
SUBSTITUTE SENATE BILL 5141

State of Washington**54th Legislature****1995 Regular Session**

By Senate Committee on Law & Justice (originally sponsored by Senators Smith, Rasmussen, Quigley, C. Anderson and Bauer)

Read first time 02/20/95.

1 AN ACT Relating to offenses involving alcohol or drugs; amending
2 RCW 46.61.502, 46.61.504, 46.61.5051, 46.61.5054, 46.61.5056,
3 46.61.506, 46.61.5151, 46.61.5152, 46.20.285, 35.21.165, 36.32.127,
4 46.20.270, 46.20.365, 46.20.291, 46.20.308, 10.05.020, 10.05.030,
5 10.05.040, 10.05.050, 10.05.060, 10.05.090, 10.05.100, 10.05.120,
6 10.05.140, 10.05.160, 10.05.170, 46.20.355, 46.20.311, 46.04.480,
7 46.04.015, 46.20.391, and 3.62.090; reenacting and amending RCW
8 10.31.100 and 46.63.020; adding a new section to chapter 46.61 RCW;
9 adding new sections to chapter 46.20 RCW; creating new sections;
10 repealing RCW 46.20.309, 46.61.5057, 46.61.5052, and 46.61.5053;
11 repealing 1994 c 275 s 44 (uncodified); prescribing penalties;
12 providing an effective date; and declaring an emergency.

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

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6 **PART I - DUI AND DUI PENALTIES**

7 **Sec. 1.** RCW 46.61.502 and 1994 c 275 s 2 are each amended to read
8 as follows:

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

12 (a) And the person has, within two hours after driving, an alcohol
13 concentration of ~~((0.10 or higher))~~ 0.08 or more as shown by analysis
14 of the person's breath or blood made under RCW 46.61.506; or

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

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

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

23 (3) It is an affirmative defense to a violation of subsection
24 (1)(a) of this section which the defendant must prove by a
25 preponderance of the evidence that the defendant consumed a sufficient
26 quantity of alcohol after the time of driving and before the
27 administration of an analysis of the person's breath or blood to cause
28 the defendant's alcohol concentration to be ~~((0.10))~~ 0.08 or more
29 within two hours after driving. The court shall not admit evidence of
30 this defense unless the defendant notifies the prosecution prior to the
31 earlier of (a) seven days prior to trial or (b) the omnibus or pretrial

1 hearing in the case of the defendant's intent to assert the affirmative
2 defense.

3 (4) Analyses of blood or breath samples obtained more than two
4 hours after the alleged driving may be used as evidence that within two
5 hours of the alleged driving, a person had an alcohol concentration of
6 ~~((0.10))~~ 0.08 or more in violation of subsection (1)(a) of this
7 section, and in any case in which the analysis shows an alcohol
8 concentration above 0.00 may be used as evidence that a person was
9 under the influence of or affected by intoxicating liquor or any drug
10 in violation of subsection (1) (b) or (c) of this section.

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

12 **Sec. 2.** RCW 46.61.504 and 1994 c 275 s 3 are each amended to read
13 as follows:

14 (1) A person is guilty of being in actual physical control of a
15 motor vehicle while under the influence of intoxicating liquor or any
16 drug if the person has actual physical control of a vehicle within this
17 state:

18 (a) And the person has, within two hours after being in actual
19 physical control of the vehicle, an alcohol concentration of ~~((0.10 or~~
20 ~~higher))~~ 0.08 or more as shown by analysis of the person's breath or
21 blood made under RCW 46.61.506; or

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

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

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

32 (3) It is an affirmative defense to a violation of subsection
33 (1)(a) of this section which the defendant must prove by a
34 preponderance of the evidence that the defendant consumed a sufficient
35 quantity of alcohol after the time of being in actual physical control
36 of the vehicle and before the administration of an analysis of the
37 person's breath or blood to cause the defendant's alcohol concentration
38 to be ~~((0.10))~~ 0.08 or more within two hours after being in such

1 control. The court shall not admit evidence of this defense unless the
2 defendant notifies the prosecution prior to the earlier of (a) seven
3 days prior to trial or (b) the omnibus or pretrial hearing in the case
4 of the defendant's intent to assert the affirmative defense.

5 (4) Analyses of blood or breath samples obtained more than two
6 hours after the alleged being in actual physical control of a vehicle
7 may be used as evidence that within two hours of the alleged being in
8 such control, a person had an alcohol concentration of ((0.10)) 0.08 or
9 more in violation of subsection (1)(a) of this section, and in any case
10 in which the analysis shows an alcohol concentration above 0.00 may be
11 used as evidence that a person was under the influence of or affected
12 by intoxicating liquor or any drug in violation of subsection (1) (b)
13 or (c) of this section.

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

15 **Sec. 3.** RCW 46.61.5051 and 1994 c 275 s 4 are each amended to read
16 as follows:

17 (1) A person ((whose driver's license is not in a probationary,
18 suspended, or revoked status, and who has not been)) convicted of a
19 violation of RCW 46.61.502 or 46.61.504 ((that was committed within
20 five years before the commission of the current violation, and who
21 violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an alcohol
22 concentration of at least 0.10 but less than 0.15, or a person who
23 violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c) and for
24 any reason other than the person's refusal to take a test offered
25 pursuant to RCW 46.20.308 the person's alcohol concentration is not
26 proved, is guilty of a gross misdemeanor and)) shall be punished ((as
27 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
37 more than five thousand dollars((. Three hundred fifty dollars of the

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

3 (c) By), and suspension or denial by the department of the
4 offender's license ((or)) permit ((to drive)), or ((suspension of any
5 nonresident)) privilege to drive((,)) for a period of ninety days or
6 until the offender reaches the age of seventeen years, whichever is
7 longer. ((The court may suspend all or part of the ninety day period
8 of suspension upon a plea agreement executed by the defendant and the
9 prosecutor. The court shall notify the department of licensing of the
10 conviction and of any period of suspension and shall notify the
11 department of the person's completion of any period of suspension.
12 Upon receiving notification of the conviction, or if applicable, upon
13 receiving notification of the completion of any period of suspension,
14 the department shall issue the offender a probationary license in
15 accordance with RCW 46.20.355.))

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

20 (a) Violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an
21 alcohol concentration of 0.15 or more; or
22 (b) Violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c)
23 and, because of the person's refusal to take a test offered pursuant to
24 RCW 46.20.308, there is no test result indicating the person's alcohol
25 concentration, is guilty of a gross misdemeanor and)) convicted of a
26 violation of RCW 46.61.502 or 46.61.504 who has one prior conviction
27 shall be punished ((as follows:

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

37 (ii) By)), a fine of not less than five hundred dollars nor more
38 than five thousand dollars((. Five hundred dollars of the fine may not

1 be suspended or deferred unless the court finds the offender to be
2 indigent; and

3 (iii) By suspension)), and revocation or denial by the department
4 of the offender's license ((or)), permit ((to drive)), or ((suspension
5 of any nonresident)) privilege to drive((,)) for a period of one
6 ((hundred twenty days. The court shall notify the department of the
7 conviction, and upon receiving notification of the conviction the
8 department shall suspend the offender's license and shall issue the
9 offender a probationary license in accordance with RCW 46.20.355)) year
10 or until the offender reaches the age of eighteen years, whichever is
11 longer.

12 (3) A person convicted of a violation of RCW 46.61.502 or 46.61.504
13 who has at least two prior convictions shall be punished by
14 imprisonment for not less than ninety days nor more than one year, a
15 fine of not less than seven hundred fifty dollars nor more than five
16 thousand dollars, and revocation or denial by the department of the
17 offender's license, permit, or privilege to drive for a period of two
18 years or until the offender reaches the age of eighteen years,
19 whichever is longer.

20 (4) For purposes of sentencing under this section, "prior
21 conviction" means a conviction under RCW 46.61.502, 46.61.504, section
22 18 of this act, or a municipal ordinance or out-of-state statute or
23 ordinance similar to any of these statutes or, as provided by RCW
24 10.05.060, 10.05.120, and 46.20.270(4), a deferred prosecution for a
25 violation of RCW 46.61.502 or 46.61.504 or similar municipal ordinance
26 based on an incident within five years of the commission of the current
27 violation. For purposes of sentencing under this section, the court
28 shall determine, based on a preponderance of the evidence, whether the
29 offender has been convicted under RCW 46.61.502, 46.61.504, section 18
30 of this act, or a municipal ordinance or out-of-state statute or
31 ordinance similar to any of these statutes or has been granted a
32 deferred prosecution for a violation of RCW 46.61.502 or 46.61.504 or
33 similar municipal ordinance based on an incident within five years of
34 the commission of the current violation. The prosecutor or the court
35 may obtain an abstract of the offender's driving record, which shall be
36 prima facie evidence of the offender's prior convictions.

37 (5) In exercising its discretion in setting penalties within the
38 limits allowed by this section, the court shall particularly consider
39 as an aggravating factor whether:

1 (a) The ((person's)) offender's driving at the time of the offense
2 was responsible for injury or damage to another or another's
3 property((.

4 (4) Upon conviction under this section, the offender's driver's
5 license is deemed to be in a probationary status for five years from
6 the date of the issuance of a probationary license under RCW 46.20.355.
7 Being on probationary status does not authorize a person to drive
8 during any period of license suspension imposed as a penalty for the
9 infraction.

10 (+5));

11 (b) The offender's alcohol concentration was 0.15 or more;

12 (c) The offender refused to take a test offered pursuant to RCW
13 46.20.308;

14 (d) The offender's license, permit, or privilege to drive was
15 suspended, revoked, denied, or in probationary status at the time of
16 the violation; and

17 (e) The offender was not in compliance with RCW 46.30.020 at the
18 time of the violation.

19 (6) The court shall not defer the minimum term of imprisonment or
20 minimum fine. The court shall not suspend the minimum term of
21 imprisonment or minimum fine unless it finds, considering the purposes
22 of Title 46 RCW and any aggravating or mitigating factors, that the
23 minimum term of imprisonment or minimum fine would be clearly excessive
24 and that there are substantial and compelling reasons justifying a
25 lesser term of imprisonment or fine. Whenever the minimum term of
26 imprisonment or minimum fine is suspended, the court shall set forth
27 the reasons for its decision in written findings of fact and
28 conclusions of law. A sentence suspending the minimum term of
29 imprisonment or minimum fine is subject to appeal by the prosecution.
30 To reverse a sentence suspending the minimum term of imprisonment or
31 minimum fine, the reviewing court must find that the reasons supplied
32 by the sentencing judge are not supported by the record that was before
33 the judge, those reasons do not justify such a sentence, or the
34 sentence imposed was clearly too lenient.

35 (7) Upon sentencing an offender under this section, the court shall
36 notify the department of licensing, which shall suspend, revoke, or
37 deny the offender's license, permit, or privilege to drive. The period
38 of suspension, revocation, or denial imposed under this section shall
39 be reduced by the length of the period of suspension, revocation, or

1 denial imposed under RCW 46.20.365 based on the same incident. After
2 expiration of the period of suspension, revocation, or denial, the
3 department shall place the offender's driving privilege in probationary
4 status pursuant to RCW 46.20.355.

