

Repeal RMC 10.14  
Repeal RMC 10.10.035  
Amend RMC 10.10.010

ORDINANCE NO. 1891

ORIGINAL

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, REPEALING CHAPTER 10.14 OF THE REDMOND MUNICIPAL CODE ENTITLED "DRIVING UNDER THE INFLUENCE OF INTOXICANTS OR DRUGS"; REPEALING SECTION 10.10.035 OF THE REDMOND MUNICIPAL CODE ENTITLED "STATE STATUTES NOT ADOPTED AS PART OF THE MODEL TRAFFIC ORDINANCE AS OF JULY 18, 1995 BUT TO BE INSERTED LATER"; AMENDING SECTIONS 10.10.010 AND 10.10.030 OF THE REDMOND MUNICIPAL CODE RELATING TO THE "MODEL TRAFFIC ORDINANCE" TO ADOPT RCW 46.61.502 DRIVING UNDER THE INFLUENCE, RCW 46.61.504 PHYSICAL CONTROL OF VEHICLE UNDER THE INFLUENCE, RCW 46.61.5054 ALCOHOL VIOLATORS-ADDITIONAL FEE-DISTRIBUTION, RCW 46.61.5055 ALCOHOL VIOLATORS-PENALTY SCHEDULE, RCW 46.61.5056 ALCOHOL VIOLATORS-INFORMATION SCHOOL-EVALUATION AND TREATMENT, RCW 46.61.506 PERSONS UNDER INFLUENCE OF INTOXICATING LIQUOR OR DRUG-EVIDENCE- TESTS-INFORMATION CONCERNING TESTS; CREATING A NEW SECTION OF THE REDMOND MUNICIPAL CODE 10.10.033 ADOPTING RCW 46.61.5151 SENTENCES-INTERMITTENT FULFILLMENT-RESTRICTIONS, AND RCW 46.61.5152 ATTENDANCE AT PROGRAM FOCUSING ON VICTIMS; CONTAINING SAVINGS AND SEVERABILITY CLAUSES; DECLARING AN EMERGENCY AND ESTABLISHING AN EFFECTIVE DATE OF JUNE 6, 1996.

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WHEREAS, Redmond Municipal Code Chapter 10.14 provides for a breath or blood alcohol level (BAC) standard of 0.08 for the crimes of Driving Under the Influence and Physical Control, and

WHEREAS, the Washington State Supreme Court, in Seattle v. Williams, 128 Wn. 2d 341 (1995), has found that the uniformity language of RCW 46.08.020 and

RCW 46.08.030 precludes a municipality from enforcing a BAC standard that is less than the 0.10 standard as provided for by state statute, and

WHEREAS, the Driving Under the Influence and the Physical Control statutes under state law and Redmond law differ only in that they set forth different BAC standards, and the City of Redmond wishes to repeal its Driving Under the Influence and Physical Control statutes and adopt the same under state law and any future amendments thereto, and

WHEREAS, the City of Redmond also wishes to adopt state law amendments to the penalty schedule of the Driving Under the Influence and Physical Control statutes created by Section 3, Chapter 307, Laws of 1996 and effective on June 6, 1996, NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON,  
DO ORDAIN AS FOLLOWS:

Section 1.     Repeal. Redmond Municipal Code Chapter 10.14, Driving Under the Influence of Intoxicants or Drugs, is hereby repealed.

Section 2.     Repeal. Redmond Municipal Code 10.10.035, State statutes not adopted as part of the Model Traffic Ordinance as of July 18, 1995 but to be inserted later, is hereby repealed.

Section 3.     Adopt state law. The following statutes of the state of Washington contained in the Model Traffic Ordinance, including any future amendments and additions thereto and repeals thereof, which were previously not adopted and which were expressly deleted from the Redmond Municipal Code, are now adopted by reference in the Redmond Municipal Code and are hereby made a part of and included in the traffic ordinance for the City of Redmond:

RCW 46.61.502	Driving under the influence
RCW 46.61.504	Physical control of vehicle under the influence
RCW 46.61.5054	Alcohol violators -- Additional fee -- Distribution
RCW 46.61.5055	Alcohol violators -- Penalty schedule

RCW 46.61.5056 Alcohol violators -- Information school --  
Evaluation and treatment  
RCW 46.61.506 Persons under influence of intoxicating liquor or  
drug -- Evidence -- Tests -- Information  
concerning tests

Section 4. Amend. Redmond Municipal Code 10.10.030 is hereby amended to read as follows:

**10.10.030 Specific state statutes contained in the Model Traffic Ordinance not adopted.** The following state statutes contained in the Model Traffic Ordinance are not adopted and are expressly deleted from the Redmond Municipal Code:

RCW 46.04.431 Definition of Highways, as adopted by WAC 308-330-100.

