

2 SSB 6166 - S AMD - 632

3 By Senators Rossi, Roach, Fairley and Kline

4 ADOPTED AS AMENDED 2/12/98

5 Strike everything after the enacting clause and insert the
6 following:

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

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

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

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

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

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

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

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

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

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

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

22 (2) A person who is convicted of a violation of RCW 46.61.502 or
23 46.61.504 and who has one prior offense (~~within five years~~) shall be
24 punished as follows:

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

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

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

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

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

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

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

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

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

33 (3) A person who is convicted of a violation of RCW 46.61.502 or
34 46.61.504 and who has two or more prior offenses (~~within five years~~)
35 shall be punished as follows:

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

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

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

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

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

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

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

36 (iii) By revocation of the offender's license or permit to drive,
37 or suspension of any nonresident privilege to drive, for a period of
38 four years. The period of license, permit, or privilege revocation may
39 not be suspended. The court shall notify the department of licensing

1 of the conviction, and upon receiving notification of the conviction
2 the department shall revoke the offender's license, permit, or
3 privilege.

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

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

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

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

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

38 (c) For each incident involving a violation of a mandatory
39 condition of probation imposed under this subsection, the license,

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

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

10 ((~~i~~)) (a) A conviction for a violation of RCW 46.61.502 or an
11 equivalent local ordinance;

12 ((~~ii~~)) (b) A conviction for a violation of RCW 46.61.504 or an
13 equivalent local ordinance;

14 ((~~iii~~)) (c) A conviction for a violation of RCW 46.61.520
15 committed while under the influence of intoxicating liquor or any drug;

16 ((~~iv~~)) (d) A conviction for a violation of RCW 46.61.522
17 committed while under the influence of intoxicating liquor or any drug;

18 ((~~v~~)) (e) A conviction for a violation of RCW 46.61.5249,
19 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the
20 conviction is the result of a charge that was originally filed as a
21 violation of RCW 46.61.502 or 46.61.504, or an equivalent local
22 ordinance, or of RCW 46.61.520 or 46.61.522;

23 ((~~vi~~)) (f) An out-of-state conviction for a violation that would
24 have been a violation of (a)((~~i~~)), ((~~ii~~)) (b), ((~~iii~~)) (c),
25 ((~~iv~~)) (d), or ((~~v~~)) (e) of this subsection if committed in this
26 state;

27 ((~~vii~~)) (g) A deferred prosecution under chapter 10.05 RCW
28 granted in a prosecution for a violation of RCW 46.61.502, 46.61.504,
29 or an equivalent local ordinance; or

30 ((~~viii~~)) (h) A deferred prosecution under chapter 10.05 RCW
31 granted in a prosecution for a violation of RCW 46.61.5249, or an
32 equivalent local ordinance, if the charge under which the deferred
33 prosecution was granted was originally filed as a violation of RCW
34 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
35 46.61.520 or 46.61.522.

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

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

3 (1) Upon the arrest of a person or upon the filing of a complaint,
4 citation, or information in a court of competent jurisdiction, based
5 upon probable cause to believe that a person has violated RCW 46.61.502
6 or 46.61.504 or any similar municipal ordinance, if such person has a
7 prior offense (~~((within five years))~~) as defined in RCW 46.61.5055, and
8 where the person has been provided written notice that any transfer,
9 sale, or encumbrance of such person's interest in the vehicle over
10 which that person was actually driving or had physical control when the
11 violation occurred, is unlawful pending either acquittal, dismissal,
12 sixty days after conviction, or other termination of the charge, such
13 person shall be prohibited from encumbering, selling, or transferring
14 his or her interest in such vehicle, except as otherwise provided in
15 (a), (b), and (c) of this subsection, until either acquittal,
16 dismissal, sixty days after conviction, or other termination of the
17 charge. The prohibition against transfer of title shall not be stayed
18 pending the determination of an appeal from the conviction.

19 (a) A vehicle encumbered by a bona fide security interest may be
20 transferred to the secured party or to a person designated by the
21 secured party;

22 (b) A leased or rented vehicle may be transferred to the lessor,
23 rental agency, or to a person designated by the lessor or rental
24 agency; and

25 (c) A vehicle may be transferred to a third party or a vehicle
26 dealer who is a bona fide purchaser or may be subject to a bona fide
27 security interest in the vehicle unless it is established that (i) in
28 the case of a purchase by a third party or vehicle dealer, such party
29 or dealer had actual notice that the vehicle was subject to the
30 prohibition prior to the purchase, or (ii) in the case of a security
31 interest, the holder of the security interest had actual notice that
32 the vehicle was subject to the prohibition prior to the encumbrance of
33 title.

34 (2) On conviction for a violation of either RCW 46.61.502 or
35 46.61.504 or any similar municipal ordinance where the person convicted
36 has a prior offense (~~((within five years))~~) as defined in RCW 46.61.5055,
37 the motor vehicle the person was driving or over which the person had
38 actual physical control at the time of the offense, if the person has

1 a financial interest in the vehicle, is subject to seizure and
2 forfeiture pursuant to this section.

