ~~((the percent by weight of~~

34 ~~alcohol in))~~ grams of alcohol per one hundred milliliters of a person's

35 blood.

36 **Sec. 21.** RCW 46.61.506 and 1994 c 275 s 26 are each amended to

37 read as follows:

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

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

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

23 (4) When a blood test is administered under the provisions of RCW  
24 46.20.308, the withdrawal of blood for the purpose of determining its  
25 alcoholic or drug content may be performed only by a physician, a  
26 registered nurse, or a qualified technician. This limitation shall not  
27 apply to the taking of breath specimens.

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

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

1        NEW SECTION.    **Sec. 22.**    A new section is added to chapter 46.04 RCW  
2 to read as follows:

3        "Reasonable grounds", when used in the context of a law enforcement  
4 officer's decision to make an arrest or take other enforcement action,  
5 means probable cause.

6        NEW SECTION.    **Sec. 23.**    RCW 46.20.309 is recodified as a section in  
7 chapter 46.61 RCW.

8        NEW SECTION.    **Sec. 24.**    The following acts or parts of acts are  
9 each repealed:

- 10        (1) RCW 46.20.365 and 1994 c 275 s 12;
- 11        (2) RCW 46.61.5051 and 1994 c 275 s 4;
- 12        (3) RCW 46.61.5052 and 1994 c 275 s 5; and
- 13        (4) RCW 46.61.5053 and 1994 c 275 s 6.

14        NEW SECTION.    **Sec. 25.**    1994 c 275 s 44 (uncodified) is hereby  
15 repealed.

16        NEW SECTION.    **Sec. 26.**    If any provision of this act or its  
17 application to any person or circumstance is held invalid, the  
18 remainder of the act or the application of the provision to other  
19 persons or circumstances is not affected.

20        NEW SECTION.    **Sec. 27.**    This act shall take effect September 1,  
21 1995, except for sections 16 and 25 of this act which are necessary for  
22 the immediate preservation of the public peace, health, or safety, or  
23 support of the state government and its existing public institutions,  
24 and shall take effect immediately.

--- END ---