Section 5. Adopt state law. A new section 10.10.033 is added to the Redmond Municipal Code to read as follows:

**10.10.033 Additional sentencing requirements for persons convicted of driving under the influence or being in actual physical control of a motor vehicle while under the influence.** The following statutes of the State of Washington, including any future amendments and additions thereto and repeals thereof, are adopted by reference:

RCW 46.61.5151 Sentences -- Intermittent fulfillment - Restrictions  
RCW 46.61.5152 Attendance at program focusing on victims

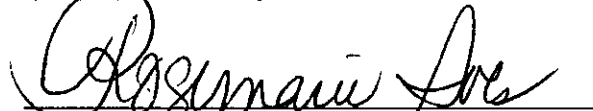
Section 6. Savings Clause. The amendments, additions, and repeals contained in this ordinance shall not affect any pending or existing prosecution and shall not operate as an abatement or bar to any action or proceeding pending under or by virtue of any other ordinance.

Section 7. Severability. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 8. Effective Date/Emergency Passage. The City Council finds and declares that:

- A. Washington Laws of 1996, Chapter 307, section 3 amends RCW 46.61.5055, Penalty Schedule for Alcohol Violators, and is effective June 6, 1996. Unless the City of Redmond acts immediately to revise its ordinances governing the offenses of Driving Under the Influence and Physical Control and adopt state law, and unless those amendments are made effective June 6, 1996, the penalty section of the Driving Under the Influence and Physical Control statutes currently defined under Redmond Municipal Code Chapter 10.14, will not be consistent with state law. Without such consistency, the public health, safety, property, peace, and welfare will be endangered.
- B. The City's customary passage and publication procedures, which provide that ordinances shall become effective five (5) days after publication of a summary thereof in the City's official newspaper, will not provide sufficient time for this ordinance to be passed, published and become effective by June 6, 1996. Following these customary procedures, this ordinance would not become effective until June 17, 1996, and the City's Driving Under the Influence and Physical Control penalty section would not be consistent with state law.
- C. The City Council therefore declares that an emergency exists which endangers the public health, safety, property, peace and welfare, and which requires that this ordinance become effective within a shorter time than would otherwise apply.
- D. Having been declared an emergency and having passed by the affirmative vote of at least a majority plus one of the entire membership of the City Council, this ordinance shall become effective at 12:00:01 a.m. on June 6, 1996. The City Clerk is directed to publish a summary of this ordinance, consisting of the title, at the earliest possible date.

CITY OF REDMOND

  
MAYOR ROSEMARIE IVES

ATTEST/AUTHENTICATED:

Bonnie Mattson  
CITY CLERK, BONNIE MATTSON

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

By: 

FILED WITH THE CITY CLERK:	May 20, 1996
PASSED BY THE CITY COUNCIL:	June 4, 1996
SIGNED BY THE MAYOR:	June 5, 1996
PUBLISHED:	June 12, 1996
EFFECTIVE DATE:	June 6, 1996
ORDINANCE NO. <u>1891</u>	

CHAPTER 307  
[Engrossed Substitute Senate Bill 6204]  
NEGLIGENT DRIVING—REVISIONS

AN ACT Relating to penalties for driving without a driver's license and negligent driving; amending RCW 46.61.525, 46.61.5055, 46.52.130; reenacting and amending RCW 46.20.021 and 46.63.020; creating a new creating; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 46.61.525 and 1979 ex.s. c 136 s 86 are each amended to read as follows:

~~((It shall be unlawful for any person to operate a motor vehicle in a negligent manner. For the purpose of this section to "operate in a negligent manner" shall be construed to mean the operation of a vehicle in such a manner as to endanger or be likely to endanger any persons or property. PROVIDED HOWEVER, That any person operating a motor vehicle on private property with the consent of the owner in a manner consistent with the owner's consent shall not be guilty of negligent driving.~~

~~The offense of operating a vehicle in a negligent manner shall be considered to be a lesser offense than, but included in, the offense of operating a vehicle in a reckless manner, and any person charged with operating a vehicle in a reckless manner may be convicted of the lesser offense of operating a vehicle in a negligent manner. Any person violating the provisions of this section will be guilty of a misdemeanor. PROVIDED, That the director may not revoke any license under this section, and such offense is not punishable by imprisonment or by a fine exceeding two hundred fifty dollars.) (1)(a) A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed liquor or an illegal~~

~~(b) It is an affirmative defense to negligent driving in the first degree by means of exhibiting the effects of having consumed an illegal drug that must be proved by the defendant by a preponderance of the evidence, that the driver has a valid prescription for the drug consumed, and has been consuming it according to the prescription directions and warnings.~~

~~(c) Negligent driving in the first degree is a misdemeanor.  
(2)(a) A person is guilty of negligent driving in the second degree if, under circumstances not constituting negligent driving in the first degree, he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property.~~

~~(b) It is an affirmative defense to negligent driving in the second degree that must be proved by the defendant by a preponderance of the evidence, that the driver was operating the motor vehicle on private property with the consent of the owner in a manner consistent with the owner's consent.~~

(c) Negligent driving in the second degree is a traffic infraction and is subject to a penalty of two hundred fifty dollars.