3 (3) A vehicle subject to forfeiture under this chapter may be
4 seized by a law enforcement officer of this state upon process issued
5 by a court of competent jurisdiction. Seizure of a vehicle may be made
6 without process if the vehicle subject to seizure has been the subject
7 of a prior judgment in favor of the state in a forfeiture proceeding
8 based upon this section.

9 (4) Seizure under subsection (3) of this section automatically
10 commences proceedings for forfeiture. The law enforcement agency under
11 whose authority the seizure was made shall cause notice of the seizure
12 and intended forfeiture of the seized vehicle to be served within
13 fifteen days after the seizure on the owner of the vehicle seized, on
14 the person in charge of the vehicle, and on any person having a known
15 right or interest in the vehicle, including a community property
16 interest. The notice of seizure may be served by any method authorized
17 by law or court rule, including but not limited to service by certified
18 mail with return receipt requested. Service by mail is complete upon
19 mailing within the fifteen-day period after the seizure. Notice of
20 seizure in the case of property subject to a security interest that has
21 been perfected on a certificate of title shall be made by service upon
22 the secured party or the secured party's assignee at the address shown
23 on the financing statement or the certificate of title.

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

28 (6) If a person notifies the seizing law enforcement agency in
29 writing of the person's claim of ownership or right to possession of
30 the seized vehicle within forty-five days of the seizure, the law
31 enforcement agency shall give the person or persons a reasonable
32 opportunity to be heard as to the claim or right. The hearing shall be
33 before the chief law enforcement officer of the seizing agency or the
34 chief law enforcement officer's designee, except where the seizing
35 agency is a state agency as defined in RCW 34.12.020, the hearing shall
36 be before the chief law enforcement officer of the seizing agency or an
37 administrative law judge appointed under chapter 34.12 RCW, except that
38 any person asserting a claim or right may remove the matter to a court
39 of competent jurisdiction. Removal may only be accomplished according

1 to the rules of civil procedure. The person seeking removal of the
2 matter must serve process against the state, county, political
3 subdivision, or municipality that operates the seizing agency, and any
4 other party of interest, in accordance with RCW 4.28.080 or 4.92.020,
5 within forty-five days after the person seeking removal has notified
6 the seizing law enforcement agency of the person's claim of ownership
7 or right to possession. The court to which the matter is to be removed
8 shall be the district court when the aggregate value of the vehicle is
9 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
10 before the seizing agency and any appeal therefrom shall be under Title
11 34 RCW. In a court hearing between two or more claimants to the
12 vehicle involved, the prevailing party shall be entitled to a judgment
13 for costs and reasonable attorneys' fees. The burden of producing
14 evidence shall be upon the person claiming to be the legal owner or the
15 person claiming to have the lawful right to possession of the vehicle.
16 The seizing law enforcement agency shall promptly return the vehicle to
17 the claimant upon a determination by the administrative law judge or
18 court that the claimant is the present legal owner under Title 46 RCW
19 or is lawfully entitled to possession of the vehicle.

20 (7) When a vehicle is forfeited under this chapter the seizing law
21 enforcement agency may sell the vehicle, retain it for official use, or
22 upon application by a law enforcement agency of this state release the
23 vehicle to that agency for the exclusive use of enforcing this title;
24 provided, however, that the agency shall first satisfy any bona fide
25 security interest to which the vehicle is subject under subsection (1)
26 (a) or (c) of this section.

27 (8) When a vehicle is forfeited, the seizing agency shall keep a
28 record indicating the identity of the prior owner, if known, a
29 description of the vehicle, the disposition of the vehicle, the value
30 of the vehicle at the time of seizure, and the amount of proceeds
31 realized from disposition of the vehicle.

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

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

37 (11) The quarterly report need not include a record of a forfeited
38 vehicle that is still being held for use as evidence during the

1 investigation or prosecution of a case or during the appeal from a
2 conviction.

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

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

14 (14) The value of a sold forfeited vehicle is the sale price. The
15 value of a retained forfeited vehicle is the fair market value of the
16 vehicle at the time of seizure, determined when possible by reference
17 to an applicable commonly used index, such as the index used by the
18 department of licensing. A seizing agency may, but need not, use an
19 independent qualified appraiser to determine the value of retained
20 vehicles. If an appraiser is used, the value of the vehicle appraised
21 is net of the cost of the appraisal.

22 **Sec. 3.** RCW 46.61.520 and 1996 c 199 s 7 are each amended to read
23 as follows:

24 (1) When the death of any person ensues within three years as a
25 proximate result of injury proximately caused by the driving of any
26 vehicle by any person, the driver is guilty of vehicular homicide if
27 the driver was operating a motor vehicle:

28 (a) While under the influence of intoxicating liquor or any drug,
29 as defined by RCW 46.61.502; or

30 (b) In a reckless manner; or

31 (c) With disregard for the safety of others.

32 (2) Vehicular homicide is a class A felony punishable under chapter
33 9A.20 RCW, except that, for a conviction under subsection (1)(a) of
34 this section, an additional two years shall be added to the sentence
35 for each prior offense as defined in RCW 46.61.5055.

