

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1940

Chapter 229, Laws of 1997

(partial veto)

55th Legislature
1997 Regular Session

DRIVING WHILE UNDER THE INFLUENCE OF LIQUOR OR DRUGS--IGNITION
INTERLOCKS

EFFECTIVE DATE: 1/1/98

Passed by the House March 13, 1997
Yeas 95 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate April 11, 1997
Yeas 44 Nays 0

BRAD OWEN
President of the Senate

Approved April 26, 1997, with the
exception of sections 3, 4, 5, 6, 7,
and 12, which are vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of
the House of Representatives of the
State of Washington, do hereby certify
that the attached is **ENGROSSED HOUSE
BILL 1940** as passed by the House of
Representatives and the Senate on the
dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

April 26, 1997 - 11:08 p.m.

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 1940

Passed Legislature - 1997 Regular Session

State of Washington

55th Legislature

1997 Regular Session

By Representatives Robertson, Appelwick, Sheahan, Regala, Scott, O'Brien, Ogden, Cooper, Blalock, Costa, Cole, Conway, Cody, Wolfe and Cooke

Read first time 02/14/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to driving while under the influence of liquor or
2 drugs; amending RCW 10.05.090, 10.05.140, 46.20.3101, 46.20.380,
3 46.20.391, 46.20.394, 46.20.400, 46.20.720, 46.20.730, 46.20.740,
4 46.61.5055, and 46.61.5056; reenacting and amending RCW 46.63.020;
5 adding a new section to chapter 46.04 RCW; recodifying RCW 46.20.730;
6 prescribing penalties; and providing an effective date.

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

8 **Sec. 1.** RCW 10.05.090 and 1994 c 275 s 18 are each amended to read
9 as follows:

10 If a petitioner, who has been accepted for a deferred prosecution,
11 fails or neglects to carry out and fulfill any term or condition of the
12 petitioner's treatment plan or any term or condition imposed in
13 connection with the installation of an interlock or other device under
14 RCW 46.20.720, the facility, center, institution, or agency
15 administering the treatment or the entity administering the use of the
16 device, shall immediately report such breach to the court, the
17 prosecutor, and the petitioner or petitioner's attorney of record,
18 together with its recommendation. The court upon receiving such a
19 report shall hold a hearing to determine whether the petitioner should

1 be removed from the deferred prosecution program. At the hearing,
2 evidence shall be taken of the petitioner's alleged failure to comply
3 with the treatment plan or device installation and the petitioner shall
4 have the right to present evidence on his or her own behalf. The court
5 shall either order that the petitioner continue on the treatment plan
6 or be removed from deferred prosecution. If removed from deferred
7 prosecution, the court shall enter judgment pursuant to RCW 10.05.020
8 and, if the charge for which the deferred prosecution was granted was
9 a misdemeanor or gross misdemeanor under Title 46 RCW, shall notify the
10 department of licensing of the removal and entry of judgment.

11 **Sec. 2.** RCW 10.05.140 and 1991 c 247 s 1 are each amended to read
12 as follows:

13 As a condition of granting a deferred prosecution petition, the
14 court shall order that the petitioner shall not operate a motor vehicle
15 upon the public highways without a valid operator's license and proof
16 of liability insurance. The amount of liability insurance shall be
17 established by the court at not less than that established by RCW
18 46.29.490. As a condition of granting a deferred prosecution petition,
19 the court may also order the installation of an interlock or other
20 device under RCW 46.20.720. As a condition of granting a deferred
21 prosecution petition, the court may order the petitioner to make
22 restitution and to pay costs as defined in RCW 10.01.160. The court
23 may terminate the deferred prosecution program upon violation of this
24 section.

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

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

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

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

35 *(b) For a second (~~or subsequent~~) refusal within five years, or*
36 *for a first refusal where there has been one or more previous incidents*
37 *within five years that have resulted in administrative action under*

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

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

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

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

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

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

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

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

32 (4) Ninety days after revocation or denial under subsection (1)(a)
33 or (2)(b) of this section, or one year after revocation or denial under
34 subsection (1)(b) or (c) of this section, the person whose license or
35 privilege has been revoked or denied may apply to the department for
36 issuance of a temporary restricted license under RCW 46.20.391 with the
37 requirement that the person have an ignition interlock or other
38 biological or technical device installed on his or her vehicle and
39 operate no other motor vehicle for the remainder of the term of

1 revocation or denial. A temporary restricted license granted as the
2 result of an application under this section extends through the period
3 of any suspension, revocation, or denial imposed under a criminal
4 conviction arising out of the same incident.