(3) For the purposes of this section:

(a) "Negligent" means the failure to exercise ordinary care, and is the doing of some act that a reasonably careful person would not do under the same or similar circumstances, or the failure to do something that a reasonably careful person would do under the same or similar circumstances.

(b) "Exhibiting the effects of having consumed liquor" means that a person has the odor of liquor on his or her breath, or that by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed liquor, and either:

(i) Is in possession of or in close proximity to a container that has or recently had liquor in it; or

(ii) Is shown by other evidence to have recently consumed liquor.

(c) "Exhibiting the effects of having consumed an illegal drug" means that a person by speech, manner, appearance, behavior, lack of coordination, or otherwise exhibits that he or she has consumed an illegal drug and either:

(i) Is in possession of an illegal drug; or

(ii) Is shown by other evidence to have recently consumed an illegal drug, (d) "Illegal drug" means a controlled substance under chapter 69.50 RCW for which the driver does not have a valid prescription or that is not being consumed in accordance with the prescription directions and warnings.

(4) Any act prohibited by this section that also constitutes a crime under any other law of this state may be the basis of prosecution under such other law notwithstanding that it may also be the basis for prosecution under this section.

NEW SECTION. Sec. 2. (1) The office of the administrator for the courts shall collect data on the following after the effective date of this act:

(a) The number of arrests, charges, and convictions for negligent driving in the first degree;

(b) The number of notices of infraction issued for negligent driving in the second degree; and

(c) The number of charges for negligent driving that were the result of an amended charge from some other offense, and the numbers for each such other offense.

(2) The office of the administrator for the courts shall compile the collected data and make a report to the legislature no later than October 1, 1998.

Sec. 3. RCW 46.61.5055 and 1995 1st sp.s. c 17 s 2 are each amended to read as follows:

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

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

(i) By imprisonment for not less than one day nor more than one year.

Twenty-four consecutive hours of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

(i) By imprisonment for not less than two days nor more than one year.

Two consecutive days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

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

(i) By imprisonment for not less than thirty days nor more than one year.

Thirty days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



(iv) A conviction for a violation of RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug; ~~§ 46.61.525(1)~~ <sup>§ 46.61.525(1)</sup> or an equivalent local ordinance. A conviction for a violation of RCW 46.61.525(1) or an equivalent local ordinance, if the conviction is the result of a charge that was originally filed as a violation of RCW 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or 46.61.522.

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

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

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

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

Sec. 4. RCW 46.52.130 and 1994 c 275 s 16 are each amended to read as follows:

A certified abstract of the driving record shall be furnished only to the individual named in the abstract, an employer, the insurance carrier that has insurance in effect covering the employer or a prospective employer, the insurance carrier that has insurance in effect covering the named individual, the insurance carrier to which the named individual has applied, an alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment, or city and county prosecuting attorneys. City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment. The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies. Upon proper request, the director shall furnish a certified abstract covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies, except that the certified abstract shall also include records of alcohol-related offenses as defined in RCW 46.01.260(2) covering a period of not more than the last ten years. Upon proper request, a certified abstract of the full driving record maintained by the department shall be furnished to a city or county prosecuting attorney, to the individual named in the abstract or to an employer or prospective employer of the named individual. The abstract, whenever possible, shall include an enumeration of motor vehicle accidents in which the person was driving; the total

number of vehicles involved; whether the vehicles were legally parked or moving; whether the vehicles were occupied at the time of the accident; any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law; and the status of the person's driving privilege in this state. The enumeration shall include any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer. Certified abstracts furnished to prosecutors and alcohol/drug assessment or treatment agencies shall also indicate whether a recorded violation is an alcohol-related offense as defined in RCW 46.01.260(2) that was originally charged as one of the alcohol-related offenses designated in RCW 46.01.260(2)(a)(i).

The abstract provided to the insurance company shall exclude any information, except that related to the commission of misdemeanors or felonies by the individual, pertaining to law enforcement officers or fire fighters as defined in RCW 41.26.030, or any officer of the Washington state patrol, while driving official vehicles in the performance of occupational duty. The abstract provided to the insurance company shall include convictions for RCW 46.61.525 (1) and (2) except that the abstract shall report them only as negligent driving without reference to whether they are for first or second degree negligent driving. The abstract provided to the insurance company shall exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract shall show the deferred prosecution as well as the removal.

The director shall collect for each abstract the sum of four dollars and fifty cents which shall be deposited in the highway safety fund.

Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of commercial motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

Any employer or prospective employer receiving the certified abstract shall use it exclusively for his or her own purpose to determine whether the licensee should be permitted to operate a commercial vehicle or school bus upon the public highways of this state and shall not divulge any information contained in it to a third party.

Any alcohol/drug assessment or treatment agency approved by the department of social and health services receiving the certified abstract shall use

it exclusively for the purpose of assisting its employees in making a determination as to what level of treatment, if any, is appropriate. The agency, or any of its employees, shall not divulge any information contained in the abstract to a third party.

Any violation of this section is a gross misdemeanor.

Sec. 5. RCW 46.20.021 and 1991 c 293 s 3 and 1991 c 73 s 1 are each reenacted and amended to read as follows:

(1) No person, except as expressly exempted by this chapter, may drive any motor vehicle upon a highway in this state unless the person has a valid driver's license issued to Washington residents under the provisions of this chapter. A violation of this subsection is a misdemeanor and is a lesser included offense within the offenses described in RCW 46.20.342(1) or 46.20.420. However, if a person in violation of this section provides the citing officer with an expired driver's license or other valid identifying documentation under RCW 46.20.035 at the time of the stop and is not in violation of RCW 46.20.342(1) or 46.20.420, the violation of this section is an infraction and is subject to a penalty of two hundred fifty dollars. If the person appears in person before the court or submits by mail written proof that he or she obtained a valid license after being cited, the court shall reduce the penalty to fifty dollars.

(2) For the purposes of obtaining a valid driver's license, a resident is a person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Evidence of residency includes but is not limited to:

- (a) Becoming a registered voter in this state; or
- (b) Receiving benefits under one of the Washington public assistance programs; or
- (c) Declaring that he or she is a resident for the purpose of obtaining a state license or tuition fees at resident rates.

(3) The term "Washington public assistance programs" referred to in subsection (2)(b) of this section includes only public assistance programs for which more than fifty percent of the combined costs of benefits and administration are paid from state funds. Programs which are not included within the term "Washington public assistance programs" pursuant to the above criteria include, but are not limited to the food stamp program under the federal food stamp act of 1964; programs under the child nutrition act of 1966, 42 U.S.C. Secs. 1771 through 1788; and aid to families with dependent children, 42 U.S.C. Secs. 601 through 606.

(4) No person shall receive a driver's license unless and until he or she surrenders to the department all valid driver's licenses in his or her possession issued to him or her by any other jurisdiction. The department shall establish a procedure to invalidate the surrendered photograph license and return it to the person. The invalidated license, along with the valid temporary Washington driver's license provided for in RCW 46.20.055(3), shall be accepted as proper identification. The department shall notify the issuing department that the

licensee is now licensed in a new jurisdiction. No person shall be permitted to have more than one valid driver's license at any time.

(5) New Washington residents are allowed thirty days from the date they become residents as defined in this section to procure a valid Washington driver's license.

(6) Any person licensed as a driver under this chapter may exercise the privilege thereby granted upon all streets and highways in this state and shall not be required to obtain any other license to exercise such privilege by any county, municipal or local board, or body having authority to adopt local police regulations.

Sec. 6. RCW 46.63.020 and 1995 1st sp.s. c 16 s 1, 1995 c 332 s 16, and 1995 c 256 s 25 are each reenacted and amended to read as follows:

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

- (1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;
- (2) RCW 46.09.130 relating to operation of nonhighway vehicles;
- (3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;
- (4) RCW 46.10.130 relating to the operation of snowmobiles;
- (5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;
- (6) RCW 46.16.010 relating to initial registration of motor vehicles;
- (7) RCW 46.16.011 relating to permitting unauthorized persons to drive;
- (8) RCW 46.16.160 relating to vehicle trip permits;
- (9) RCW 46.16.381 (6) or (9) relating to unauthorized use or acquisition of a special placard or license plate for disabled persons' parking;
- (10) RCW 46.20.021 relating to driving without a valid driver's license, unless the person cited for the violation provided the citing officer with an expired driver's license or other valid identifying documentation under RCW 46.20.035 at the time of the stop and was not in violation of RCW 46.20.342(1) or 46.20.420, in which case the violation is an infraction;