36 **Sec. 4.** RCW 9.94A.310 and 1997 c 365 s 3 and 1997 c 338 s 50 are
37 each reenacted and amended to read as follows:

1 (1)

TABLE 1

2

Sentencing Grid

3 SERIOUSNESS

4 SCORE

OFFENDER SCORE

5

6

	0	1	2	3	4	5	6	7	8	9 or more
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7

8 XV Life Sentence without Parole/Death Penalty

9

10	XIV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
11		240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
12		320	333	347	361	374	388	416	450	493	548

13

14	XIII	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
15		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
16		220	234	244	254	265	275	295	316	357	397

17

18	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
19		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
20		123	136	147	160	171	184	216	236	277	318

21

22	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
23		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
24		102	114	125	136	147	158	194	211	245	280

25

26	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
27		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
28		68	75	82	89	96	102	130	144	171	198

29

30	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
31		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
32		41	48	54	61	68	75	102	116	144	171

33

34	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
35		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
36		27	34	41	48	54	61	89	102	116	144

37

1	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
2		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
3		20	27	34	41	48	54	75	89	102	116
4											
5	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
6		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
7		14	20	27	34	41	48	61	75	89	102
8											
9	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
10		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
11		12	14	17	20	29	43	54	68	82	96
12											
13	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
14		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
15		9	12	14	17	20	29	43	57	70	84
16											
17	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
18		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
19		3	8	12	12	16	22	29	43	57	68
20											
21	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
22		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
23		Days	6	9	12	14	18	22	29	43	57
24											
25	I			3m	4m	5m	8m	13m	16m	20m	2y2m
26		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
27		Days	Days	5	6	8	12	14	18	22	29
28											

29 NOTE: Numbers in the first horizontal row of each seriousness category
30 represent sentencing midpoints in years(y) and months(m). Numbers in
31 the second and third rows represent presumptive sentencing ranges in
32 months, or in days if so designated. 12+ equals one year and one day.

33 (2) For persons convicted of the anticipatory offenses of criminal
34 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
35 presumptive sentence is determined by locating the sentencing grid
36 sentence range defined by the appropriate offender score and the
37 seriousness level of the completed crime, and multiplying the range by
38 75 percent.

1 (3) The following additional times shall be added to the
2 presumptive sentence for felony crimes committed after July 23, 1995,
3 if the offender or an accomplice was armed with a firearm as defined in
4 RCW 9.41.010 and the offender is being sentenced for one of the crimes
5 listed in this subsection as eligible for any firearm enhancements
6 based on the classification of the completed felony crime. If the
7 offender or an accomplice was armed with a firearm as defined in RCW
8 9.41.010 and the offender is being sentenced for an anticipatory
9 offense under chapter 9A.28 RCW to commit one of the crimes listed in
10 this subsection as eligible for any firearm enhancements, the following
11 additional times shall be added to the presumptive sentence determined
12 under subsection (2) of this section based on the felony crime of
13 conviction as classified under RCW 9A.28.020:

14 (a) Five years for any felony defined under any law as a class A
15 felony or with a maximum sentence of at least twenty years, or both,
16 and not covered under (f) of this subsection.

17 (b) Three years for any felony defined under any law as a class B
18 felony or with a maximum sentence of ten years, or both, and not
19 covered under (f) of this subsection.

20 (c) Eighteen months for any felony defined under any law as a
21 class C felony or with a maximum sentence of five years, or both, and
22 not covered under (f) of this subsection.

23 (d) If the offender is being sentenced for any firearm
24 enhancements under (a), (b), and/or (c) of this subsection and the
25 offender has previously been sentenced for any deadly weapon
26 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
27 subsection or subsection (4)(a), (b), and/or (c) of this section, or
28 both, any and all firearm enhancements under this subsection shall be
29 twice the amount of the enhancement listed.

30 (e) Notwithstanding any other provision of law, any and all
31 firearm enhancements under this section are mandatory, shall be served
32 in total confinement, and shall not run concurrently with any other
33 sentencing provisions.

34 (f) The firearm enhancements in this section shall apply to all
35 felony crimes except the following: Possession of a machine gun,
36 possessing a stolen firearm, drive-by shooting, theft of a firearm,
37 unlawful possession of a firearm in the first and second degree, and
38 use of a machine gun in a felony.

1 (g) If the presumptive sentence under this section exceeds the
2 statutory maximum for the offense, the statutory maximum sentence shall
3 be the presumptive sentence unless the offender is a persistent
4 offender as defined in RCW 9.94A.030.