5 *Sec. 3 was vetoed. See message at end of chapter.

6 *Sec. 4. RCW 46.20.380 and 1985 ex.s. c 1 s 6 are each amended to
7 read as follows:

8 No person may file an application for ~~((an occupational))~~ a
9 temporary restricted driver's license as provided in RCW 46.20.391
10 unless he or she first pays to the director or other person authorized
11 to accept applications and fees for driver's licenses a fee of twenty-
12 five dollars. The applicant shall receive upon payment an official
13 receipt for the payment of such fee. All such fees shall be forwarded
14 to the director who shall transmit such fees to the state treasurer in
15 the same manner as other driver's license fees.

16 *Sec. 4 was vetoed. See message at end of chapter.

17 *Sec. 5. RCW 46.20.391 and 1995 c 332 s 12 are each amended to
18 read as follows:

19 (1) Any person licensed under this chapter who is convicted of an
20 offense relating to motor vehicles for which suspension or revocation
21 of the driver's license is mandatory, other than vehicular homicide or
22 vehicular assault, or any person authorized to apply under RCW
23 46.20.3101, may submit to the department an application for ~~((an~~
24 ~~occupational))~~ a temporary restricted driver's license. The
25 department, upon receipt of the prescribed fee and upon determining
26 that the petitioner is ~~((engaged in an occupation or trade that makes~~
27 ~~it essential that the petitioner operate a motor vehicle))~~ eligible to
28 receive the license under subsection (3) of this section, may issue
29 ~~((an occupational))~~ a temporary restricted driver's license and may set
30 definite restrictions as provided in RCW 46.20.394. No person may
31 petition for, and the department shall not issue, ~~((an occupational))~~
32 a temporary restricted driver's license that is effective during the
33 first:

34 (a) Thirty days of any suspension ((or revocation)) imposed ((for
35 a violation of RCW 46.61.502 or 46.61.504)) under RCW 46.61.5055(1)(a);

36 (b) Thirty days of a revocation imposed under RCW 46.61.5055(1)(b);

37 (c) Ninety days of a revocation imposed under RCW 46.20.3101(1)(a)
38 or (2)(b);

1 (d) One year of a revocation imposed under RCW 46.61.5055 (2) or
2 (3) or 46.20.3101(1) (b) or (c).

3 A petitioner under (b), (c), or (d) of this subsection must also
4 agree to have an ignition interlock or other biological or technical
5 device installed on his or her vehicle and operate no other motor
6 vehicle during the term of revocation. A temporary restricted license
7 issued after a suspension or revocation under RCW 46.61.5055 or
8 46.20.3101 extends through the entire period of any concurrent or
9 consecutive suspensions or revocations that may be imposed as the
10 result of both administrative action and criminal conviction arising
11 out of the same incident.

12 (2) A person aggrieved by the decision of the department on the
13 application for ~~((an occupational))~~ a temporary restricted driver's
14 license may request a hearing as provided by rule of the department.

15 ~~((+2))~~ (3) An applicant for ~~((an occupational))~~ a temporary
16 restricted driver's license is eligible to receive such license only
17 if:

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

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

28 (c) The applicant meets at least one of the following qualifying
29 circumstances: (i) Is engaged in an occupation or trade that makes it
30 essential that he or she operate a motor vehicle; (ii) is undergoing
31 continuing health care or providing continuing health care to another
32 who is dependent upon the applicant; (iii) is enrolled in an
33 educational institution and pursuing a course of study leading to a
34 diploma, degree, or other certification of successful educational
35 completion; (iv) is undergoing substance abuse treatment; or (v) is
36 fulfilling court-ordered community service responsibilities; and

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

1 ~~((3))~~ (4) The director shall cancel ~~((an occupational))~~ a
2 temporary restricted driver's license upon receipt of notice that the
3 holder thereof has been convicted of operating a motor vehicle in
4 violation of its restrictions, or of an offense that pursuant to
5 chapter 46.20 RCW would warrant suspension or revocation of a regular
6 driver's license. The cancellation is effective as of the date of the
7 conviction, and continues with the same force and effect as any
8 suspension or revocation under this title.

9 *Sec. 5 was vetoed. See message at end of chapter.