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

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

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

- (14) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;
- (15) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;
- (16) RCW 46.25.170 relating to commercial driver's licenses;
- (17) Chapter 46.29 RCW relating to financial responsibility;
- (18) RCW 46.30.040 relating to providing false evidence of financial responsibility;
- (19) RCW 46.37.435 relating to wrongful installation of sunscreening material;
- (20) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- (21) RCW 46.48.175 relating to the transportation of dangerous articles;
- (22) RCW 46.52.010 relating to duty on striking an unattended car or other property;
- (23) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (24) RCW 46.52.090 relating to reports by repairmen, storage men, and appraisers;
- (25) RCW 46.52.100 relating to driving under the influence of liquor or drugs;
- (26) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;
- (27) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;
- (28) RCW 46.55.035 relating to prohibited practices by tow truck operators;
- (29) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;
- (30) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
- (31) RCW 46.61.022 relating to failure to stop and give identification to an officer;
- (32) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
- (33) RCW 46.61.500 relating to reckless driving;
- (34) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;
- (35) RCW (~~46.61.505~~ ~~Section 5, chapter 332 (Substitute Senate Bill No. 5144), Laws of 1995~~) 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;
- (36) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
- (37) RCW 46.61.522 relating to vehicular assault;
- (38) RCW 46.61.525(1) relating to first degree negligent driving;

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- (39) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;
  - (40) RCW 46.61.530 relating to racing of vehicles on highways;
  - (41) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
  - (42) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
  - (43) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;
  - (44) Chapter 46.65 RCW relating to habitual traffic offenders;
  - (45) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;
  - (46) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;
  - (47) Chapter 46.80 RCW relating to motor vehicle wreckers;
  - (48) Chapter 46.82 RCW relating to driver's training schools;
  - (49) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;
  - (50) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.
- Passed the Senate March 6, 1996.  
Passed the House March 5, 1996.  
Approved by the Governor March 30, 1996.  
Filed in Office of Secretary of State March 30, 1996.

**CHAPTER 308**

[Engrossed Substitute Senate Bill 62111]

**CRIMINAL JUSTICE COSTS—INTERLOCAL AGREEMENTS AND CONTRACTS**

AN ACT Relating to criminal justice costs; adding a new section to chapter 39.34 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION. Sec. 1.** A new section is added to chapter 39.34 RCW to read as follows:

(1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor or offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of

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load thereon. [1961 c 12 § 46.04.410. Prior: 1959 c 49 § 43; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

**46.04.414 Pole trailer.** "Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregular shaped loads such as poles, pipes, logs or structural members capable, generally, of sustaining themselves as beams between the supporting connections. [1961 c 12 § 46.04.414. Prior: 1959 c 49 § 44; prior: 1951 c 56 § 1.]

**46.04.416 Private carrier bus.** "Private carrier bus" means every motor vehicle designed for the purpose of carrying passengers (having a seating capacity for eleven or more persons) used regularly to transport persons in furtherance of any organized agricultural, religious or charitable purpose. Such term does not include buses operated by common carriers under a franchise granted by any city or town or the Washington public utilities commission. [1970 ex.s. c 100 § 3.]

**46.04.420 Private road or driveway.** "Private road or driveway" includes every way or place in private ownership and used for travel of vehicles by the owner or those having express or implied permission from the owner, but not by other persons. [1961 c 12 § 46.04.420. Prior: 1959 c 49 § 45; prior: 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

**46.04.431 Highway.** Highway means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. [1965 ex.s. c 155 § 87.]

**46.04.435 Public scale.** "Public scale" means every scale under public or private ownership which is certified as to its accuracy and which is available for public weighing. [1961 c 12 § 46.04.435. Prior: 1959 c 49 § 47.]

**46.04.440 Railroad.** "Railroad" means a carrier of persons or property upon vehicles, other than street cars, operated upon stationary rails, the route of which is principally outside cities and towns. [1961 c 12 § 46.04.440. Prior: 1959 c 49 § 48; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

**46.04.450 Railroad sign or signal.** "Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train. [1961 c 12 § 46.04.450. Prior: 1959 c 49 § 49; prior: 1937 c 189 § 1, part; RRS § 6360-1, part.]

[Title 46 RCW—page 12]

**46.04.460 Registered owner.** "Registered owner" means the person whose lawful right of possession of a vehicle has most recently been recorded with the department. [1975 c 25 § 3; 1961 c 12 § 46.04.460. Prior: 1959 c 49 § 50; prior: 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part.]

**46.04.465 Rental car.** (1) "Rental car" means a passenger car, as defined in RCW 46.04.382, that is used solely by a rental car business for rental to others, without a driver provided by the rental car business, for periods of not more than thirty consecutive days.

(2) "Rental car" does not include:

(a) Vehicles rented or loaned to customers by automotive repair businesses while the customer's vehicle is under repair;

(b) Vehicles licensed and operated as taxicabs. [1992 c 194 § 1.]

Effective dates—1992 c 194: See note following RCW 46.04.466.

**46.04.466 Rental car business.** "Rental car business" means a person engaging within this state in the business of renting rental cars, as determined under rules of the department of licensing. [1992 c 194 § 5.]

Effective dates—1992 c 194: "(1) Sections 1 through 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1992.

(2) Sections 4 through 13 of this act shall take effect January 1, 1993." [1992 c 194 § 14.]

Registration of rental car businesses: RCW 46.87.023.