5 (8) An offender ((punishable)) sentenced under this section is
6 subject to the alcohol assessment and treatment provisions of RCW
7 46.61.5056. An offender sentenced under subsection (2) or (3) of this
8 section is not eligible for an occupational license under RCW 46.20.391
9 and is subject to vehicle seizure and forfeiture using the procedures
10 of RCW 46.61.5058.

11 ((+6)) (9)(a) In addition to any nonsuspendable and nondeferrable
12 jail sentence required by this section, whenever the court imposes less
13 than one year in jail, the court shall also suspend but shall not defer
14 a period of confinement for a period not exceeding two years. The
15 court shall impose conditions of probation that include: (i) Not
16 driving a motor vehicle within this state without a valid license to
17 drive and proof of financial responsibility for the future as defined
18 by RCW 46.29.260; (ii) not driving a motor vehicle within this state
19 while having an alcohol concentration of ((0.08)) 0.04 or more within
20 two hours after driving; and (iii) not refusing to submit to a test of
21 his or her breath or blood to determine alcohol concentration upon
22 request of a law enforcement officer who has reasonable grounds to
23 believe the person was driving or was in actual physical control of a
24 motor vehicle within this state while under the influence of
25 intoxicating liquor. The court may impose conditions of probation that
26 include nonrepetition, alcohol or drug treatment, supervised probation,
27 or other conditions that may be appropriate. The sentence may be
28 imposed in whole or in part upon violation of a condition of probation
29 during the suspension period.

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

34 (c) For each ((incident involving a)) violation of a mandatory
35 condition of probation imposed under this subsection, the court shall
36 notify the department, which shall suspend or deny the offender's
37 license, permit, or privilege to drive ((of the person shall be
38 suspended by the court)) for thirty days or, if such license, permit,
39 or privilege to drive already is suspended, revoked, or denied at the

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

6 **Sec. 4.** RCW 46.61.5054 and 1994 c 275 s 7 are each amended to read
7 as follows:

8 (1)(a) In addition to penalties set forth in RCW 46.61.5051
9 ((through 46.61.5053)), a one hundred twenty-five dollar fee shall be
10 assessed to a person who is either convicted, sentenced to a lesser
11 charge, or given deferred prosecution((,)) as a result of an arrest for
12 violating RCW 46.61.502, 46.61.504, 46.61.520, ((or)) 46.61.522, or
13 section 9 of this act. This fee is for the purpose of funding the
14 Washington state toxicology laboratory and the Washington state patrol
15 breath test program.

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

19 (c) When a ((minor)) juvenile has been adjudicated a juvenile
20 offender for an offense which, if committed by an adult, would
21 constitute a violation of RCW 46.61.502, 46.61.504, 46.61.520, or
22 46.61.522, the court shall assess the one hundred twenty-five dollar
23 fee under (a) of this subsection. Upon a verified petition by a
24 ((minor)) juvenile assessed the fee, the court may suspend payment of
25 all or part of the fee if it finds that the minor does not have the
26 ability to pay the fee.

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

29 (a) Forty percent shall be subject to distribution under RCW
30 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

31 (b) If the case involves a blood test by the state toxicology
32 laboratory, the remainder of the fee shall be forwarded to the state
33 treasurer for deposit in the death investigations account to be used
34 solely for funding the state toxicology laboratory blood testing
35 program.

36 (c) Otherwise, the remainder of the fee shall be forwarded to the
37 state treasurer for deposit in the state patrol highway account to be

1 used solely for funding the Washington state patrol breath test
2 program.

3 **Sec. 5.** RCW 46.61.5056 and 1994 c 275 s 9 are each amended to read
4 as follows:

5 (1) A person subject to alcohol assessment and treatment under RCW
6 46.61.5051((, 46.61.5052, or 46.61.5053)) shall be required by the
7 court to complete a course in an alcohol information school approved by
8 the department of social and health services or to complete more
9 intensive treatment ((in a)) by an approved treatment program
10 ((approved by the department of social and health services)), as
11 defined by RCW 70.96A.020, as determined by either the court or the
12 court's probation department. The court shall notify the department of
13 licensing whenever it orders a person to complete a course or treatment
14 ((program)) under this section.

15 (2) A written diagnostic evaluation and recommended treatment
16 ((recommendation)) shall be prepared under the direction of the court
17 by an ((alcoholism agency approved by the department of social and
18 health services)) approved treatment program or a qualified probation
19 department approved by the department of social and health services.
20 A copy of the report shall be forwarded to the department of licensing.
21 Based on the written diagnostic evaluation and recommended treatment,
22 the court or the court's probation department shall determine whether
23 the person shall be required to complete a course in an alcohol
24 information school approved by the department of social and health
25 services or more intensive treatment ((in a)) by an approved treatment
26 program ((approved by the department of social and health services)).

27 (3) Standards for approval for alcohol ((treatment programs))
28 information schools shall be prescribed by the department of social and
29 health services. The department of social and health services shall
30 periodically review the costs of alcohol information schools and
31 treatment by approved treatment programs.

32 (4) Any ((agency)) approved treatment program that provides
33 treatment ordered under RCW 46.61.5051((, 46.61.5052, or 46.61.5053,))
34 shall immediately report to the appropriate probation department where
35 applicable, otherwise to the court, and to the department of licensing
36 any noncompliance by ((a person)) an offender with the conditions of
37 his or her ordered treatment. The court shall notify the department of
38 licensing and the department of social and health services of any

1 failure by an ((agency)) approved treatment program to so report
2 noncompliance. Any ((agency)) approved treatment program with
3 knowledge of noncompliance that fails to so report shall be fined two
4 hundred fifty dollars by the department of social and health services.
5 Upon three such failures by an ((agency)) approved treatment program
6 within one year, the department of social and health services shall
7 revoke the ((agency's approval)) approved treatment program's license
8 or certification under this section. If the secretary imposes a fine
9 under this subsection, the fine must be paid within ninety days of
10 notice of its imposition or the secretary shall revoke the license of
11 the approved treatment program or licensed service provider. Upon
12 receipt of a report of an offender's noncompliance under this
13 subsection, the department of licensing shall suspend the offender's
14 license or permit to drive under RCW 46.20.291(4) or deny the
15 offender's privilege to drive under RCW 46.20.031(3).

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

19 **Sec. 6.** RCW 46.61.506 and 1994 c 275 s 26 are each amended to read
20 as follows:

21 (1) Upon the trial of any civil or criminal action or proceeding
22 arising out of acts alleged to have been committed by any person while
23 driving or in actual physical control of a vehicle while under the
24 influence of intoxicating liquor or any drug, if the person's alcohol
25 concentration is less than ((0.10)) 0.08, it is evidence that may be
26 considered with other competent evidence in determining whether the
27 person was under the influence of intoxicating liquor or any drug.

28 ((The breath analysis shall be based upon grams of alcohol per
29 two hundred ten liters of breath.)) The foregoing provisions of this
30 section shall not be construed as limiting the introduction of any
31 other competent evidence bearing upon the question whether the person
32 was under the influence of intoxicating liquor or any drug.

33 (3) Analysis of the person's blood or breath to be considered valid
34 under the provisions of this section or RCW 46.61.502 or 46.61.504
35 shall have been performed according to methods approved by the state
36 toxicologist and by an individual possessing a valid permit issued by
37 the state toxicologist for this purpose. The state toxicologist is
38 directed to approve satisfactory techniques or methods, to supervise

1 the examination of individuals to ascertain their qualifications and
2 competence to conduct such analyses, and to issue permits which shall
3 be subject to termination or revocation at the discretion of the state
4 toxicologist.

5 (4) When a blood test is administered under the provisions of RCW
6 46.20.308, the withdrawal of blood for the purpose of determining its
7 ((alcoholic content)) alcohol concentration or presence of drugs may be
8 performed only by a physician, a registered nurse, or a qualified
9 technician. This limitation shall not apply to the taking of breath
10 specimens.

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

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

22 **Sec. 7.** RCW 46.61.5151 and 1994 c 275 s 39 are each amended to
23 read as follows:

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

31 **Sec. 8.** RCW 46.61.5152 and 1994 c 275 s 40 are each amended to
32 read as follows:

33 In addition to penalties that may be imposed under RCW 46.61.5051,
34 ((46.61.5052, or 46.61.5053,)) the court may require a person who is
35 convicted of a violation of RCW 46.61.502 or 46.61.504 or who enters a
36 deferred prosecution program under RCW 10.05.020 based on a violation
37 of RCW 46.61.502 or 46.61.504, to attend an educational program

1 focusing on the emotional, physical, and financial suffering of victims
2 who were injured by persons convicted of driving while under the
3 influence of intoxicants.

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

6 (1) A person is guilty of driving a motor vehicle after consuming
7 alcohol if the person operates a motor vehicle within this state and
8 the person:

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

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

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

23 (3) Analyses of blood or breath samples obtained more than two
24 hours after the alleged driving may be used as evidence that within two
25 hours of the alleged driving, a person had an alcohol concentration of
26 0.02 or more in violation of subsection (1) of this section.

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

28 **Sec. 10.** RCW 46.20.285 and 1990 c 250 s 43 are each amended to
29 read as follows:

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

35 (1) For vehicular homicide the period of revocation ((shall be)) is
36 two years;

37 (2) Vehicular assault;

1 (3) For driving a motor vehicle while under the influence of
2 ~~intoxicating liquor or ((a narcotic)) any drug, ((or under the~~
3 ~~influence of any other drug to a degree which renders the driver~~
4 ~~incapable of safely driving a motor vehicle,)) upon a showing by the~~
5 department's records that the conviction is the second such conviction
6 for the driver within a period of five years, the period of revocation
7 is one year or until the driver reaches the age of eighteen years,
8 whichever is longer. Upon a showing that the conviction is the third
9 or subsequent such conviction for the driver within a period of five
10 years, the period of revocation ~~((shall be))~~ is two years or until the
11 driver reaches the age of eighteen years, whichever is longer;

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 (8) For refusal to submit to a breath or blood test, upon a showing
24 by the department's records that the conviction is the second such
25 conviction for the driver within a period of five years, the period of
26 revocation is two years or until the driver reaches the age of eighteen
27 years, whichever is longer. Upon a showing that the conviction is the
28 third or subsequent such conviction for the driver within a period of
29 five years from the first conviction, the period of revocation is three
30 years or until the driver reaches the age of eighteen years, whichever
31 is longer.

32 **Sec. 11.** RCW 10.31.100 and 1993 c 209 s 1 and 1993 c 128 s 5 are
33 each reenacted and amended to read as follows:

34 A police officer having probable cause to believe that a person has
35 committed or is committing a felony shall have the authority to arrest
36 the person without a warrant. A police officer may arrest a person
37 without a warrant for committing a misdemeanor or gross misdemeanor

1 only when the offense is committed in the presence of the officer,
2 except as provided in subsections (1) through (10) of this section.