5 (4) The following additional times shall be added to the
6 presumptive sentence for felony crimes committed after July 23, 1995,
7 if the offender or an accomplice was armed with a deadly weapon as
8 defined in this chapter other than a firearm as defined in RCW 9.41.010
9 and the offender is being sentenced for one of the crimes listed in
10 this subsection as eligible for any deadly weapon enhancements based on
11 the classification of the completed felony crime. If the offender or
12 an accomplice was armed with a deadly weapon other than a firearm as
13 defined in RCW 9.41.010 and the offender is being sentenced for an
14 anticipatory offense under chapter 9A.28 RCW to commit one of the
15 crimes listed in this subsection as eligible for any deadly weapon
16 enhancements, the following additional times shall be added to the
17 presumptive sentence determined under subsection (2) of this section
18 based on the felony crime of conviction as classified under RCW
19 9A.28.020:

20 (a) Two years for any felony defined under any law as a class A
21 felony or with a maximum sentence of at least twenty years, or both,
22 and not covered under (f) of this subsection.

23 (b) One year for any felony defined under any law as a class B
24 felony or with a maximum sentence of ten years, or both, and not
25 covered under (f) of this subsection.

26 (c) Six months for any felony defined under any law as a class C
27 felony or with a maximum sentence of five years, or both, and not
28 covered under (f) of this subsection.

29 (d) If the offender is being sentenced under (a), (b), and/or (c)
30 of this subsection for any deadly weapon enhancements and the offender
31 has previously been sentenced for any deadly weapon enhancements after
32 July 23, 1995, under (a), (b), and/or (c) of this subsection or
33 subsection (3)(a), (b), and/or (c) of this section, or both, any and
34 all deadly weapon enhancements under this subsection shall be twice the
35 amount of the enhancement listed.

36 (e) Notwithstanding any other provision of law, any and all deadly
37 weapon enhancements under this section are mandatory, shall be served
38 in total confinement, and shall not run concurrently with any other
39 sentencing provisions.

1 (f) The deadly weapon enhancements in this section shall apply to
2 all felony crimes except the following: Possession of a machine gun,
3 possessing a stolen firearm, drive-by shooting, theft of a firearm,
4 unlawful possession of a firearm in the first and second degree, and
5 use of a machine gun in a felony.

6 (g) If the presumptive sentence under this section exceeds the
7 statutory maximum for the offense, the statutory maximum sentence shall
8 be the presumptive sentence unless the offender is a persistent
9 offender as defined in RCW 9.94A.030.

10 (5) The following additional times shall be added to the
11 presumptive sentence if the offender or an accomplice committed the
12 offense while in a county jail or state correctional facility as that
13 term is defined in this chapter and the offender is being sentenced for
14 one of the crimes listed in this subsection. If the offender or an
15 accomplice committed one of the crimes listed in this subsection while
16 in a county jail or state correctional facility as that term is defined
17 in this chapter, and the offender is being sentenced for an
18 anticipatory offense under chapter 9A.28 RCW to commit one of the
19 crimes listed in this subsection, the following additional times shall
20 be added to the presumptive sentence determined under subsection (2) of
21 this section:

22 (a) Eighteen months for offenses committed under RCW
23 69.50.401(a)(1) (i) or (ii) or 69.50.410;

24 (b) Fifteen months for offenses committed under RCW
25 69.50.401(a)(1) (iii), (iv), and (v);

26 (c) Twelve months for offenses committed under RCW 69.50.401(d).

27 For the purposes of this subsection, all of the real property of
28 a state correctional facility or county jail shall be deemed to be part
29 of that facility or county jail.

30 (6) An additional twenty-four months shall be added to the
31 presumptive sentence for any ranked offense involving a violation of
32 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

33 (7) An additional two years shall be added to the presumptive
34 sentence for vehicular homicide committed while under the influence of
35 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
36 prior offense as defined in RCW 46.61.5055.

37 **Sec. 5.** RCW 9.94A.360 and 1997 c 338 s 5 are each amended to read
38 as follows:

1 The offender score is measured on the horizontal axis of the
2 sentencing grid. The offender score rules are as follows:

3 The offender score is the sum of points accrued under this section
4 rounded down to the nearest whole number.

5 (1) A prior conviction is a conviction which exists before the
6 date of sentencing for the offense for which the offender score is
7 being computed. Convictions entered or sentenced on the same date as
8 the conviction for which the offender score is being computed shall be
9 deemed "other current offenses" within the meaning of RCW 9.94A.400.

10 (2) Class A and sex prior felony convictions shall always be
11 included in the offender score. Class B prior felony convictions other
12 than sex offenses shall not be included in the offender score, if since
13 the last date of release from confinement (including full-time
14 residential treatment) pursuant to a felony conviction, if any, or
15 entry of judgment and sentence, the offender had spent ten consecutive
16 years in the community without committing any crime that subsequently
17 results in a conviction. Class C prior felony convictions other than
18 sex offenses shall not be included in the offender score if, since the
19 last date of release from confinement (including full-time residential
20 treatment) pursuant to a felony conviction, if any, or entry of
21 judgment and sentence, the offender had spent five consecutive years in
22 the community without committing any crime that subsequently results in
23 a conviction. Serious traffic convictions shall not be included in the
24 offender score if, since the last date of release from confinement
25 (including full-time residential treatment) pursuant to a felony
26 conviction, if any, or entry of judgment and sentence, the offender
27 spent five years in the community without committing any crime that
28 subsequently results in a conviction. This subsection applies to both
29 adult and juvenile prior convictions.