**46.04.470 Residence district.** "Residence district" means the territory contiguous to and including a public highway not comprising a business district, when the property on such public highway for a continuous distance of three hundred feet or more on either side thereof is in the main improved with residences or residences and buildings in use for business. [1961 c 12 § 46.04.470. Prior: 1959 c 49 § 51; prior: 1937 c 189 § 1, part; RRS § 6360-1, part; 1929 c 180 § 1, part; 1927 c 309 § 2, part; RRS § 6362-2, part.]

**46.04.480 Revoke.** "Revoke," in all its forms, means the invalidation for a period of one calendar year and thereafter until reissue: PROVIDED, That under the provisions of RCW 46.20.285, 46.20.311, 46.20.265, 46.61.5051, 46.61.5052, or 46.61.5053, and chapter 46.65 RCW the invalidation may last for a period other than one calendar year. [1994 c 275 § 38; 1988 c 148 § 8; 1985 c 407 § 1; 1983 c 165 § 14; 1983 c 165 § 13; 1979 c 62 § 7; 1961 c 12 § 46.04.480. Prior: 1959 c 49 § 52; prior: (i) 1943 c 153 § 1, part; 1937 c 188 § 1, part; Rem. Supp. 1943 § 6312-1, part. (ii) 1937 c 189 § 1, part; RRS § 6360-1, part.]

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

Effective dates—1985 c 407: "Sections 2 and 4 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institu-

181 § 6, part; 1921 c 96 § 27, part; 1917 c 155 § 16, part; 1915 c 142 § 24, part; RRS § 6362-3, part; 1909 c 249 § 279, part; Rem. & Bal. § 2531, part. Formerly RCW 46.48.026.]

**46.61.470 Speed traps defined, certain types permitted—Measured courses, speed measuring devices, timing from aircraft.** (1) No evidence as to the speed of any vehicle operated upon a public highway by any person arrested for violation of any of the laws of this state regarding speed or of any orders, rules, or regulations of any city or town or other political subdivision relating thereto shall be admitted in evidence in any court at a subsequent trial of such person in case such evidence relates to or is based upon the maintenance or use of a speed trap except as provided in subsection (2) of this section. A "speed trap," within the meaning of this section, is a particular section of or distance on any public highway, the length of which has been or is measured off or otherwise designated or determined, and the limits of which are within the vision of any officer or officers who calculate the speed of a vehicle passing through such speed trap by using the lapsed time during which such vehicle travels between the entrance and exit of such speed trap.

(2) Evidence shall be admissible against any person arrested or issued a notice of a traffic infraction for violation of any of the laws of this state or of any orders, rules, or regulations of any city or town or other political subdivision regarding speed if the same is determined by a particular section of or distance on a public highway, the length of which has been accurately measured off or otherwise designated or determined and either: (a) The limits of which are controlled by a mechanical, electrical, or other device capable of measuring or recording the speed of a vehicle passing within such limits; or (b) a timing device is operated from an aircraft, which timing device when used to measure the elapsed time of a vehicle passing over such a particular section of or distance upon a public highway indicates the speed of a vehicle.

(3) The exceptions of subsection (2) of this section are limited to devices or observations with a maximum error of not to exceed five percent using the lapsed time during which such vehicle travels between such limits, and such limits shall not be closer than one-fourth mile. [1981 c 105 § 1; 1961 c 12 § 46.48.120. Prior: 1937 c 189 § 74; RRS § 6360-74; 1927 c 309 § 7; RRS § 6362-7. Formerly RCW 46.48.120.]

**46.61.475 Charging violations of speed regulations.** (1) In every charge of violation of any speed regulation in this chapter the complaint, also the summons or notice to appear, shall specify the approximate speed at which the defendant is alleged to have driven, also the maximum speed applicable within the district or at the location. [1965 ex.s. c 155 § 58.]

**RECKLESS DRIVING, DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUG, VEHICULAR HOMICIDE AND ASSAULT**

**46.61.500 Reckless driving—Penalty.** (1) Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving. Violation of the provisions of this section is a gross misdemeanor punishable by imprisonment of not more than one year and by a fine of not more than five thousand dollars.

(2) The license or permit to drive or any nonresident privilege of any person convicted of reckless driving shall be suspended by the department for not less than thirty days. [1990 c 291 § 1; 1979 ex.s. c 136 § 85; 1967 c 32 § 67; 1965 ex.s. c 155 § 59.]

*Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

*Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.*

*Arrest of person involved in reckless driving: RCW 10.31.100.*

*Embracing another while driving as reckless driving: RCW 46.61.665.*

*Excess speed as prima facie evidence of reckless driving: RCW 46.61.465.*

*Racing of vehicles on public highways, reckless driving: RCW 46.61.530.*

*Revocation of license, reckless driving: RCW 46.20.285.*

**46.61.502 Driving under the influence.** (1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:

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

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

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

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

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

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

(5) A violation of this section is a gross misdemeanor. [1994 c 275 § 2; 1993 c 328 § 1; 1987 c 373 § 2; 1986 c 153 § 2; 1979 ex.s. c 176 § 1.]

*Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**Legislative finding, purpose—1987 c 373:** "The legislature finds the existing statutes that establish the criteria for determining when a person is guilty of driving a motor vehicle under the influence of intoxicating liquor or drugs are constitutional and do not require any additional criteria to ensure their legality. The purpose of this act is to provide an additional method of defining the crime of driving while intoxicated. This act is not an acknowledgement that the existing breath alcohol standard is legally improper or invalid." [1987 c 373 § 1.]

**Severability—1987 c 373:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 373 § 8.]

**Severability—1979 ex.s. c 176:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 176 § 8.]

*Business operation of vessel or vehicle while intoxicated: RCW 9.91.020.*

*Operating aircraft recklessly or under influence of intoxicants or drugs: RCW 47.68.220.*

*Use of vessel in reckless manner or while under influence of alcohol or drugs prohibited: RCW 88.12.025.*

**46.61.504 Physical control of vehicle under the influence.** (1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:

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

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

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

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

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

(4) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of 0.10 or more in violation of subsection (1)(a) of this section, and in any case

in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1) (b) or (c) of this section.

(5) A violation of this section is a gross misdemeanor. [1994 c 275 § 3; 1993 c 328 § 2; 1987 c 373 § 3; 1986 c 153 § 3; 1979 ex.s. c 176 § 2.]

*Rules of court: Bail in criminal traffic offense cases—Mandatory appearance—CrRLJ 3.2.*

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**Legislative finding, purpose—Severability—1987 c 373:** See notes following RCW 46.61.502.

**Severability—1979 ex.s. c 176:** See note following RCW 46.61.502.

**46.61.5051 Alcohol violator with regular license—Penalties.** (1) A person whose driver's license is not in a probationary, suspended, or revoked status, and who has not been convicted of a violation of RCW 46.61.502 or 46.61.504 that was committed within five years before the commission of the current violation, and who violates RCW 46.61.502(1)(a) or 46.61.504(1)(a) because of an alcohol concentration of at least 0.10 but less than 0.15, or a person who violates RCW 46.61.502(1) (b) or (c) or 46.61.504(1) (b) or (c) and for any reason other than the person's refusal to take a test offered pursuant to RCW 46.20.308 the person's alcohol concentration is not proved, is guilty of a gross misdemeanor and shall be punished as follows:

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

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

(c) By suspension of the offender's license or permit to drive, or suspension of any nonresident privilege to drive, for a period of ninety days. The court may suspend all or part of the ninety-day period of suspension upon a plea agreement executed by the defendant and the prosecutor. The court shall notify the department of licensing of the conviction and of any period of suspension and shall notify the department of the person's completion of any period of suspension. Upon receiving notification of the conviction, or if applicable, upon receiving notification of the completion of any period of suspension, the department shall issue the offender a probationary license in accordance with RCW 46.20.355.

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

**46.61.5054 Alcohol violators—Additional fee—Distribution.** (1)(a) In addition to penalties set forth in \*RCW 46.61.5051 through 46.61.5053 until September 1, 1995, and RCW 46.61.5055 thereafter, a one hundred twenty-five dollar fee shall be assessed to a person who is either convicted, sentenced to a lesser charge, or given deferred prosecution, as a result of an arrest for violating RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for the purpose of funding the Washington state toxicology laboratory and the Washington state patrol for grants and activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs.

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

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

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

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

(b) The remainder of the fee shall be forwarded to the state treasurer who shall, through June 30, 1997, deposit: Fifty percent in the death investigations' account to be used solely for funding the state toxicology laboratory blood or breath testing programs; and fifty percent in the state patrol highway account to be used solely for funding activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs. Effective July 1, 1997, the remainder of the fee shall be forwarded to the state treasurer who shall deposit: Fifteen percent in the death investigations' account to be used solely for funding the state toxicology laboratory blood or breath testing programs; and eighty-five percent in the state patrol highway account to be used solely for funding activities to increase the conviction rate and decrease the incidence of persons driving under the influence of alcohol or drugs.

(3) This section applies to any offense committed on or after July 1, 1993. [1995 c 398 § 15; 1995 c 332 § 13; 1994 c 275 § 7.]

Reviser's note: \*(1) RCW 46.61.5051, 46.61.5052, and 46.61.5053 were repealed by 1995 c 332 § 21, effective September 1, 1995.

(2) This section was amended by 1995 c 332 § 13 and by 1995 c 398 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective dates—1995 c 332: See notes following RCW 46.20.308.

Short title—Effective date—1994 c 275: See notes following RCW 46.04.015.