10 *Sec. 6. RCW 46.20.394 and 1983 c 165 s 26 are each amended to
11 read as follows:

12 In issuing ~~((an occupational))~~ a temporary restricted driver's
13 license under RCW 46.20.391, the department shall describe the ~~((type~~
14 ~~of occupation permitted))~~ qualifying circumstances and shall set forth
15 in detail the specific hours of the day during which the person may
16 drive to and from his ~~((place of work))~~ or her home, which may not
17 exceed twelve hours in any one day; the days of the week during which
18 the license may be used; and the general routes over which the person
19 may travel. These restrictions shall be prepared in written form by
20 the department, which document shall be carried in the vehicle at all
21 times and presented to a law enforcement officer under the same terms
22 as the ~~((occupational))~~ temporary restricted driver's license. Any
23 violation of the restrictions constitutes a violation of RCW 46.20.342
24 and subjects the person to all procedures and penalties therefor.

25 *Sec. 6 was vetoed. See message at end of chapter.

26 *Sec. 7. RCW 46.20.400 and 1967 c 32 s 33 are each amended to read
27 as follows:

28 If ~~((an occupational))~~ a temporary restricted driver's license is
29 issued and is not revoked during the period for which issued the
30 licensee may obtain a new driver's license at the end of such period,
31 but no new driver's ~~((permit shall))~~ license may be issued to such
32 person until he or she surrenders his ~~((occupational))~~ or her temporary
33 restricted driver's license and his or her copy of the order and the
34 director is satisfied that he or she complies with all other provisions
35 of law relative to the issuance of a driver's license.

36 *Sec. 7 was vetoed. See message at end of chapter.

1 **Sec. 8.** RCW 46.20.720 and 1994 c 275 s 22 are each amended to read
2 as follows:

3 The court may order that after a period of suspension, revocation,
4 or denial of driving privileges, and for up to as long as the court has
5 jurisdiction, any person convicted of any offense involving the use,
6 consumption, or possession of alcohol while operating a motor vehicle
7 ~~((to))~~ may drive only a motor vehicle equipped with a functioning
8 ignition interlock or other biological or technical device~~((, and the~~
9 ~~restriction shall be for a period of not less than six months))~~.

10 The court shall establish a specific calibration setting at which
11 the ignition interlock or other biological or technical device will
12 prevent the motor vehicle from being started and the period of time
13 that the person shall be subject to the restriction.

14 For purposes of this section, "convicted" means being found guilty
15 of an offense or being placed on a deferred prosecution program under
16 chapter 10.05 RCW.

17 **Sec. 9.** RCW 46.20.730 and 1994 c 275 s 23 are each amended to read
18 as follows:

19 ~~((For the purposes of RCW 46.20.720, 46.20.740, and 46.20.750,))~~
20 "Ignition interlock device" means breath alcohol ~~((analyzed))~~ analyzing
21 ignition equipment, certified by the state ~~((commission on equipment))~~
22 patrol, designed to prevent a motor vehicle from being operated by a
23 person who has consumed an alcoholic beverage, and "other biological or
24 technical device" means any device meeting the standards of the
25 National Highway Traffic Safety Administration or the state
26 ~~((commission on equipment))~~ patrol, designed to prevent the operation
27 of a motor vehicle by a person who is impaired by alcohol or drugs.
28 The ~~((commission))~~ state patrol shall by rule provide standards for the
29 certification, installation, repair, and removal of the devices.

30 **Sec. 10.** RCW 46.20.740 and 1994 c 275 s 24 are each amended to
31 read as follows:

32 (1) The department shall attach or imprint a notation on the
33 driver's license of any person restricted under RCW 46.20.720 stating
34 that the person may operate only a motor vehicle equipped with an
35 ignition interlock or other biological or technical device.

1 (2) It is a misdemeanor for a person with such a notation on his or
2 her driver's license to operate a motor vehicle that is not so
3 equipped.