3 (1) Any police officer having probable cause to believe that a
4 person has committed or is committing a misdemeanor or gross
5 misdemeanor, involving physical harm or threats of harm to any person
6 or property or the unlawful taking of property or involving the use or
7 possession of cannabis, or involving the acquisition, possession, or
8 consumption of alcohol by a person under the age of twenty-one years
9 under RCW 66.44.270 shall have the authority to arrest the person.

10 (2) A police officer shall arrest and take into custody, pending
11 release on bail, personal recognizance, or court order, a person
12 without a warrant when the officer has probable cause to believe that:

13 (a) An order has been issued of which the person has knowledge
14 under RCW 10.99.040(2), 10.99.050, 26.09.060, 26.44.063, chapter 26.26
15 RCW, or chapter 26.50 RCW restraining the person and the person has
16 violated the terms of the order restraining the person from acts or
17 threats of violence or excluding the person from a residence or, in the
18 case of an order issued under RCW 26.44.063, imposing any other
19 restrictions or conditions upon the person; or

20 (b) The person is eighteen years or older and within the preceding
21 four hours has assaulted that person's spouse, former spouse, or a
22 person eighteen years or older with whom the person resides or has
23 formerly resided and the officer believes: (i) A felonious assault
24 has occurred; (ii) an assault has occurred which has resulted in bodily
25 injury to the victim, whether the injury is observable by the
26 responding officer or not; or (iii) that any physical action has
27 occurred which was intended to cause another person reasonably to fear
28 imminent serious bodily injury or death. Bodily injury means physical
29 pain, illness, or an impairment of physical condition. When the
30 officer has probable cause to believe that spouses, former spouses, or
31 other persons who reside together or formerly resided together have
32 assaulted each other, the officer is not required to arrest both
33 persons. The officer shall arrest the person whom the officer believes
34 to be the primary physical aggressor. In making this determination,
35 the officer shall make every reasonable effort to consider: (i) The
36 intent to protect victims of domestic violence under RCW 10.99.010;
37 (ii) the comparative extent of injuries inflicted or serious threats
38 creating fear of physical injury; and (iii) the history of domestic
39 violence between the persons involved.

1 (3) Any police officer having probable cause to believe that a
2 person has committed or is committing a violation of any of the
3 following traffic laws shall have the authority to arrest the person:

4 (a) RCW 46.52.010, relating to duty on striking an unattended car
5 or other property;

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

8 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or
9 racing of vehicles;

10 (d) RCW 46.61.502 or 46.61.504, relating to persons under the
11 influence of intoxicating liquor or drugs;

12 (e) Section 9 of this act, relating to a person under age twenty-
13 one driving a motor vehicle after consuming alcohol;

14 (f) RCW 46.20.342, relating to driving a motor vehicle while
15 operator's license is suspended or revoked;

16 ((f)) (g) RCW 46.61.525, relating to operating a motor vehicle in
17 a negligent manner.

18 (4) A law enforcement officer investigating at the scene of a motor
19 vehicle accident may arrest the driver of a motor vehicle involved in
20 the accident if the officer has probable cause to believe that the
21 driver has committed in connection with the accident a violation of any
22 traffic law or regulation.

23 (5) Any police officer having probable cause to believe that a
24 person has committed or is committing a violation of RCW ((88.12.100))
25 88.12.025 shall have the authority to arrest the person.

26 (6) An officer may act upon the request of a law enforcement
27 officer in whose presence a traffic infraction was committed, to stop,
28 detain, arrest, or issue a notice of traffic infraction to the driver
29 who is believed to have committed the infraction. The request by the
30 witnessing officer shall give an officer the authority to take
31 appropriate action under the laws of the state of Washington.

32 (7) Any police officer having probable cause to believe that a
33 person has committed or is committing any act of indecent exposure, as
34 defined in RCW 9A.88.010, may arrest the person.

35 (8) A police officer may arrest and take into custody, pending
36 release on bail, personal recognizance, or court order, a person
37 without a warrant when the officer has probable cause to believe that
38 an order has been issued of which the person has knowledge under
39 chapter 10.14 RCW and the person has violated the terms of that order.

1 (9) Any police officer having probable cause to believe that a
2 person has, within twenty-four hours of the alleged violation,
3 committed a violation of RCW 9A.50.020 may arrest such person.

4 (10) A police officer having probable cause to believe that a
5 person illegally possesses or illegally has possessed a firearm or
6 other dangerous weapon on private or public elementary or secondary
7 school premises shall have the authority to arrest the person.

8 For purposes of this subsection, the term "firearm" has the meaning
9 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning
10 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

11 (11) Except as specifically provided in subsections (2), (3), (4),
12 and (6) of this section, nothing in this section extends or otherwise
13 affects the powers of arrest prescribed in Title 46 RCW.

14 (12) No police officer may be held criminally or civilly liable for
15 making an arrest pursuant to RCW 10.31.100 (2) or (8) if the police
16 officer acts in good faith and without malice.

17 **Sec. 12.** RCW 35.21.165 and 1994 c 275 s 36 are each amended to
18 read as follows:

19 Except as limited by the maximum penalties authorized by law, no
20 city or town may establish a penalty for an act that constitutes the
21 crime of driving while under the influence of intoxicating liquor or
22 any drug, as provided in RCW 46.61.502, or the crime of being in actual
23 physical control of a motor vehicle while under the influence of
24 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is
25 less than the penalties prescribed for those crimes in RCW
26 46.61.5051((~~, 46.61.5052, and 46.61.5053~~)).

27 **Sec. 13.** RCW 36.32.127 and 1994 c 275 s 37 are each amended to
28 read as follows:

29 No county may establish a penalty for an act that constitutes the
30 crime of driving while under the influence of intoxicating liquor or
31 any drug, as provided for in RCW 46.61.502, or the crime of being in
32 actual physical control of a motor vehicle while under the influence of
33 intoxicating liquor or any drug, as provided in RCW 46.61.504, that is
34 less than the penalties prescribed for those crimes in RCW
35 46.61.5051((~~, 46.61.5052, and 46.61.5053~~)).

1 **Sec. 14.** RCW 46.20.270 and 1990 2nd ex.s. c 1 s 402 are each
2 amended to read as follows:

3 (1) Whenever any person is convicted of any offense for which this
4 title makes mandatory the suspension or revocation of the driver's
5 license of such person by the department, the privilege of the person
6 to operate a vehicle is suspended until the department takes the action
7 required by this chapter, and the court in which such conviction is had
8 shall forthwith secure the immediate forfeiture of the driver's license
9 of such convicted person and immediately forward such driver's license
10 to the department, and on failure of such convicted person to deliver
11 such driver's license the judge ((shall)) may cause such person to be
12 confined for the period of such suspension or revocation or until such
13 driver's license is delivered to such judge((~~PROVIDED, That if the~~
14 ~~convicted person testifies that he or she does not and at the time of~~
15 ~~the offense did not have a current and valid vehicle driver's license,~~
16 ~~the judge shall cause such person to be charged with the operation of~~
17 ~~a motor vehicle without a current and valid driver's license and on~~
18 ~~conviction punished as by law provided, and the department may not~~
19 ~~issue a driver's license to such persons during the period of~~
20 ~~suspension or revocation: PROVIDED, ALSO, That)) or may take other~~
21 appropriate action to secure the forfeiture of such driver's license.
22 If the driver's license of such convicted person has been lost or
23 destroyed and such convicted person makes an affidavit to that effect,
24 sworn to before the judge, the convicted person may not be so confined,
25 but the department may not issue or reissue a driver's license for such
26 convicted person during the period of such suspension or revocation:
27 PROVIDED, That perfection of notice of appeal shall stay the execution
28 of sentence including the suspension and/or revocation of the driver's
29 license.

30 (2) Every court having jurisdiction over offenses committed under
31 this chapter, or any other act of this state or municipal ordinance
32 adopted by a local authority regulating the operation of motor vehicles
33 on highways, or any federal authority having jurisdiction over offenses
34 substantially the same as those set forth in Title 46 RCW which occur
35 on federal installations within this state, shall forward to the
36 department within ten days of a forfeiture of bail or collateral
37 deposited to secure the defendant's appearance in court, a payment of
38 a fine or penalty, a plea of guilty or a finding of guilt, or a finding
39 that any person has committed a traffic infraction an abstract of the

1 court record in the form prescribed by rule of the supreme court,
2 showing the conviction of any person or the finding that any person has
3 committed a traffic infraction in said court for a violation of any
4 said laws other than regulations governing standing, stopping, parking,
5 and pedestrian offenses.

6 (3) Every municipality having jurisdiction over offenses committed
7 under this chapter, or under any other act of this state or municipal
8 ordinance adopted by a local authority regulating the operation of
9 motor vehicles on highways, may forward to the department within ten
10 days of failure to respond, failure to pay a penalty, failure to appear
11 at a hearing to contest the determination that a violation of any
12 statute, ordinance, or regulation relating to standing, stopping, or
13 parking has been committed, or failure to appear at a hearing to
14 explain mitigating circumstances, an abstract of the citation record in
15 the form prescribed by rule of the department, showing the finding by
16 such municipality that two or more violations of laws governing
17 standing, stopping, and parking have been committed and indicating the
18 nature of the defendant's failure to act. Such violations may not have
19 occurred while the vehicle is stolen from the registered owner or is
20 leased or rented under a bona fide commercial vehicle lease or rental
21 agreement between a lessor engaged in the business of leasing vehicles
22 and a lessee who is not the vehicle's registered owner. The department
23 may enter into agreements of reciprocity with the duly authorized
24 representatives of the states for reporting to each other violations of
25 laws governing standing, stopping, and parking.

26 (4) For the purposes of Title 46 RCW ((the term))_ "conviction"
27 means a final conviction in a state or municipal court or by any
28 federal authority having jurisdiction over offenses substantially the
29 same as those set forth in Title 46 RCW which occur on federal
30 installations in this state, an unvacated forfeiture of bail or
31 collateral deposited to secure a defendant's appearance in court, the
32 payment of a fine, a plea of guilty, or a finding of guilt on a traffic
33 law violation charge, regardless of whether the imposition of sentence
34 or sanctions are deferred or the penalty is suspended((,- but)).
35 "Conviction" does not ((including)) include entry into a deferred
36 prosecution agreement under chapter 10.05 RCW, except that a deferred
37 prosecution for a violation of RCW 46.61.502 or 46.61.504 shall be
38 considered a conviction under RCW 46.61.502 or 46.61.504 for purposes

1 of imposing a mandatory minimum sentence under RCW 46.61.5051 for
2 subsequent offenses within a five-year period.

3 (5) For the purposes of Title 46 RCW ((the term)), "finding that a
4 traffic infraction has been committed" means a failure to respond to a
5 notice of infraction or a determination made by a court pursuant to
6 this chapter. Payment of a monetary penalty made pursuant to RCW
7 46.63.070(2) is deemed equivalent to such a finding.