30 (3) Out-of-state convictions for offenses shall be classified
31 according to the comparable offense definitions and sentences provided
32 by Washington law. Federal convictions for offenses shall be
33 classified according to the comparable offense definitions and
34 sentences provided by Washington law. If there is no clearly
35 comparable offense under Washington law or the offense is one that is
36 usually considered subject to exclusive federal jurisdiction, the
37 offense shall be scored as a class C felony equivalent if it was a
38 felony under the relevant federal statute.

1 (4) Score prior convictions for felony anticipatory offenses
2 (attempts, criminal solicitations, and criminal conspiracies) the same
3 as if they were convictions for completed offenses.

4 (5)(a) In the case of multiple prior convictions, for the purpose
5 of computing the offender score, count all convictions separately,
6 except:

7 (i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to
8 encompass the same criminal conduct, shall be counted as one offense,
9 the offense that yields the highest offender score. The current
10 sentencing court shall determine with respect to other prior adult
11 offenses for which sentences were served concurrently or prior juvenile
12 offenses for which sentences were served consecutively, whether those
13 offenses shall be counted as one offense or as separate offenses using
14 the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and
15 if the court finds that they shall be counted as one offense, then the
16 offense that yields the highest offender score shall be used. The
17 current sentencing court may presume that such other prior offenses
18 were not the same criminal conduct from sentences imposed on separate
19 dates, or in separate counties or jurisdictions, or in separate
20 complaints, indictments, or informations;

21 (ii) In the case of multiple prior convictions for offenses
22 committed before July 1, 1986, for the purpose of computing the
23 offender score, count all adult convictions served concurrently as one
24 offense, and count all juvenile convictions entered on the same date as
25 one offense. Use the conviction for the offense that yields the
26 highest offender score.

27 (b) As used in this subsection (5), "served concurrently" means
28 that: (i) The latter sentence was imposed with specific reference to
29 the former; (ii) the concurrent relationship of the sentences was
30 judicially imposed; and (iii) the concurrent timing of the sentences
31 was not the result of a probation or parole revocation on the former
32 offense.

33 (6) If the present conviction is one of the anticipatory offenses
34 of criminal attempt, solicitation, or conspiracy, count each prior
35 conviction as if the present conviction were for a completed offense.

36 (7) If the present conviction is for a nonviolent offense and not
37 covered by subsection (11) or (12) of this section, count one point for
38 each adult prior felony conviction and one point for each juvenile

1 prior violent felony conviction and 1/2 point for each juvenile prior
2 nonviolent felony conviction.

3 (8) If the present conviction is for a violent offense and not
4 covered in subsection (9), (10), (11), or (12) of this section, count
5 two points for each prior adult and juvenile violent felony conviction,
6 one point for each prior adult nonviolent felony conviction, and 1/2
7 point for each prior juvenile nonviolent felony conviction.

8 (9) If the present conviction is for Murder 1 or 2, Assault 1,
9 Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or Rape 1, count
10 three points for prior adult and juvenile convictions for crimes in
11 these categories, two points for each prior adult and juvenile violent
12 conviction (not already counted), one point for each prior adult
13 nonviolent felony conviction, and 1/2 point for each prior juvenile
14 nonviolent felony conviction.

15 (10) If the present conviction is for Burglary 1, count prior
16 convictions as in subsection (8) of this section; however count two
17 points for each prior adult Burglary 2 or residential burglary
18 conviction, and one point for each prior juvenile Burglary 2 or
19 residential burglary conviction.

20 (11) If the present conviction is for a felony traffic offense
21 count two points for each adult or juvenile prior conviction for
22 Vehicular Homicide or Vehicular Assault; for each felony offense or
23 serious traffic offense, count one point for each adult and 1/2 point
24 for each juvenile prior conviction. This subsection shall not apply
25 when additional time is added to a sentence pursuant to RCW
26 46.61.520(2).

27 (12) If the present conviction is for a drug offense count three
28 points for each adult prior felony drug offense conviction and two
29 points for each juvenile drug offense. All other adult and juvenile
30 felonies are scored as in subsection (8) of this section if the current
31 drug offense is violent, or as in subsection (7) of this section if the
32 current drug offense is nonviolent.

33 (13) If the present conviction is for Willful Failure to Return
34 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
35 Release, RCW 72.65.070, or Escape from Community Custody, RCW
36 72.09.310, count only prior escape convictions in the offender score.
37 Count adult prior escape convictions as one point and juvenile prior
38 escape convictions as 1/2 point.

1 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or
2 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
3 juvenile prior convictions as 1/2 point.

4 (15) If the present conviction is for Burglary 2 or residential
5 burglary, count priors as in subsection (7) of this section; however,
6 count two points for each adult and juvenile prior Burglary 1
7 conviction, two points for each adult prior Burglary 2 or residential
8 burglary conviction, and one point for each juvenile prior Burglary 2
9 or residential burglary conviction.