4 **Sec. 11.** RCW 46.61.5055 and 1996 c 307 s 3 are each amended to
5 read as follows:

6 (1) A person who is convicted of a violation of RCW 46.61.502 or
7 46.61.504 and who has no prior offense within five years shall be
8 punished as follows:

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

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

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

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

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

36 (i) By imprisonment for not less than two days nor more than one
37 year. Two consecutive days of the imprisonment may not be suspended or
38 deferred unless the court finds that the imposition of this mandatory

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

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

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

17 (2) A person who is convicted of a violation of RCW 46.61.502 or
18 46.61.504 and who has one prior offense within five years shall be
19 punished as follows:

20 (a) In the case of a person whose alcohol concentration was less
21 than 0.15, or for whom for reasons other than the person's refusal to
22 take a 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 thirty days nor more than one
25 year. Thirty days of the imprisonment may not be suspended or deferred
26 unless the court finds that the imposition of this mandatory minimum
27 sentence would impose a substantial risk to the offender's physical or
28 mental well-being. Whenever the mandatory minimum sentence is
29 suspended or deferred, the court shall state in writing the reason for
30 granting the suspension or deferral and the facts upon which the
31 suspension or deferral is based; and

32 (ii) By a fine of not less than five hundred dollars nor more than
33 five thousand dollars. Five hundred dollars of the fine may not be
34 suspended or deferred unless the court finds the offender to be
35 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 ~~((one))~~ two years. The period of license, permit, or privilege
39 revocation may not be suspended. The court shall notify the department

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

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

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

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

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

27 (3) A person who is convicted of a violation of RCW 46.61.502 or
28 46.61.504 and who has two or more prior offenses within five years
29 shall be punished as follows:

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

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

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

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

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

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

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

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

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

37 (4) In exercising its discretion in setting penalties within the
38 limits allowed by this section, the court shall particularly consider

1 whether the person's driving at the time of the offense was responsible
2 for injury or damage to another or another's property.

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

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

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

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

33 (c) For each incident involving a violation of a mandatory
34 condition of probation imposed under this subsection, the license,
35 permit, or privilege to drive of the person shall be suspended by the
36 court for thirty days or, if such license, permit, or privilege to
37 drive already is suspended, revoked, or denied at the time the finding
38 of probation violation is made, the suspension, revocation, or denial
39 then in effect shall be extended by thirty days. The court shall

1 notify the department of any suspension, revocation, or denial or any
2 extension of a suspension, revocation, or denial imposed under this
3 subsection.

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

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

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

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

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

13 (v) A conviction for a violation of RCW 46.61.525(1) or an
14 equivalent local ordinance, if the conviction is the result of a charge
15 that was originally filed as a violation of RCW 46.61.502 or 46.61.504,
16 or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522;

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

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

23 (viii) A deferred prosecution under chapter 10.05 RCW granted in a
24 prosecution for a violation of RCW 46.61.525(1), or an equivalent local
25 ordinance, if the charge under which the deferred prosecution was
26 granted was originally filed as a violation of RCW 46.61.502 or
27 ((46.61.502)) 46.61.504, or an equivalent local ordinance, or of RCW
28 46.61.520 or 46.61.522.

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

31 **Sec. 12. RCW 46.61.5056 and 1995 c 332 s 14 are each amended to*
32 *read as follows:*

33 *(1) A person subject to alcohol assessment and treatment under RCW*
34 *46.61.5055 shall be required by the court to complete a course in an*
35 *alcohol information school approved by the department of social and*
36 *health services or to complete more intensive treatment in a program*
37 *approved by the department of social and health services, as determined*
38 *by the court. The court shall notify the department of licensing*

1 whenever it orders a person to complete a course or treatment program
2 under this section.

3 (2) A diagnostic evaluation and treatment recommendation shall be
4 prepared under the direction of the court by an alcoholism agency
5 approved by the department of social and health services or a qualified
6 probation department approved by the department of social and health
7 services. The agency shall consider and make a recommendation
8 concerning installation of an ignition interlock or other biological or
9 technical device on the offender's motor vehicle. A copy of the report
10 shall be forwarded to the department of licensing. Based on the
11 diagnostic evaluation, the court shall determine (a) whether the person
12 shall be required to complete a course in an alcohol information school
13 approved by the department of social and health services or more
14 intensive treatment in a program approved by the department of social
15 and health services and (b) whether the person must have an ignition
16 interlock or other biological or technical device installed on his or
17 her vehicle.

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

22 (4) Any agency that provides treatment ordered under RCW
23 46.61.5055, shall immediately report to the appropriate probation
24 department where applicable, otherwise to the court, and to the
25 department of licensing any noncompliance by a person with the
26 conditions of his or her ordered treatment. The court shall notify the
27 department of licensing and the department of social and health
28 services of any failure by an agency to so report noncompliance. Any
29 agency with knowledge of noncompliance that fails to so report shall be
30 fined two hundred fifty dollars by the department of social and health
31 services. Upon three such failures by an agency within one year, the
32 department of social and health services shall revoke the agency's
33 approval under this section.