8 **PART II - ADMINISTRATIVE LICENSE SUSPENSION/REVOCATION**

9 **Sec. 15.** RCW 46.20.365 and 1994 c 275 s 12 are each amended to
10 read as follows:

11 (1) This section applies to any person arrested for a violation of
12 RCW 46.61.502 ((or)), 46.61.504, or section 9 of this act who ((has))
13 either (a) submitted to a test administered pursuant to RCW 46.20.308
14 and the result of each test showed an alcohol concentration of ((0.10
15 or higher as shown by a test administered under)) 0.08 or more, or 0.02
16 or more if the person is under the age of twenty-one years, or (b)
17 refused to submit to a test offered pursuant to RCW 46.20.308.

18 (2) The arresting officer or other law enforcement officer at whose
19 direction the test was given or offered, or the department of licensing
20 if the arrest was the result of a blood test, shall:

21 (a) Serve the person notice in writing on behalf of the department
22 of licensing of its intention to suspend, revoke, or deny the person's
23 license, permit, or privilege to drive ((or to issue a probationary
24 license));

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

28 (c) Confiscate the person's Washington state license or permit to
29 drive, if any, and issue a temporary license to replace any confiscated
30 license or permit. The temporary license becomes effective twelve
31 hours after the time of arrest and shall be valid for ((thirty)) forty-
32 five days from the date of arrest, or from the date the department
33 gives notice under this subsection in the event of a blood test, or
34 until the suspension ((or)), revocation, or denial of the person's
35 license ((or)) permit, or ((the issuance of a probationary license,))
36 privilege to drive is sustained at a hearing pursuant to subsection (5)
37 of this section, whichever occurs first. If the person has not within

1 the previous five years committed an offense for which he or she was
2 granted a deferred prosecution under chapter 10.05 RCW, and within
3 ((thirty)) forty-five days of the arrest the person petitions a court
4 for a deferred prosecution on criminal charges arising out of the
5 arrest, and the person documents that he or she has commenced the
6 recommended treatment or is scheduled to begin treatment at the
7 earliest available opening at the designated treatment program, the
8 court ((shall)) may direct the department to extend the period of the
9 temporary license by ((at least an additional)) not more than thirty
10 days ((but not more than an additional sixty days)). As a condition of
11 directing the department to extend the period of the temporary license,
12 the court shall order one or more of the following conditions of the
13 petitioner: (i) Not operate a motor vehicle within this state without
14 a valid operator's license and proof of compliance with RCW 46.30.020,
15 (ii) not drive a motor vehicle within this state while having any
16 measurable alcohol in his or her breath or blood within two hours after
17 driving, (iii) not refuse to submit to a test of his or her breath or
18 blood to determine alcohol concentration upon request of a law
19 enforcement officer who has reasonable grounds to believe the person
20 was driving or was in actual physical control of a motor vehicle within
21 this state while under the influence of intoxicating liquor, (iv)
22 confine the driving of a motor vehicle to petitioner's place of
23 employment and to attend treatment, including alcoholism self-help
24 recovery support group meetings, and (v) attend alcoholism self-help
25 recovery support group meetings. Upon the violation of any of the
26 conditions imposed by the court, the court shall direct the department
27 to cancel any period of extension of the temporary license. If a
28 deferred prosecution treatment plan is not recommended in the report
29 made under RCW 10.05.050, or if treatment is rejected by the court, or
30 if the person declines to accept an offered treatment plan, then the
31 court shall immediately direct the department to cancel any period of
32 extension of the temporary license. No temporary license is valid to
33 any greater degree than the license or permit it replaces;

34 (d) Notify the department of the arrest, and transmit to the
35 department any confiscated license or permit and a sworn report or
36 report under a declaration authorized by RCW 9A.72.085, and a copy of
37 the information showing the results of any test administered under RCW
38 46.20.308, stating:

1 (i) That the officer had reasonable grounds to believe the arrested
2 person was driving or in actual physical control of a motor vehicle
3 within this state while under the influence of intoxicating liquor or
4 drug, or both or was in violation of section 9 of this act;

5 (ii)(A) That pursuant to RCW 46.20.308 a test of the person's
6 ((alcohol concentration)) breath or blood was administered and the
7 result of each test showed an alcohol concentration of 0.08 or more, or
8 0.02 or more if the person was under the age of twenty-one years; or

9 (B) That the person refused to submit to a test offered pursuant to
10 RCW 46.20.308; and

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

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

15 (3) Upon receipt of a ((sworn statement)) report under subsection
16 (2) of this section, the department shall suspend, revoke, or deny the
17 person's license, permit, or driving privilege((, or shall issue a
18 probationary license,)) effective beginning ((thirty)) forty-five days
19 from the date of the arrest, or from the date the department gave
20 notice under subsection (2) of this section in the event of a blood
21 test, or beginning when the suspension, revocation, or denial((, or
22 issuance)) is sustained at a hearing pursuant to subsection (5) of this
23 section, whichever occurs first. The duration of the suspension,
24 revocation, or denial((, or issuance of a probationary license,)) shall
25 be as follows:

26 (a) Upon receipt of a first ((sworn statement, issuance of a
27 probationary license)) report showing:

28 (i) An alcohol concentration of 0.08 or more, or 0.02 or more if
29 the person is under the age of twenty-one years, suspension or denial
30 for ninety days or until the person reaches the age of seventeen years,
31 whichever is longer, followed by placement in probationary status under
32 RCW 46.20.355;

33 (ii) That the person refused to submit to a test offered pursuant
34 to RCW 46.20.308, revocation or denial for one year or until the person
35 reaches the age of seventeen years, whichever is longer, followed by
36 placement in probationary status under RCW 46.20.355;

37 (b) Upon receipt of a second report indicating an arrest date
38 within five years of the arrest date indicated by a previous report and
39 the second report shows:

1 (i) An alcohol concentration of 0.08 or more, or 0.02 or more if
2 the person is under the age of twenty-one years, revocation or denial
3 for one year or until the person reaches the age of eighteen years,
4 whichever is longer, followed by placement in probationary status under
5 RCW 46.20.355;

6 (ii) That the person refused to submit to a test offered pursuant
7 to RCW 46.20.308, revocation or denial for two years or until the
8 person reaches the age of eighteen years, whichever is longer, followed
9 by placement in probationary status under RCW 46.20.355;

10 (c) Upon receipt of a ((second)) third or subsequent ((statement))
11 report indicating an arrest date that is within five years of the
12 arrest date indicated by ((a previous statement, revocation for two
13 years)) the first report under (a) of this subsection and the third
14 report shows:

15 (i) An alcohol concentration of 0.08 or more, or 0.02 or more if
16 the person is under the age of twenty-one years, revocation or denial
17 for two years or until the person reaches the age of eighteen years,
18 whichever is longer, followed by placement in probationary status under
19 RCW 46.20.355;

20 (ii) That the person refused to submit to a test offered pursuant
21 to RCW 46.20.308, revocation or denial for three years or until the
22 person reaches the age of eighteen years, whichever is longer, followed
23 by placement in probationary status under RCW 46.20.355.

24 (4) A person receiving notification under subsection (2) of this
25 section may, within ((five)) seven days after his or her arrest, or
26 after the date the department gave notice under subsection (2) of this
27 section in the event of a blood test, request a hearing before the
28 department under subsection (5) of this section. The request shall be
29 in writing. The person shall pay a fee of one hundred dollars as part
30 of the request. If the request is mailed, it must be postmarked within
31 ((five)) seven days after the arrest, or after the date the department
32 gave notice under subsection (2) of this section in the event of a
33 blood test.

34 (5)(a) Upon timely receipt of a request and a one hundred dollar
35 fee under subsection (4) of this section, the department shall afford
36 the person an opportunity for a hearing. ((Except as otherwise
37 provided in this section, the hearing is subject to and shall be
38 scheduled and conducted in accordance with RCW 46.20.329 and
39 46.20.332.)) The director shall appoint a designee or designees to

1 conduct the hearing. A hearing officer shall conduct the hearing, may
2 issue subpoenas for the attendance of witnesses and the production of
3 documents, and shall administer oaths to witnesses. The hearing
4 officer shall not issue a subpoena for the attendance of a witness at
5 the request of the person requesting the hearing unless the request is
6 accompanied by the fee required by RCW 5.56.010 for a witness in
7 district court. The report of the law enforcement officer and any
8 other evidence accompanying that report is admissible without further
9 evidentiary foundation and the certifications authorized by the
10 criminal rules for courts of limited jurisdiction are admissible
11 without further evidentiary foundation. The person requesting the
12 hearing may be represented by counsel, may present evidence, and may
13 testify. The hearing shall be recorded and shall be conducted in the
14 county of arrest, except that all or part of the hearing may, at the
15 discretion of the department, be conducted by telephone or other
16 electronic means. The hearing shall be held within ((thirty)) forty-
17 five days following the arrest((, unless otherwise agreed to by the
18 department and the person. The hearing shall cover the issues of:

19 (a) Whether((, or following the date the department gave notice
20 under subsection (2) of this section in the event of a blood test.

21 (b) The hearing officer shall sustain the suspension, revocation,
22 or denial of the person's license, permit, or privilege to drive if the
23 hearing officer determines, based on a preponderance of the evidence,
24 that:

25 (i) The law enforcement officer had reasonable grounds to believe
26 the arrested person was driving or in actual physical control of a
27 motor vehicle within this state while under the influence of
28 intoxicating liquor or was in violation of section 9 of this act; and

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

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

33 (6) The period of any suspension, revocation, or denial imposed
34 under this section shall run consecutively to the period of any
35 suspension, revocation, or denial imposed pursuant to a criminal
36 conviction arising out of the same incident.))

37 (ii) Either (A) a test of the person's breath or blood was
38 administered in accordance with RCW 46.20.308 and the result of each
39 test showed an alcohol concentration of 0.08 or more, or 0.02 or more

1 if the person was under the age of twenty-one years, or (B) the person
2 refused to submit to a test offered pursuant to RCW 46.20.308.

3 (6) No determination of facts by the hearing officer under
4 subsection (5) of this section shall have any collateral estoppel
5 effect on a subsequent criminal prosecution and shall not preclude
6 litigation of those same facts in a subsequent criminal prosecution.

7 (7) If the person fails to timely request a hearing, fails to pay
8 the required fee, or fails to appear at a requested hearing, the right
9 to a hearing is waived and the suspension, revocation, or denial shall
10 be sustained.

11 (8) Except for a revocation of a person's license, permit, or
12 privilege to drive imposed under this section for refusal to submit to
13 a test offered pursuant to RCW 46.20.308, a suspension, revocation, or
14 denial imposed under this section shall be stayed if the person is
15 accepted for deferred prosecution as provided in chapter 10.05 RCW for
16 the incident upon which the suspension, revocation, or denial is based.
17 If the deferred prosecution is terminated, the stay shall be lifted and
18 the suspension, revocation, or denial reinstated. If the deferred
19 prosecution is completed, the stay shall be lifted and the suspension,
20 revocation, or denial canceled.