10 (16) If the present conviction is for a sex offense, count priors
11 as in subsections (7) through (15) of this section; however count three
12 points for each adult and juvenile prior sex offense conviction.

13 (17) If the present conviction is for an offense committed while
14 the offender was under community placement, add one point.

15 **Sec. 6.** RCW 10.05.010 and 1985 c 352 s 4 are each amended to read
16 as follows:

17 In a court of limited jurisdiction a person charged with a
18 misdemeanor or gross misdemeanor may petition the court to be
19 considered for a deferred prosecution program. The petition shall be
20 filed with the court at least seven days before the date set for trial
21 but, upon a written motion and affidavit establishing good cause for
22 the delay and failure to comply with this section, the court may waive
23 this requirement subject to the defendant's reimbursement to the court
24 of the witness fees and expenses due for subpoenaed witnesses who have
25 appeared on the date set for trial.

26 A person charged with a traffic infraction, misdemeanor, or gross
27 misdemeanor under Title 46 RCW shall not be eligible for a deferred
28 prosecution program unless the court makes specific findings pursuant
29 to RCW 10.05.020. Such person shall not be eligible for a deferred
30 prosecution program more than once (~~in any five year period~~).
31 Separate offenses committed more than seven days apart may not be
32 consolidated in a single program.

33 **Sec. 7.** RCW 10.05.100 and 1985 c 352 s 13 are each amended to
34 read as follows:

35 If a petitioner (~~is subsequently convicted of a similar offense~~
36 ~~while in a deferred prosecution program~~), within five years after
37 entry of an order of deferred prosecution, engages in conduct which

1 results in conviction of an offense listed in RCW 46.61.5055(8), upon
2 notice the court shall remove the petitioner's docket from the deferred
3 prosecution file and the court shall enter judgment pursuant to RCW
4 10.05.020.

5 **Sec. 8.** RCW 10.05.120 and 1994 c 275 s 19 are each amended to
6 read as follows:

7 ~~((Upon))~~ Three years after receiving proof of successful
8 completion of the two-year treatment program, but not before five years
9 following entry of the order of deferred prosecution, the court and
10 prosecutor shall review and verify the defendant's criminal history and
11 driving record as provided in section 9 of this act. If the petitioner
12 has not been arrested for or convicted of an offense listed in RCW
13 46.61.5055(8) since entry of the order of deferred prosecution, the
14 court shall dismiss the charges pending against the petitioner. If the
15 defendant has been arrested for an offense listed in RCW 46.61.5055(8)
16 since entry of the order of deferred prosecution, and there has been no
17 disposition of the charge or charges, the court shall maintain the case
18 in deferred prosecution status until a disposition has occurred.
19 Unless the disposition was a conviction of an offense listed in RCW
20 46.61.5055(8), the court shall dismiss the charges pending against the
21 petitioner.

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

24 (1) Immediately before the court defers prosecution under RCW
25 10.05.020, dismisses a charge, or orders a sentence for any offense
26 listed in subsection (2) of this section, the court and prosecutor
27 shall verify the defendant's criminal history and driving record. The
28 order shall include specific findings as to the criminal history and
29 driving record. For purposes of this section, the criminal history
30 shall include all previous convictions and orders of deferred
31 prosecution, as reported through the judicial information system or
32 otherwise available to the court or prosecutor, current to within the
33 period specified in subsection (3) of this section before the date of
34 the order. For purposes of this section, the driving record shall
35 include all information reported to the court by the department of
36 licensing.

1 (2) The offenses to which this section applies are violations of:
2 (a) RCW 46.61.502 or an equivalent local ordinance; (b) RCW 46.61.504
3 or an equivalent local ordinance; (c) RCW 46.61.520 committed while
4 under the influence of intoxicating liquor or any drug; (d) RCW
5 46.61.522 committed while under the influence of intoxicating liquor or
6 any drug; and (e) RCW 46.61.5249, 46.61.500, or 9A.36.050, or an
7 equivalent local ordinance, if the conviction is the result of a charge
8 that was originally filed as a violation of RCW 46.61.502 or 46.61.504
9 or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

10 (3) The periods applicable to previous convictions and orders of
11 deferred prosecution are: (a) One working day, in the case of previous
12 actions of courts that fully participate in the state judicial
13 information system; and (b) seven calendar days, in the case of
14 previous actions of courts that do not fully participate in the
15 judicial information system. For purposes of this subsection, "fully
16 participate" means regularly providing records to and receiving records
17 from the system by electronic means on a daily basis.

18 **Sec. 10.** RCW 10.05.160 and 1985 c 352 s 18 are each amended to
19 read as follows:

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

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

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

26 (3) Failure of the court to comply with the requirements of RCW
27 10.05.100;

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

33 **Sec. 11.** RCW 46.01.260 and 1997 c 66 s 11 are each amended to
34 read as follows:

35 (1) Except as provided in subsection (2) of this section, the
36 director, in his or her discretion, may destroy applications for
37 vehicle licenses, copies of vehicle licenses issued, applications for

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

7 (2)(a) The director shall not destroy records of convictions or
8 adjudications of RCW 46.61.502, 46.61.504, 46.61.520, and 46.61.522 and
9 shall maintain such records permanently on file.