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

37 *Sec. 12 was vetoed. See message at end of chapter.

1 **Sec. 13.** RCW 46.63.020 and 1996 c 307 s 6, 1996 c 287 s 7, 1996 c
2 93 s 3, 1996 c 87 s 21, and 1996 c 31 s 3 are each reenacted and
3 amended to read as follows:

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

12 (1) RCW 46.09.120(2) relating to the operation of a nonhighway
13 vehicle while under the influence of intoxicating liquor or a
14 controlled substance;

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

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

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

20 (5) Chapter 46.12 RCW relating to certificates of ownership and
21 registration and markings indicating that a vehicle has been destroyed
22 or declared a total loss;

23 (6) RCW 46.16.010 relating to initial registration of motor
24 vehicles;

25 (7) RCW 46.16.011 relating to permitting unauthorized persons to
26 drive;

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

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

31 (10) RCW 46.20.021 relating to driving without a valid driver's
32 license, unless the person cited for the violation provided the citing
33 officer with an expired driver's license or other valid identifying
34 documentation under RCW 46.20.035 at the time of the stop and was not
35 in violation of RCW 46.20.342(1) or 46.20.420, in which case the
36 violation is an infraction;

37 (11) RCW 46.20.091 relating to false statements regarding a
38 driver's license or instruction permit;

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

3 (13) RCW 46.20.342 relating to driving with a suspended or revoked
4 license or status;

5 (14) RCW 46.20.410 relating to the violation of restrictions of an
6 occupational driver's license;

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

9 (16) RCW 46.20.740 relating to operation of a motor vehicle without
10 an ignition interlock device in violation of a license notation that
11 the device is required;

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

14 (~~(17)~~) (18) RCW 46.25.170 relating to commercial driver's
15 licenses;

16 (~~(18)~~) (19) Chapter 46.29 RCW relating to financial
17 responsibility;

18 (~~(19)~~) (20) RCW 46.30.040 relating to providing false evidence of
19 financial responsibility;

20 (~~(20)~~) (21) RCW 46.37.435 relating to wrongful installation of
21 sunscreening material;

22 (~~(21)~~) (22) RCW 46.44.180 relating to operation of mobile home
23 pilot vehicles;

24 (~~(22)~~) (23) RCW 46.48.175 relating to the transportation of
25 dangerous articles;

26 (~~(23)~~) (24) RCW 46.52.010 relating to duty on striking an
27 unattended car or other property;

28 (~~(24)~~) (25) RCW 46.52.020 relating to duty in case of injury to
29 or death of a person or damage to an attended vehicle;

30 (~~(25)~~) (26) RCW 46.52.090 relating to reports by repairmen,
31 storagemen, and appraisers;

32 (~~(26)~~) (27) RCW 46.52.100 relating to driving under the influence
33 of liquor or drugs;

34 (~~(27)~~) (28) RCW 46.52.130 relating to confidentiality of the
35 driving record to be furnished to an insurance company, an employer,
36 and an alcohol/drug assessment or treatment agency;

37 (~~(28)~~) (29) RCW 46.55.020 relating to engaging in the activities
38 of a registered tow truck operator without a registration certificate;

1 (~~(29)~~) (30) RCW 46.55.035 relating to prohibited practices by tow
2 truck operators;
3 (~~(30)~~) (31) RCW 46.61.015 relating to obedience to police
4 officers, flagmen, or fire fighters;
5 (~~(31)~~) (32) RCW 46.61.020 relating to refusal to give information
6 to or cooperate with an officer;
7 (~~(32)~~) (33) (RCW 46.61.022 relating to failure to stop and give
8 identification to an officer;
9 (~~(33)~~) (34) RCW 46.61.024 relating to attempting to elude
10 pursuing police vehicles;
11 (~~(34)~~) (35) RCW 46.61.500 relating to reckless driving;
12 (~~(35)~~) (36) RCW 46.61.502 and 46.61.504 relating to persons under
13 the influence of intoxicating liquor or drugs;
14 (~~(36)~~) (37) RCW 46.61.503 relating to a person under age twenty-
15 one driving a motor vehicle after consuming alcohol;
16 (~~(37)~~) (38) RCW 46.61.520 relating to vehicular homicide by motor
17 vehicle;
18 (~~(38)~~) (39) RCW 46.61.522 relating to vehicular assault;
19 (~~(39)~~) (40) RCW 46.61.525(1) relating to first degree negligent
20 driving;
21 (~~(40)~~) (41) RCW 46.61.527(4) relating to reckless endangerment of
22 roadway workers;
23 (~~(41)~~) (42) RCW 46.61.530 relating to racing of vehicles on
24 highways;
25 (~~(42)~~) (43) RCW 46.61.685 relating to leaving children in an
26 unattended vehicle with the motor running;
27 (~~(43)~~) (44) RCW 46.64.010 relating to unlawful cancellation of or
28 attempt to cancel a traffic citation;
29 (~~(44)~~) (45) RCW 46.64.048 relating to attempting, aiding,
30 abetting, coercing, and committing crimes;
31 (~~(45)~~) (46) Chapter 46.65 RCW relating to habitual traffic
32 offenders;
33 (~~(46)~~) (47) RCW 46.68.010 relating to false statements made to
34 obtain a refund;
35 (~~(47)~~) (48) Chapter 46.70 RCW relating to unfair motor vehicle
36 business practices, except where that chapter provides for the
37 assessment of monetary penalties of a civil nature;
38 (~~(48)~~) (49) Chapter 46.72 RCW relating to the transportation of
39 passengers in for hire vehicles;