21 ((+7))) (9) If the suspension, revocation, or denial is sustained,
22 the department of licensing may recover costs in excess of one hundred
23 dollars as provided by RCW 12.20.060. If costs are to be recovered,
24 the person's license, permit, or privilege to drive shall not be
25 reissued or renewed until these costs are paid. If the suspension,
26 revocation, or denial is rescinded, the person shall be awarded the
27 amount of the hearing fee and the department shall reissue the person's
28 license or permit to drive without charge. If the suspension,
29 revocation, or denial((, or issuance)) is sustained ((after such a
30 hearing)), the person whose license, privilege, or permit is suspended,
31 revoked, or denied((, or who has been issued a probationary license,))
32 has the right to ((file a petition in)) appeal to the superior court of
33 the county of arrest in the same manner as an appeal from a decision of
34 a court of limited jurisdiction. The appellant must pay the costs
35 associated with obtaining the record of the hearing before the hearing
36 officer. A court may stay the suspension, revocation, or denial if it
37 finds that the appellant is likely to prevail in the appeal and that
38 without a stay the appellant will suffer irreparable injury. If the
39 court stays the suspension, revocation, or denial, it may impose

1 conditions on such stay. The stay shall not exceed ninety days, except
2 for good cause shown, but shall in no event exceed one hundred eighty
3 days.

4 ((+8)) (10) When it has been finally determined under the
5 procedures of this section that a nonresident's privilege to operate a
6 motor vehicle in this state has been suspended, revoked, or denied, the
7 department shall give information in writing of the action taken to the
8 motor vehicle administrator of the state of the person's residence and
9 of any state in which he or she has a license.

10 **Sec. 16.** RCW 46.20.291 and 1993 c 501 s 4 are each amended to read
11 as follows:

12 The department is authorized to suspend the license of a driver
13 upon a showing by its records or other sufficient evidence that the
14 licensee:

15 (1) Has committed an offense for which mandatory revocation or
16 suspension of license is provided by law or has violated a mandatory
17 condition of probation imposed under RCW 46.61.5051;

18 (2) Has, by reckless or unlawful operation of a motor vehicle,
19 caused or contributed to an accident resulting in death or injury to
20 any person or serious property damage;

21 (3) Has been convicted of offenses against traffic regulations
22 governing the movement of vehicles, or found to have committed traffic
23 infractions, with such frequency as to indicate a disrespect for
24 traffic laws or a disregard for the safety of other persons on the
25 highways;

26 (4) Is incompetent to drive a motor vehicle under RCW 46.20.031(3);
27 ((or))

28 (5) Has failed to respond to a notice of traffic infraction, failed
29 to appear at a requested hearing, violated a written promise to appear
30 in court, or has failed to comply with the terms of a notice of traffic
31 infraction or citation, as provided in RCW 46.20.289; ((or))

32 (6) Has committed one of the prohibited practices relating to
33 drivers' licenses defined in RCW 46.20.336; or

34 (7) Has submitted to a test offered pursuant to RCW 46.20.308 and
35 the result of the test showed an alcohol concentration of 0.08 or more,
36 or 0.02 or more if the person was under the age of twenty-one years.

1 **Sec. 17.** RCW 46.20.308 and 1994 c 275 s 13 are each amended to
2 read as follows:

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

13 (2) The test or tests of breath shall be administered at the
14 direction of a law enforcement officer having reasonable grounds to
15 believe the person to have been driving or in actual physical control
16 of a motor vehicle within this state while under the influence of
17 intoxicating liquor. However, a blood test shall be administered by a
18 qualified person as provided in RCW 46.61.506(4) in those instances
19 where: (a) The person is incapable due to physical injury, physical
20 incapacity, or other physical limitation, of providing a breath sample;
21 ((or)) (b) ((as a result of a traffic accident)) the person is being
22 treated ((for a medical condition)) in a hospital, clinic, doctor's
23 office, or other similar facility in which a breath testing instrument
24 is not present((, a blood test shall be administered by a qualified
25 person as provided in RCW 46.61.506(4))); (c) the person is being
26 treated by an emergency medical technician, as defined by RCW
27 18.73.030; or (d) the law enforcement officer has reasonable grounds to
28 believe the person was driving or in actual physical control of a motor
29 vehicle while under the influence of any drug. The officer shall
30 inform the person ((of his or her right to refuse the breath or blood
31 test, and)) of his or her right to have additional tests administered
32 by any qualified person of his or her choosing as provided in RCW
33 46.61.506. The officer shall warn the driver that ((+at)) (i) his or
34 her privilege to drive will be revoked or denied if he or she refuses
35 to submit to the test, ((and (b) that)) (ii) knowing refusal to submit
36 to the test is a crime punishable as a gross misdemeanor, (iii) if the
37 person is under the age of twenty-one years, his or her license,
38 permit, or privilege to drive will be suspended, revoked, or denied if
39 the test is administered and the result of each test shows an alcohol

1 concentration of 0.02 or more, (iv) if the person is age twenty-one
2 years or older, his or her license, permit, or privilege to drive will
3 be suspended, revoked, or denied if the test is administered and the
4 result of each test shows an alcohol concentration of 0.08 or more, and
5 (v) his or her refusal to take the test may be used in a criminal
6 trial.

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

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

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

29 ((+6) The department of licensing, upon the receipt of a sworn
30 report of the law enforcement officer that the officer had reasonable
31 grounds to believe the arrested person had been driving or was in
32 actual physical control of a motor vehicle within this state while
33 under the influence of intoxicating liquor and that the person had
34 refused to submit to the test or tests upon the request of the law
35 enforcement officer after being informed that refusal would result in
36 the revocation of the person's privilege to drive, shall revoke the
37 person's license or permit to drive or any nonresident operating
38 privilege.

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

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

33 (9) When it has been finally determined under the procedures of
34 this section that a nonresident's privilege to operate a motor vehicle
35 in this state has been revoked, the department shall give information
36 in writing of the action taken to the motor vehicle administrator of
37 the state of the person's residence and of any state in which he or she
38 has a license.))

1 NEW SECTION. **Sec. 18.** A new section is added to chapter 46.20 RCW
2 to read as follows:

3 (1) A person is guilty of refusal to submit to a breath or blood
4 test when he or she:

5 (a) Is arrested for any offense where, at the time of the arrest,
6 the arresting officer has reasonable grounds to believe the arrested
7 person had been driving or was in actual physical control of a motor
8 vehicle while under the influence of intoxicating liquor or any drug or
9 was in violation of section 9 of this act; and

10 (b) Receives the warnings under RCW 46.20.308(2); and

11 (c) Knowingly refuses to submit to the test offered pursuant to RCW
12 46.20.308. "Knowingly" has the same definition as in RCW
13 9A.08.010(1)(b).

14 (2) Refusal to submit to a breath or blood test is a gross
15 misdemeanor, punishable under chapter 9A.20 RCW.

16 (3) The department shall revoke or deny the license, permit, or
17 privilege to drive of a person convicted under this section as follows:

18 (a) If the person has no prior convictions within a five-year
19 period, revocation or denial for one year;

20 (b) If the person has one prior conviction within a five-year
21 period, revocation or denial for two years;

22 (c) If the person has two or more prior convictions within a five-
23 year period, revocation or denial for three years.

24 For purposes of this subsection, "prior conviction" means a
25 conviction under this section, RCW 46.61.502, 46.61.504, a municipal
26 ordinance or out-of-state statute or ordinance similar to any of these
27 statutes or, as provided by RCW 10.05.060, 10.05.120, and 46.20.270(4),
28 a deferred prosecution for a violation of RCW 46.61.502, 46.61.504, or
29 similar municipal ordinance based on an incident within five years
30 before the commission of the current violation.

31 If a person convicted under this section also is convicted under
32 RCW 46.61.502 or 46.61.504 based on the same incident, the period of
33 revocation or denial imposed under this section shall run consecutive
34 to the period of suspension, revocation, or denial imposed under RCW
35 46.61.5051. The period of revocation or denial imposed under this
36 section shall be reduced by the length of the period of revocation or
37 denial imposed under RCW 46.20.365 based on the same incident.
38 However, if a person convicted under this section also is convicted
39 under RCW 46.61.502 or 46.61.504 based on the same incident, the period

1 of revocation or denial imposed under RCW 46.20.365 shall reduce only
2 the period of revocation or denial imposed under this section and shall
3 not be used to reduce both the period of revocation or denial imposed
4 under this section and the period of suspension, revocation, or denial
5 imposed under RCW 46.61.5051.

6 (4) A conviction under this section shall be considered a
7 conviction under RCW 46.61.502 or 46.61.504 for purposes of imposing a
8 mandatory minimum sentence under RCW 46.61.5051 for subsequent offenses
9 within a five-year period, unless the person is convicted both under
10 this section and under RCW 46.61.502 or 46.61.504 based on the same
11 incident, in which case the conviction under this section shall not be
12 considered a conviction under RCW 46.61.502 or 46.61.504.

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

15 Failure to perform any act required or the performance of any act
16 prohibited by this title or an equivalent administrative regulation or
17 local law, ordinance, regulation, or resolution relating to traffic
18 including parking, standing, stopping, and pedestrian offenses, is
19 designated as a traffic infraction and may not be classified as a
20 criminal offense, except for an offense contained in the following
21 provisions of this title or a violation of an equivalent administrative
22 regulation or local law, ordinance, regulation, or resolution:

23 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
24 vehicle while under the influence of intoxicating liquor or a
25 controlled substance;

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

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

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

31 (5) Chapter 46.12 RCW relating to certificates of ownership and
32 registration;

33 (6) RCW 46.16.010 relating to initial registration of motor
34 vehicles;

35 (7) RCW 46.16.011 relating to permitting unauthorized persons to
36 drive;

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

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

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

6 (11) RCW 46.20.--- (section 18 of this act) relating to refusal to
7 submit to a breath or blood test;

8 (12) RCW 46.20.336 relating to the unlawful possession and use of
9 a driver's license;

10 ((+12))) (13) RCW 46.20.342 relating to driving with a suspended or
11 revoked license or status;

12 ((+13))) (14) RCW 46.20.410 relating to the violation of
13 restrictions of an occupational driver's license;

14 ((+14))) (15) RCW 46.20.420 relating to the operation of a motor
15 vehicle with a suspended or revoked license;

16 ((+15))) (16) RCW 46.20.750 relating to assisting another person to
17 start a vehicle equipped with an ignition interlock device;

18 ((+16))) (17) RCW 46.25.170 relating to commercial driver's
19 licenses;

20 ((+17))) (18) Chapter 46.29 RCW relating to financial
21 responsibility;

22 ((+18))) (19) RCW 46.30.040 relating to providing false evidence of
23 financial responsibility;

24 ((+19))) (20) RCW 46.37.435 relating to wrongful installation of
25 sunscreening material;

26 ((+20))) (21) RCW 46.44.180 relating to operation of mobile home
27 pilot vehicles;

28 ((+21))) (22) RCW 46.48.175 relating to the transportation of
29 dangerous articles;

30 ((+22))) (23) RCW 46.52.010 relating to duty on striking an
31 unattended car or other property;

32 ((+23))) (24) RCW 46.52.020 relating to duty in case of injury to
33 or death of a person or damage to an attended vehicle;