10 (b) The director shall not, within ten years from the date of
11 conviction, adjudication, or entry of deferred prosecution, destroy
12 records of the following:

13 (i) ~~((Convictions or adjudications of the following offenses: RCW
14 46.61.502 or 46.61.504;~~

15 ~~((ii)))~~ If the offense was originally charged as one of the
16 offenses designated in (a) ~~((or (b)(i)))~~ of this subsection,
17 convictions or adjudications of the following offenses: RCW 46.61.500
18 or 46.61.5249 or any other violation that was originally charged as one
19 of the offenses designated in (a) ~~((or (b)(i)))~~ of this subsection; or

20 ~~((iii)))~~ (ii) Deferred prosecutions granted under RCW 10.05.120.

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

23 **Sec. 12.** RCW 46.20.285 and 1996 c 199 s 5 are each amended to
24 read as follows:

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

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

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

34 (3) Driving a motor vehicle while under the influence of
35 intoxicating liquor or a narcotic drug, or under the influence of any
36 other drug to a degree which renders the driver incapable of safely
37 driving a motor vehicle, ~~((upon a showing by the department's records
38 that the conviction is the second such conviction for the driver within~~

1 a period of five years. Upon a showing that the conviction is the
2 third such conviction for the driver within a period of five years, the
3 period of revocation shall be two years)) for the period prescribed in
4 RCW 46.61.5055;

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

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

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

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

16 **Sec. 13.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to
17 read as follows:

18 (1) Any person who operates a motor vehicle within this state is
19 deemed to have given consent, subject to the provisions of RCW
20 46.61.506, to a test or tests of his or her breath or blood for the
21 purpose of determining the alcohol concentration or presence of any
22 drug in his or her breath or blood if arrested for any offense where,
23 at the time of the arrest, the arresting officer has reasonable grounds
24 to believe the person had been driving or was in actual physical
25 control of a motor vehicle while under the influence of intoxicating
26 liquor or any drug or was in violation of RCW 46.61.503.

27 (2) The test or tests of breath shall be administered at the
28 direction of a law enforcement officer having reasonable grounds to
29 believe the person to have been driving or in actual physical control
30 of a motor vehicle within this state while under the influence of
31 intoxicating liquor or the person to have been driving or in actual
32 physical control of a motor vehicle while having alcohol in a
33 concentration of 0.02 or more in his or her system and being under the
34 age of twenty-one. However, in those instances where the person is
35 incapable due to physical injury, physical incapacity, or other
36 physical limitation, of providing a breath sample or where the person
37 is being treated in a hospital, clinic, doctor's office, emergency
38 medical vehicle, ambulance, or other similar facility in which a breath

1 testing instrument is not present or where the officer has reasonable
2 grounds to believe that the person is under the influence of a drug, a
3 blood test shall be administered by a qualified person as provided in
4 RCW 46.61.506(4). The officer shall inform the person of his or her
5 right to refuse the breath or blood test, and of his or her right to
6 have additional tests administered by any qualified person of his or
7 her choosing as provided in RCW 46.61.506. The officer shall warn the
8 driver that:

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

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

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

19 (3) Except as provided in this section, the test administered
20 shall be of the breath only. If an individual is unconscious or is
21 under arrest for the crime of vehicular homicide as provided in RCW
22 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an
23 individual is under arrest for the crime of driving while under the
24 influence of intoxicating liquor or drugs as provided in RCW 46.61.502,
25 which arrest results from an accident in which there has been serious
26 bodily injury to another person, a breath or blood test may be
27 administered without the consent of the individual so arrested.

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

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

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

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

15 (b) Serve notice in writing on the person on behalf of the
16 department of his or her right to a hearing, specifying the steps he or
17 she must take to obtain a hearing as provided by subsection (8) of this
18 section;

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

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

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

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

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

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

8 (7) The department of licensing, upon the receipt of a sworn
9 report or report under a declaration authorized by RCW 9A.72.085 under
10 subsection (6)(e) of this section, shall suspend, revoke, deny, or
11 place in probationary status the person's license, permit, or privilege
12 to drive or any nonresident operating privilege, as provided in RCW
13 46.20.3101, such suspension, revocation, denial, or placement in
14 probationary status to be effective beginning sixty days from the date
15 of arrest or from the date notice has been given in the event notice is
16 given by the department following a blood test, or when sustained at a
17 hearing pursuant to subsection (8) of this section, whichever occurs
18 first.