**46.61.5055 Alcohol violators—Penalty schedule.** (1) A person who is convicted of a violation of RCW 46.61.502

or 46.61.504 and who has no prior offense within five years shall be punished as follows:

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

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

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

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

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

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

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

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

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

(a) In the case of a person whose alcohol concentration was less than 0.15, or for whom for reasons other than the

person's refusal to take a test offered pursuant to RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

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

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

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

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

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

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

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

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

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

(i) By imprisonment for not less than ninety days nor more than one year. Ninety days of the imprisonment may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental

well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

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

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

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

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

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

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

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

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

(7)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding two years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and



proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

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

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

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

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

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

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

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

(vi) A deferred prosecution under chapter 10.05 RCW granted in a prosecution for a violation of RCW 46.61.502, 46.61.504, or an equivalent local ordinance.

(b) "Within five years" means that the arrest for a prior offense occurred within five years of the arrest for the current offense. [1995 1st sp.s. c 17 § 2; 1995 c 332 § 5.]

**Effective date—1995 1st sp.s. c 17:** See note following RCW 46.20.355.

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

**46.61.5056 Alcohol violators—Information school—Evaluation and treatment.** (1) A person subject to alcohol assessment and treatment under RCW 46.61.5055 shall be required by the court to complete a course in an alcohol information school approved by the department of social and health services or to complete more intensive treatment in a

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

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

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

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

(5) The department of licensing and the department of social and health services may adopt such rules as are necessary to carry out this section. [1995 c 332 § 14; 1994 c 275 § 9.]

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**46.61.5058 Alcohol violators—Vehicle seizure and forfeiture.** (1) Upon the arrest of a person or upon the filing of a complaint, citation, or information in a court of competent jurisdiction, based upon probable cause to believe that a person has violated RCW 46.61.502 or 46.61.504 or any similar municipal ordinance, if such person has a prior offense within five years as defined in RCW 46.61.5055, and where the person has been provided written notice that any transfer, sale, or encumbrance of such person's interest in the vehicle over which that person was actually driving or had physical control when the violation occurred, is unlawful pending either acquittal, dismissal, sixty days after conviction, or other termination of the charge, such person shall be prohibited from encumbering, selling, or transferring his or her interest in such vehicle, except as otherwise provided in (a), (b), and (c) of this subsection, until either acquittal, dismissal, sixty days after conviction, or other termination of

a sold vehicle, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(14) The value of a sold forfeited vehicle is the sale price. The value of a retained forfeited vehicle is the fair market value of the vehicle at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing. A seizing agency may, but need not, use an independent qualified appraiser to determine the value of retained vehicles. If an appraiser is used, the value of the vehicle appraised is net of the cost of the appraisal. [1995 c 332 § 6; 1994 c 139 § 1.]

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

**46.61.506 Persons under influence of intoxicating liquor or drug—Evidence—Tests—Information concerning tests.** (1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.10, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

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

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

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

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

(6) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney. [1995 c 332

§ 18; 1994 c 275 § 26; 1987 c 373 § 4; 1986 c 153 § 4; 1979 ex.s. c 176 § 5; 1975 1st ex.s. c 287 § 1; 1969 c 1 § 3 (Initiative Measure No. 242, approved November 5, 1968).]

*Rules of court: Evidence of Breathalyzer, BAC Verifier, simulator solution tests—CPLJ 6.13.*

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**Legislative finding, purpose—Severability—1987 c 373:** See notes following RCW 46.61.502.

**Severability—1979 ex.s. c 176:** See note following RCW 46.61.502.

**Severability, implied consent law—1969 c 1:** See RCW 46.20.911.

*Arrest of driver under influence of intoxicating liquor or drugs: RCW 10.31.100.*

**46.61.5151 Sentences—Intermittent fulfillment—Restrictions.** A sentencing court may allow persons convicted of violating RCW 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in RCW 46.61.5055 in nonconsecutive or intermittent time periods. However, any mandatory minimum sentence under RCW 46.61.5055 shall be served consecutively unless suspended or deferred as otherwise provided by law. [1995 c 332 § 15; 1994 c 275 § 39; 1983 c 165 § 33.]

**Severability—Effective dates—1995 c 332:** See notes following RCW 46.20.308.

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**Legislative finding, intent—Effective dates—Severability—1983 c 165:** See notes following RCW 46.20.308.

**46.61.5152 Attendance at program focusing on victims.** In addition to penalties that may be imposed under RCW 46.61.5051, 46.61.5052, or 46.61.5053, the court may require a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 or who enters a deferred prosecution program under RCW 10.05.020 based on a violation of RCW 46.61.502 or 46.61.504, to attend an educational program focusing on the emotional, physical, and financial suffering of victims who were injured by persons convicted of driving while under the influence of intoxicants. [1994 c 275 § 40; 1992 c 64 § 1.]

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.