34 ((+24))) (25) RCW 46.52.090 relating to reports by repairmen,
35 storagemen, and appraisers;

36 ((+25))) (26) RCW 46.52.100 relating to driving under the influence
37 of liquor or drugs;

1 ((+26))) (27) RCW 46.52.130 relating to confidentiality of the
2 driving record to be furnished to an insurance company, an employer,
3 and an alcohol/drug assessment or treatment agency;

4 ((+27))) (28) RCW 46.55.020 relating to engaging in the activities
5 of a registered tow truck operator without a registration certificate;

6 ((+28))) (29) RCW 46.55.035 relating to prohibited practices by tow
7 truck operators;

8 ((+29))) (30) RCW 46.61.015 relating to obedience to police
9 officers, flagmen, or fire fighters;

10 ((+30))) (31) RCW 46.61.020 relating to refusal to give information
11 to or cooperate with an officer;

12 ((+31))) (32) RCW 46.61.022 relating to failure to stop and give
13 identification to an officer;

14 ((+32))) (33) RCW 46.61.024 relating to attempting to elude
15 pursuing police vehicles;

16 ((+33))) (34) RCW 46.61.500 relating to reckless driving;

17 ((+34))) (35) RCW 46.61.502((,) and 46.61.504((, 46.61.5051,
18 46.61.5052, and 46.61.5053)) relating to persons under the influence of
19 intoxicating liquor or drugs;

20 ((+35))) (36) RCW 46.61.--- (section 9 of this act) relating to a
21 person under age twenty-one driving a motor vehicle after consuming
22 alcohol;

23 (37) RCW 46.61.520 relating to vehicular homicide by motor vehicle;

24 ((+36))) (38) RCW 46.61.522 relating to vehicular assault;

25 ((+37))) (39) RCW 46.61.525 relating to negligent driving;

26 ((+38))) (40) RCW 46.61.527(4) relating to reckless endangerment of
27 roadway workers;

28 ((+39))) (41) RCW 46.61.530 relating to racing of vehicles on
29 highways;

30 ((+40))) (42) RCW 46.61.685 relating to leaving children in an
31 unattended vehicle with the motor running;

32 ((+41))) (43) RCW 46.64.010 relating to unlawful cancellation of or
33 attempt to cancel a traffic citation;

34 ((+42))) (44) RCW 46.64.048 relating to attempting, aiding,
35 abetting, coercing, and committing crimes;

36 ((+43))) (45) Chapter 46.65 RCW relating to habitual traffic
37 offenders;

1 ((+44))) (46) Chapter 46.70 RCW relating to unfair motor vehicle
2 business practices, except where that chapter provides for the
3 assessment of monetary penalties of a civil nature;
4 ((+45))) (47) Chapter 46.72 RCW relating to the transportation of
5 passengers in for hire vehicles;
6 ((+46))) (48) Chapter 46.80 RCW relating to motor vehicle wreckers;
7 ((+47))) (49) Chapter 46.82 RCW relating to driver's training
8 schools;
9 ((+48))) (50) RCW 46.87.260 relating to alteration or forgery of a
10 cab card, letter of authority, or other temporary authority issued
11 under chapter 46.87 RCW;
12 ((+49))) (51) RCW 46.87.290 relating to operation of an
13 unregistered or unlicensed vehicle under chapter 46.87 RCW.

PART IV - DEFERRED PROSECUTION

15 **Sec. 20.** RCW 10.05.020 and 1985 c 352 s 6 are each amended to read
16 as follows:

17 (1) The petitioner shall allege under oath in the petition that the
18 wrongful conduct charged is the result of or caused by alcoholism, drug
19 addiction, or mental problems for which the person is in need of
20 treatment and unless treated the probability of future reoccurrence is
21 great, along with a statement that the person agrees to pay the cost of
22 a diagnosis and treatment of the alleged problem or problems if
23 financially able to do so. The petition shall also contain a ((~~case~~
24 ~~history and written assessment~~)) written diagnostic evaluation and
25 recommended treatment prepared by an approved ((alcoholism)) treatment
26 ((facility as designated in chapter 70.96A RCW)) program, as defined by
27 RCW 70.96A.020 if the petition alleges alcoholism((, an approved drug
28 program as designated in chapter 71.24 RCW if the petition alleges)) or
29 drug addiction, or by ((an approved mental health center)) a licensed
30 service provider, as defined by RCW 71.24.025, if the petition alleges
31 a mental problem.

The secretary of social and health services shall periodically provide to courts of limited jurisdiction and superior courts a list of the approved treatment programs and licensed service providers in the county in which the court is located. The court shall not approve the treatment unless the approved treatment program or licensed service provider preparing the written diagnostic evaluation and recommended

1 treatment and the approved treatment program or licensed service
2 provider proposing to administer the treatment both are on the list
3 provided by the secretary of social and health services.

4 (2) Before entry of an order deferring prosecution, a petitioner
5 shall be advised of his or her rights as an accused and execute, as a
6 condition of receiving treatment, a statement that contains: (a) An
7 acknowledgement of his or her rights; (b) an acknowledgement and waiver
8 of the right to testify, the right to a speedy trial, the right to call
9 witnesses to testify, the right to present evidence in his or her
10 defense, and the right to jury trial; (c) a stipulation to the
11 admissibility of the facts contained in the written police report; and
12 ((+e))) (d) an acknowledgement that the ((statement)) report will be
13 entered and used to support a finding of guilty if the court finds
14 cause to revoke the order granting deferred prosecution. The
15 petitioner shall also be advised that he or she may, if he or she
16 proceeds to trial and is found guilty, be allowed to seek suspension of
17 some or all of the fines and incarceration that may be ordered upon the
18 condition that he or she seek treatment and, further, that he or she
19 may seek treatment from public and private agencies at any time without
20 regard to whether or not he or she is found guilty of the offense
21 charged. ((He)) The petitioner shall also be advised that the court
22 will not accept a petition for deferred prosecution from a person who
23 sincerely believes that he or she is innocent of the charges or
24 sincerely believes that he or she does not, in fact, suffer from
25 alcoholism, drug addiction, or mental problems.

26 (3) The petitioner shall state in his or her petition any other
27 offenses or cases for which the petitioner has, is, or will be seeking
28 a deferred prosecution and the court shall not enter an order granting
29 the deferred prosecution for offenses committed more than seven days
30 apart, and shall advise the petitioner that any attempt to seek a
31 deferred prosecution for offenses committed more than seven days apart
32 will be a breach of the conditions of deferred prosecution.

33 (4) Before entering an order deferring prosecution, the court shall
34 make specific findings that: (a) The petitioner has stipulated to the
35 admissibility of the facts as contained in the written police report;
36 (b) the petitioner has acknowledged the admissibility of the stipulated
37 facts in any criminal hearing or trial on the underlying offense or
38 offenses held subsequent to revocation of the order granting deferred
39 prosecution; ((and)) (c) the petitioner has acknowledged and waived the

1 right to testify, the right to a speedy trial, the right to call
2 witnesses to testify, the right to present evidence in his or her
3 defense, and the right to a jury trial; (d) the petitioner's
4 statements, stipulations, acknowledgements, and waivers were made
5 knowingly and voluntarily; (e) the petitioner qualifies for deferred
6 prosecution; and (f) the proposed treatment includes, at a minimum: (i)
7 The frequency and type of contact between the petitioner and the
8 treatment program, (ii) the specific issues to be addressed in the
9 treatment and description of proposed treatment, (iii) the monitoring
10 plans, including any requirements regarding living conditions,
11 lifestyle requirements, and monitoring by family members and others,
12 (iv) anticipated length of treatment, and (v) recommended prohibitions
13 relating to use of alcohol or drugs. Such findings shall be included
14 in the order granting deferred prosecution.

15 **Sec. 21.** RCW 10.05.030 and 1975 1st ex.s. c 244 s 3 are each
16 amended to read as follows:

17 The arraigning judge upon consideration of the petition ((and with
18 the concurrence of the prosecuting attorney)) may continue the
19 arraignment and refer such person for a diagnostic ((investigation
20 and)) evaluation to an approved ((alcoholism)) treatment ((facility as
21 designated in chapter 70.96A RCW)) program, if the petition alleges an
22 alcohol or drug problem((, an approved drug treatment center as
23 designated in chapter 71.24 RCW, if the petition alleges a drug
24 problem, or to an approved mental health center,)) or to a licensed
25 service provider if the petition alleges a mental problem.

26 **Sec. 22.** RCW 10.05.040 and 1985 c 352 s 7 are each amended to read
27 as follows:

28 The ((facility)) approved treatment program or licensed service
29 provider to which such person is referred shall conduct an
30 ((investigation and examination)) evaluation to determine:

- 31 (1) Whether the person suffers from the problem described;
- 32 (2) Whether the problem is such that if not treated there is a
33 probability that similar misconduct will occur in the future;
- 34 (3) Whether extensive and long term treatment is required;
- 35 (4) Whether effective treatment for the person's problem is
36 available; and
- 37 (5) Whether the person is amenable to treatment.

1 **Sec. 23.** RCW 10.05.050 and 1985 c 352 s 8 are each amended to read
2 as follows:

3 The ((facility)) approved treatment program or licensed service
4 provider shall make a written ((report to the court)) diagnostic
5 evaluation stating its findings and recommendations after the
6 ((examination)) evaluation required by RCW 10.05.040. If its findings
7 and recommendations support treatment, it shall also recommend a
8 treatment ((plan)) setting out:

- 9 (1) The type;
10 (2) Nature;
11 (3) Length;
12 (4) A treatment time schedule; and
13 (5) Approximate cost of the treatment.

14 ((The report with the treatment plan)) If the written diagnostic
15 evaluation and recommended treatment is used in support of a petition
16 for deferred prosecution, the evaluation and treatment shall be filed
17 with the court and a copy given to the petitioner ((and)), petitioner's
18 counsel(. A copy of the treatment plan shall be given to the
19 prosecutor by petitioner's counsel at the request of), and the
20 prosecutor. The ((evaluation facility)) approved treatment program or
21 licensed service provider making the written ((report)) diagnostic
22 evaluation and recommended treatment shall ((append to the report a
23 commitment by the treatment facility that it)) include the name of the
24 approved treatment program or licensed service provider that will
25 provide the treatment in accordance with this chapter. The
26 ((facility)) approved treatment program or licensed service provider
27 that will provide the treatment shall agree to provide the court with
28 a statement every three months for the first year and every six months
29 for the second year regarding (a) the petitioner's cooperation with the
30 treatment ((plan)) proposed and (b) the petitioner's progress or
31 failure in treatment. These statements shall be made as a declaration
32 by the person who is personally responsible for providing the
33 treatment.