19 (8) A person receiving notification under subsection (6)(b) of
20 this section may, within thirty days after the notice has been given,
21 request in writing a formal hearing before the department. The person
22 shall pay a fee of one hundred dollars as part of the request. If the
23 request is mailed, it must be postmarked within thirty days after
24 receipt of the notification. Upon timely receipt of such a request for
25 a formal hearing, including receipt of the required one hundred dollar
26 fee, the department shall afford the person an opportunity for a
27 hearing. Except as otherwise provided in this section, the hearing is
28 subject to and shall be scheduled and conducted in accordance with RCW
29 46.20.329 and 46.20.332. The hearing shall be conducted in the county
30 of the arrest, except that all or part of the hearing may, at the
31 discretion of the department, be conducted by telephone or other
32 electronic means. The hearing shall be held within sixty days
33 following the arrest or following the date notice has been given in the
34 event notice is given by the department following a blood test, unless
35 otherwise agreed to by the department and the person, in which case the
36 action by the department shall be stayed, and any valid temporary
37 license marked under subsection (6)(c) of this section extended, if the
38 person is otherwise eligible for licensing. For the purposes of this
39 section, the scope of the hearing shall cover the issues of whether a

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

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

1 foundation. The person may be represented by counsel, may question
2 witnesses, may present evidence, and may testify. The department shall
3 order that the suspension, revocation, denial, or placement in
4 probationary status either be rescinded or sustained.

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

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

1 department shall issue a temporary license, or extend any valid
2 temporary license marked under subsection (6) of this section, for the
3 period of the stay. If a deferred prosecution treatment plan is not
4 recommended in the report made under RCW 10.05.050, or if treatment is
5 rejected by the court, or if the person declines to accept an offered
6 treatment plan, or if the person violates any condition imposed by the
7 court, then the court shall immediately direct the department to cancel
8 the stay and any temporary marked license or extension of a temporary
9 license issued under this subsection.

10 A suspension, revocation, or denial imposed under this section,
11 other than as a result of a breath test refusal, shall be stayed if the
12 person is accepted for deferred prosecution as provided in chapter
13 10.05 RCW for the incident upon which the suspension, revocation, or
14 denial is based. If the deferred prosecution is terminated, the stay
15 shall be lifted and the suspension, revocation, or denial reinstated.
16 If the deferred prosecution is completed, the stay shall be lifted and
17 the suspension, revocation, or denial canceled.

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

24 **Sec. 14.** RCW 46.20.3101 and 1995 c 332 s 3 are each amended to
25 read as follows:

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

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

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

34 (b) For a second or subsequent refusal (~~within five years~~), or
35 for a first refusal where there has been one or more previous incidents
36 (~~within five years~~) that have resulted in administrative action under
37 this section, revocation or denial for two years or until the person
38 reaches age twenty-one, whichever is longer. A revocation imposed

1 under this subsection (1)(b) shall run consecutively to the period of
2 any suspension, revocation, or denial imposed pursuant to a criminal
3 conviction arising out of the same incident.

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

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

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

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

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

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

22 **Sec. 15.** RCW 46.20.391 and 1995 c 332 s 12 are each amended to
23 read as follows:

24 (1) Any person licensed under this chapter who is convicted of an
25 offense relating to motor vehicles for which suspension or revocation
26 of the driver's license is mandatory, other than vehicular homicide or
27 vehicular assault, may submit to the department an application for an
28 occupational driver's license. The department, upon receipt of the
29 prescribed fee and upon determining that the petitioner is engaged in
30 an occupation or trade that makes it essential that the petitioner
31 operate a motor vehicle, may issue an occupational driver's license and
32 may set definite restrictions as provided in RCW 46.20.394. No person
33 may petition for, and the department shall not issue, an occupational
34 driver's license that is effective during the first thirty days of any
35 suspension or revocation imposed for a violation of RCW 46.61.502 or
36 46.61.504. A person aggrieved by the decision of the department on the
37 application for an occupational driver's license may request a hearing
38 as provided by rule of the department.

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

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

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

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

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

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

24 NEW SECTION. Sec. 16. If this act mandates an increased level of
25 service by local governments, the local government may, under RCW
26 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the
27 legislature. The claims shall be subject to verification by the office
28 of financial management."

29 **SSB 6166** - S AMD - 632

30 By Senators Rossi, Roach, Fairley and Kline

31 ADOPTED AS AMENDED 2/12/98

32 On page 1, line 1 of the title, after "influence;" strike the
33 remainder of the title and insert "amending RCW 46.61.5058, 46.61.520,
34 9.94A.360, 10.05.010, 10.05.100, 10.05.120, 10.05.160, 46.01.260,
35 46.20.285, 46.20.308, 46.20.3101, and 46.20.391; reenacting and
36 amending RCW 46.61.5055 and 9.94A.310; adding a new section to chapter
37 46.61 RCW; creating a new section; and prescribing penalties."

--- END ---

EFFECT: (1) A conviction for reckless endangerment II or reckless driving will count as a "prior offense" for the purposes of sentencing for subsequent DUI's when the individual was originally charged with a DUI. (2) The period of a deferred prosecution is extended from 2 to 5 years, and the underlying DUI charge may not be dismissed until five years have passed without the commission of another DUI or related offense. (3) The court is required to verify current criminal history and driving record when sentencing for a DUI or related offense. (4) Vehicular homicide is exempted from the scoring rules related to felony traffic offenses because of the sentencing enhancement in the underlying bill.