1 (~~(49)~~) (50) RCW 46.72A.060 relating to limousine carrier
2 insurance;

3 (~~(50)~~) (51) RCW 46.72A.070 relating to operation of a limousine
4 without a vehicle certificate;

5 (~~(51)~~) (52) RCW 46.72A.080 relating to false advertising by a
6 limousine carrier;

7 (~~(52)~~) (53) Chapter 46.80 RCW relating to motor vehicle wreckers;

8 (~~(53)~~) (54) Chapter 46.82 RCW relating to driver's training
9 schools;

10 (~~(54)~~) (55) RCW 46.87.260 relating to alteration or forgery of a
11 cab card, letter of authority, or other temporary authority issued
12 under chapter 46.87 RCW;

13 (~~(55)~~) (56) RCW 46.87.290 relating to operation of an
14 unregistered or unlicensed vehicle under chapter 46.87 RCW.

15 NEW SECTION. **Sec. 14.** RCW 46.20.730, as amended by this act, is
16 recodified as a section in chapter 46.04 RCW.

17 NEW SECTION. **Sec. 15.** This act takes effect January 1, 1998.

 Passed the House March 13, 1997.

 Passed the Senate April 11, 1997.

 Approved by the Governor April 26, 1997, with the exception of
 certain items that were vetoed.

 Filed in Office of Secretary of State April 26, 1997.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 3, 4,
3 5, 6, 7, and 12, Engrossed House Bill No. 1940 entitled:

4 "AN ACT Relating to driving while under the influence of liquor or
5 drugs;"

6 Engrossed House Bill No. 1940 expands the use of ignition interlock
7 devices and increases the periods of license suspension or revocation
8 and other penalties for people convicted of driving under the influence
9 of alcohol or drugs (DUI). A number of jurisdictions, including Kitsap
10 County, have found that ignition interlock devices allow DUI offenders
11 to be closely monitored while granted limited driving privileges so
12 that they may keep their jobs.

13 I strongly support stiff sentences for drunk drivers and increasing
14 the utilization of technology in this way. However, due to an
15 oversight in the drafting of the bill, drivers who refuse to take a
16 blood alcohol concentration test and lose their licenses could apply to
17 get a "temporary restricted" license after only 90 days of suspension.
18 This may encourage drunk drivers to refuse the tests as a way to avoid
19 a DUI conviction, and to also get their driving privileges restored

1 quickly. In order to avoid this problem, I have vetoed sections 3
2 through 7 of the bill.

3 I agree with broadening the statutory definition of an
4 "occupational" license to include driving necessary to obtain health
5 care, counseling, education and community service. Unfortunately, this
6 change in definition could not be retained while vetoing the sections
7 noted above. I would support this expanded definition in subsequent
8 legislation.

9 Section 12 of the bill provides that chemical dependency diagnostic
10 reports must include a recommendation on whether installation of an
11 ignition interlock would be appropriate for a particular person. This
12 could create liability for the agencies writing the reports, and is a
13 matter more appropriately addressed by the courts.

14 For these reasons, I have vetoed sections 3 through 7 and section
15 12 of Engrossed House Bill No. 1940.

16 With the exception of sections 3, 4, 5, 6, 7, and 12, Engrossed
17 House Bill No. 1940 is approved."