34 **Sec. 24.** RCW 10.05.060 and 1994 c 275 s 17 are each amended to
35 read as follows:

36 If the ((report)) written diagnostic evaluation recommends
37 treatment, the court shall examine the treatment ((plan)). If it
38 approves the ((plan)) recommended treatment and the petitioner agrees

1 to comply with its terms and conditions and agrees to pay the cost
2 thereof, if able to do so, or arrange for the treatment, an entry shall
3 be made upon the person's court docket showing that the person has been
4 accepted for deferred prosecution. A copy of the treatment ((plan))
5 shall be attached to the docket, which shall then be removed from the
6 regular court dockets and filed in a special court deferred prosecution
7 file. If the charge be one that an abstract of the docket showing the
8 charge, the date of the violation for which the charge was made, and
9 the date of petitioner's acceptance is required to be sent to the
10 department of licensing, an abstract shall be sent, and the department
11 of licensing shall make an entry of the charge and of the petitioner's
12 acceptance for deferred prosecution on the department's driving record
13 of the petitioner. The entry is not a conviction for purposes of Title
14 46 RCW, but a deferred prosecution for a violation of RCW 46.61.502 or
15 46.61.504 shall be considered a conviction under RCW 46.61.502 or
16 46.61.504 for purposes of imposing a mandatory minimum sentence under
17 RCW 46.61.5051 for subsequent offenses within a five-year period. Upon
18 receipt of the abstract of the docket, the department shall ((issue the
19 petitioner a probationary license in accordance with RCW 46.20.355, and
20 the petitioner's driver's license shall be on)) place the petitioner's
21 driving privilege in probationary status ((for five years from the date
22 of the violation that gave rise to the charge)), pursuant to RCW
23 46.20.355. The department shall maintain the record for ten years from
24 date of entry of the order granting deferred prosecution.

25 **Sec. 25.** RCW 10.05.090 and 1994 c 275 s 18 are each amended to
26 read as follows:

27 (1) If a petitioner, who has been accepted for a deferred
28 prosecution, fails or neglects to carry out and fulfill any term or
29 condition of the petitioner's treatment ((plan)), the ((facility,
30 center, institution, or agency)) approved treatment program or licensed
31 service provider administering the treatment shall immediately report
32 such breach to the court, the probation department, the prosecutor, and
33 the petitioner or petitioner's attorney of record, together with its
34 recommendation. If the approved treatment program or licensed service
35 provider fails to report the petitioner's breach as required by this
36 section, the court, the probation department, or the prosecutor may
37 notify the secretary of social and health services of such failure to
38 report. After notification under this section, the secretary of social

1 and health services shall fine such approved treatment program or
2 licensed service provider two hundred fifty dollars, and after three
3 notifications under this section within one year, the secretary of
4 social and health services shall revoke the license or certification of
5 such approved treatment program or licensed service provider. If the
6 secretary imposes a fine under this subsection, the fine must be paid
7 within ninety days of notice of its imposition or the secretary shall
8 revoke the license of the approved treatment program or licensed
9 service provider.

10 (2) The court upon receiving such a report shall hold a hearing to
11 determine whether the petitioner should be removed from the deferred
12 prosecution program. At the hearing, evidence shall be taken of the
13 petitioner's alleged failure to comply with the treatment ((plan)) and
14 the petitioner shall have the right to present evidence on his or her
15 own behalf. The court shall either order that the petitioner continue
16 on the treatment ((plan)) or be removed from deferred prosecution. If
17 removed from deferred prosecution, the court shall enter judgment
18 pursuant to RCW 10.05.020 and, if the charge for which the deferred
19 prosecution was granted was a misdemeanor or gross misdemeanor under
20 Title 46 RCW, shall notify the department of licensing of the removal
21 and entry of judgment.

22 **Sec. 26.** RCW 10.05.100 and 1985 c 352 s 13 are each amended to
23 read as follows:

24 (1) If ((a)), after notice to the petitioner and a hearing, the
25 court finds, by a preponderance of the evidence and regardless of the
26 prosecution status of the similar offense, that the petitioner ((is
27 subsequently)) committed or was convicted of a similar offense while in
28 a deferred prosecution program, ((upon notice)) the court shall remove
29 the petitioner's docket from the deferred prosecution file and the
30 court shall enter judgment pursuant to RCW 10.05.020.

31 (2) If the charge for which the deferred prosecution was granted
32 was a misdemeanor or gross misdemeanor under Title 46 RCW, the court
33 shall notify the department of licensing of the removal and entry of
34 judgment.

35 (3) For the purposes of this section, "convicted" means an
36 unvacated forfeiture of bail or collateral deposited to secure a
37 defendant's appearance in court, the payment of a fine, and any
38 adjudication of guilt, including a verdict of guilty, a finding of

1 guilty, and acceptance of a plea of guilty. For the purposes of this
2 section, a "similar offense" to a violation of RCW 46.61.502 or
3 46.61.504 includes any criminal traffic offense and any "alcohol-
4 related" offense, as defined by RCW 46.01.260(2).

5 **Sec. 27.** RCW 10.05.120 and 1994 c 275 s 19 are each amended to
6 read as follows:

7 (1) Upon proof of successful completion of the two-year treatment
8 program and verification that the petitioner has not been convicted of
9 or found by any court to have committed a similar offense within two
10 years after the date of entry of the order granting deferred
11 prosecution, the court shall dismiss the charges pending against the
12 petitioner. A successfully completed deferred prosecution for a
13 violation of RCW 46.61.502 or 46.61.504 shall be considered a
14 conviction under RCW 46.61.502 or 46.61.504 for purposes of imposing a
15 mandatory minimum sentence under RCW 46.61.5051 for subsequent offenses
16 within a five-year period.

17 (2) If the charge for which the deferred prosecution was granted
18 was a misdemeanor or gross misdemeanor under Title 46 RCW, the court
19 shall notify the department of licensing of the dismissal.

20 (3) For the purposes of this section, "convicted" means an
21 unvacated forfeiture of bail or collateral deposited to secure a
22 defendant's appearance in court, the payment of a fine, and any
23 adjudication of guilt, including a verdict of guilty, a finding of
24 guilty, and acceptance of a plea of guilty. For the purposes of this
25 section, a "similar offense" to a violation of RCW 46.61.502 or
26 46.61.504 includes any criminal traffic offense and any "alcohol-
27 related" offense, as defined by RCW 46.01.260(2).

28 **Sec. 28.** RCW 10.05.140 and 1991 c 247 s 1 are each amended to read
29 as follows:

30 As a condition of granting a deferred prosecution petition for a
31 violation of RCW 46.61.502 or 46.61.504, the court shall order that the
32 petitioner ((shall)): (1) Not operate a motor vehicle ((upon the public
33 highways)) within this state without a valid operator's license and
34 proof of ((liability insurance. The amount of liability insurance
35 shall be established by the court at not less than that established by
36 RCW 46.29.490)) compliance with RCW 46.30.020, (2) not drive a motor
37 vehicle within this state while having any measurable alcohol in his or

1 her breath or blood within two hours after driving, and (3) not refuse
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 shall not grant a deferred
7 prosecution unless the petitioner has executed all acknowledgements,
8 stipulations, and waivers specified in RCW 10.05.020. As a condition
9 of granting a deferred prosecution petition, the court may order the
10 petitioner to make restitution and to pay costs as defined in RCW
11 10.01.160. ((The court may terminate the deferred prosecution program
12 upon violation of this section.)) Upon violation of any of the
13 conditions authorized or required by this section, the court shall
14 remove the petitioner from the deferred prosecution program and shall
15 enter judgment pursuant to RCW 10.05.020. If the charge for which the
16 deferred prosecution was granted was a misdemeanor or gross misdemeanor
17 under Title 46 RCW, the court shall notify the department of licensing
18 of the removal and entry of judgment.

19 **Sec. 29.** RCW 10.05.160 and 1985 c 352 s 18 are each amended to
20 read as follows:

21 The prosecutor may appeal an order granting deferred prosecution on
22 any or all of the following grounds:

23 (1) Prior deferred prosecution has been granted to the defendant
24 within five years;

25 (2) Failure of the court to obtain proof of ((insurance or)) a
26 treatment ((plan)) conforming to the requirements of this chapter;

27 (3) Failure of the court to comply with the requirements of RCW
28 10.05.020, 10.05.090, 10.05.100, or 10.05.140;

29 (4) Failure of the ((evaluation facility)) approved treatment
30 program or licensed service provider to provide the information
31 required in RCW 10.05.040 and 10.05.050, if the defendant has been
32 referred to the ((facility)) approved treatment program or licensed
33 service provider for treatment. If an appeal on such basis is
34 successful, the trial court may consider the use of another treatment
35 ((facility)) program or licensed service provider.

36 **Sec. 30.** RCW 10.05.170 and 1991 c 247 s 2 are each amended to read
37 as follows:

As a condition of granting deferred prosecution, the court may order supervision of the petitioner during the period of deferral and may levy a monthly assessment upon the petitioner as provided in RCW 10.64.120. In a jurisdiction with a probation department, the court may appoint the probation department to supervise the petitioner. In a jurisdiction without a probation department, the court may appoint an appropriate person or agency to supervise the petitioner. A supervisor appointed under this section shall be required to do at least the following:

10 (1) If the charge for which deferral is granted relates to
11 operation of a motor vehicle, at least once every six months request
12 from the department of licensing an abstract of the petitioner's
13 driving record and notify the court and the prosecutor if the
14 petitioner has been convicted of any criminal traffic offense or any
15 "alcohol-related" offense, as defined by RCW 46.01.260(2). For
16 purposes of this section, "convicted" means an unvacated forfeiture of
17 bail or collateral deposited to secure a defendant's appearance in
18 court, the payment of a fine, and any adjudication of guilt, including
19 a verdict of guilty, a finding of guilty, and acceptance of a plea of
20 guilty; and

21 (2) At least once every month make contact with the petitioner or
22 with any agency to which the petitioner has been directed for treatment
23 as a part of the deferral to determine the petitioner's compliance with
24 the treatment and notify the court and the prosecutor if the petitioner
25 has failed or neglected to carry out and fulfill any term or condition
26 of the treatment.

PART V - PROBATIONARY LICENSE

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

(1) Upon notification of a ((conviction under RCW 46.61.502 or 46.61.504 for which the issuance of a probationary driver's license is required,)) sentence imposed under RCW 46.61.5051 or section 9 of this act, upon receipt of a report under RCW 46.20.365, or upon receipt of an abstract indicating a deferred prosecution has been granted under RCW 10.05.060, the department of licensing shall order the person to surrender his or her Washington license. Unless the person previously has surrendered his or her Washington license to a law enforcement

1 officer, to the department, to a court, or to the prosecutor or has
2 completed an affidavit of lost, stolen, destroyed, or previously
3 surrendered license, the department shall revoke the license, permit,
4 or privilege to drive of any person who fails to surrender it as
5 required by this section for one year, effective thirty days after
6 notice is given of the requirement of license surrender.

7 (2) ((Upon receipt of the surrendered license, and following the
8 expiration of any period of license suspension or revocation, or
9 following receipt of a sworn statement under RCW 46.20.365 that
10 requires issuance of a probationary license, the department shall issue
11 the person a probationary license if otherwise qualified. The
12 probationary license shall be renewed on the same cycle as the person's
13 regular license would have been renewed until five years after the date
14 of its issuance.)) Upon notification of a sentence imposed under RCW
15 46.61.5051 or section 9 of this act, upon receipt of a report under RCW
16 46.20.365, or upon receipt of an abstract indicating a deferred
17 prosecution has been granted under RCW 10.05.060, the department shall
18 place a person's driving privilege in probationary status for five
19 years from the date of the arrest that gave rise to placement in
20 probationary status pursuant to RCW 46.61.5051, 46.20.365, or
21 10.05.060.

22 (3) After expiration of any period of suspension, revocation, or
23 denial, a person whose driving privilege is in probationary status must
24 obtain a probationary license in order to operate a motor vehicle in
25 this state, unless exempt under RCW 46.20.025. The department shall
26 not issue a probationary license unless the person is otherwise
27 qualified for licensing. A probationary license shall be renewed on
28 the same cycle as the person's regular license would have been renewed
29 until the probationary status expires. Possession of a probationary
30 license, or having a driving privilege in probationary status, does not
31 authorize a person to drive during a period of suspension, revocation,
32 or denial of the person's license, permit, or privilege to drive.

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

1 ((4)) (5) A probationary license shall enable the department and
2 law enforcement personnel to determine that the person is on
3 probationary status (, including the period of that status, for a
4 violation of RCW 46.61.502 or 46.61.504 or 46.20.365)). ((That)) The
5 fact that a person's driving privilege is in probationary status or
6 that the person has been issued a probationary license shall not be a
7 part of the person's record that is available to insurance companies.

PART VI - REINSTATEMENT

Sec. 32. RCW 46.20.311 and 1994 c 275 s 27 are each amended to read as follows:

(1) The department shall not suspend a driver's license, permit, or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as specifically permitted under RCW 46.20.342 or other provision of law. Except for a suspension under RCW 46.20.289 and 46.20.291(5), whenever the license, permit, or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW((,)) or ((pursuant to)) RCW 46.20.291 or 46.20.365, or because of a violation of a mandatory condition of probation imposed under RCW 46.61.5051, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. If the suspension is imposed under RCW 46.20.365 or 46.61.5051, the department shall determine the person's eligibility for licensing based upon the written diagnostic evaluation and recommended treatment prepared pursuant to RCW 46.61.5056 or prepared by an approved treatment provider as defined by RCW 70.96A.020 and shall not reinstate the person's driving privilege until the person completes a course in an approved alcohol information school or establishes participation in any required treatment. The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of twenty dollars. If the suspension is ((the result of a violation of RCW 46.61.502 or 46.61.504)) imposed under section 18 of this act, RCW 46.20.365, or 46.61.5051, the reissue fee ((shall be fifty)) is one hundred dollars.

(2) Any person whose license, permit, or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation

1 was for a cause which has been removed, is not entitled to have the
2 license, permit, or privilege renewed or restored until: (a) After the
3 expiration of one year from the date the license, permit, or privilege
4 to drive was revoked; (b) after the expiration of the applicable
5 revocation period provided by section 18 of this act, RCW ((46.20.308
6 or 46.61.5052, 46.61.5053, or)) 46.20.365, or 46.61.5051; (c) after the
7 expiration of two years for persons convicted of vehicular homicide; or
8 (d) after the expiration of the applicable revocation period provided
9 by RCW 46.20.265. If the revocation is imposed under RCW 46.20.365 or
10 46.61.5051, the department shall determine the person's eligibility for
11 licensing based upon the written diagnostic evaluation and recommended
12 treatment prepared pursuant to RCW 46.61.5056 or prepared by an
13 approved treatment provider as defined by RCW 70.96A.020 and shall not
14 reinstate the person's driving privilege until the person completes a
15 course in an approved alcohol information school or establishes
16 participation in any required treatment. After the expiration of the
17 appropriate period, the person may make application for a new license
18 as provided by law together with a reissue fee in the amount of twenty
19 dollars, but if the revocation is ((the result of a violation of RCW
20 46.20.308, 46.61.502, or 46.61.504 or is the result of administrative
21 action)) imposed under section 18 of this act, RCW 46.20.365, or
22 46.61.5051, the reissue fee ((shall be fifty)) is one hundred dollars.
23 Except for a revocation under RCW 46.20.265, the department shall not
24 then issue a new license unless it is satisfied after investigation of
25 the driving ability of the person that it will be safe to grant the
26 privilege of driving a motor vehicle on the public highways, and until
27 the person gives and thereafter maintains proof of financial
28 responsibility for the future as provided in chapter 46.29 RCW. For a
29 revocation under RCW 46.20.265, the department shall not issue a new
30 license unless it is satisfied after investigation of the driving
31 ability of the person that it will be safe to grant that person the
32 privilege of driving a motor vehicle on the public highways.

33 (3) Whenever the driver's license of any person is suspended
34 pursuant to Article IV of the nonresident violators compact or RCW
35 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue
36 to the person any new or renewal license until the person pays a
37 reissue fee of twenty dollars. If the suspension is the result of a
38 violation of the laws of this or any other state, province, or other
39 jurisdiction involving (a) the operation or physical control of a motor

1 vehicle upon the public highways while under the influence of
2 intoxicating liquor or drugs, ((or)) (b) the refusal to submit to a
3 ((chemical)) test of the driver's breath or blood ((alcohol content))
4 for alcohol concentration, or (c) the result of a test of the driver's
5 breath or blood showing an alcohol concentration of 0.08 or more, or
6 0.02 or more if the driver is under the age of twenty-one years, the
7 reissue fee ((shall be fifty)) is one hundred dollars.

PART VII - TECHNICAL

Sec. 33. RCW 46.04.480 and 1994 c 275 s 38 are each amended to read as follows:

11 "Revoke," in all its forms, means the invalidation for a period of
12 one calendar year and thereafter until reissue: PROVIDED, That under
13 the provisions of RCW 46.20.285, section 18 of this act, 46.20.311,
14 46.20.265, 46.20.365, 46.61.5051, ((46.61.5052, or 46.61.5053,)) and
15 chapter 46.65 RCW the invalidation may last for a period other than one
16 calendar year.

17 **Sec. 34.** RCW 46.04.015 and 1994 c 275 s 1 are each amended to read
18 as follows:

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

23 **Sec. 35.** RCW 46.20.391 and 1994 c 275 s 29 are each amended to
24 read as follows:

(1) Any person licensed under this chapter who is suspended under RCW 46.20.365(3)(a)(i) or who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than vehicular homicide or vehicular assault, may submit to the department an application for an occupational driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is engaged in an occupation or trade that makes it essential that the petitioner 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 under RCW 46.20.365(3)(a)(i), imposed for a
5 violation of section 18 of this act, RCW 46.61.502, or 46.61.504. No
6 person may petition for, and the department shall not issue, an
7 occupational driver's license if the person is ineligible for such a
8 license under RCW ((46.61.5052 or 46.61.5053)) 46.61.5051(8). A person
9 aggrieved by the decision of the department on the application for an
10 occupational driver's license may request a hearing as provided by rule
11 of the department.

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

14 (a) Within one year immediately preceding the date of the offense
15 that gave rise to the present conviction or suspension under RCW
16 46.20.365(3)(a)(i), the applicant has not committed ((ef)) any
17 ((committed any))) offense relating to motor vehicles for which
18 suspension or revocation of a driver's license is mandatory; and

19 (b) Within five years immediately preceding the date of the offense
20 that gave rise to the present conviction or suspension under RCW
21 46.20.365(3)(a)(i), the applicant has not committed any of the
22 following offenses: (i) Driving or being in actual physical control of
23 a motor vehicle while under the influence of intoxicating liquor under
24 RCW 46.61.502 or 46.61.504; (ii) refusal to submit to a breath or blood
25 test under section 18 of this act; (iii) vehicular homicide under RCW
26 46.61.520; or ((iii)) (iv) vehicular assault under RCW 46.61.522; and

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

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

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

Sec. 36. RCW 3.62.090 and 1994 c 275 s 34 are each amended to read as follows:

3 (1) There shall be assessed and collected in addition to any fines,
4 forfeitures, or penalties assessed, other than for parking infractions,
5 by all courts organized under Title 3 or 35 RCW a public safety and
6 education assessment equal to sixty percent of such fines, forfeitures,
7 or penalties, which shall be remitted as provided in chapters 3.46,
8 3.50, 3.62, and 35.20 RCW. The assessment required by this section
9 shall not be suspended or waived by the court.

10 (2) There shall be assessed and collected in addition to any fines,
11 forfeitures, or penalties assessed, other than for parking infractions
12 and for fines levied under RCW 46.61.5051((, ~~46.61.5052~~, and
13 ~~46.61.5053~~)), and in addition to the public safety and education
14 assessment required under subsection (1) of this section, by all courts
15 organized under Title 3 or 35 RCW, an additional public safety and
16 education assessment equal to fifty percent of the public safety and
17 education assessment required under subsection (1) of this section,
18 which shall be remitted to the state treasurer and deposited as
19 provided in RCW 43.08.250. The additional assessment required by this
20 subsection shall not be suspended or waived by the court.

PART VIII - MISCELLANEOUS

22 NEW SECTION. Sec. 37. A new section is added to chapter 46.20 RCW
23 to read as follows:

24 The department of licensing shall report to the appropriate
25 legislative committees and the governor by January 31st of each year
26 regarding the number of hearings requested and conducted under RCW
27 46.20.365, the number of those hearings at which the suspension,
28 revocation, or denial of the person's license, permit, or privilege to
29 drive was sustained and rescinded, and the reason for the rescission,
30 the length of the period following the arrest in which those hearings
31 were conducted, and any other information that the director believes
32 would be useful in evaluating the procedures required by RCW 46.20.365.

NEW SECTION. Sec. 38. If any provision of this act or its application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 **NEW SECTION.** **Sec. 39.** The following acts or parts of acts are
4 each repealed:

- 5 (1) RCW 46.20.309 and 1994 c 275 s 10; and
6 (2) RCW 46.61.5057 and 1994 c 275 s 11.

7 **NEW SECTION.** **Sec. 40.** The following acts or parts of acts are
8 each repealed:

- 9 (1) RCW 46.61.5052 and 1994 c 275 s 5; and
10 (2) RCW 46.61.5053 and 1994 c 275 s 6.

11 **NEW SECTION.** **Sec. 41.** 1994 c 275 s 44 (uncodified) is repealed.

12 **NEW SECTION.** **Sec. 42.** This act shall be known as the "1995 DUI
13 improvement act."

14 **NEW SECTION.** **Sec. 43.** Part headings and the table of contents as
15 used in this act do not constitute any part of the law.

16 **NEW SECTION.** **Sec. 44.** (1) Sections 1 through 3, 5 through 8, 12
17 through 14, 24, 27, 33, 35, 40, and 41 of this act are necessary for
18 the immediate preservation of the public peace, health, or safety, or
19 support of the state government and its existing public institutions,
20 and shall take effect immediately.

21 (2) Sections 4, 9 through 11, 15 through 23, 25, 26, 28 through 32,
22 34, 36 through 39, 42, and 43 of this act shall take effect August 1,
23 1995.

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