

the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate April 10, 1982.

Passed the House April 9, 1982.

Approved by the Governor April 20, 1982.

Filed in Office of Secretary of State April 20, 1982.

CHAPTER 47

[House Bill No. 600]

CRIMINAL LAW REVISIONS

AN ACT Relating to crimes; amending section 1, chapter 175, Laws of 1969 ex. sess. as amended by section 1, chapter 258, Laws of 1981 and RCW 9.41.025; adding a new section to chapter 9.41 RCW; amending section 1, chapter 64, Laws of 1933 and RCW 9.41.190; amending section 5, chapter 172, Laws of 1935 as amended by section 4, chapter 124, Laws of 1961 and RCW 9.41.050; amending section 13, chapter 249, Laws of 1909 and RCW 9.92.010; amending section 15, chapter 249, Laws of 1909 and RCW 9.92.020; amending section 785, Code of 1881 as amended by section 14, chapter 249, Laws of 1909 and RCW 9.92.030; amending section 1, chapter 24, Laws of 1905 as last amended by section 4, chapter 8, Laws of 1982 1st ex. sess. and RCW 9.92.060; amending section 2, chapter 188, Laws of 1971 ex. sess. and RCW 9.92.064; amending section 1, chapter 19, Laws of 1980 as last amended by section 5, chapter 8, Laws of 1982 1st ex. sess. and RCW 9.95.210; amending section 6, chapter 227, Laws of 1957 and RCW 9.95.230; amending section 9A.20.030, chapter 260, Laws of 1975 1st ex. sess. as amended by section 3, chapter 29, Laws of 1979 and RCW 9A.20.030; amending section 9A.52.100, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.52.100; amending section 9A.56.040, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.56.040; amending section 9A.72.090, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.72.090; amending section 9A.72.100, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.72.100; amending section 9A.72.110, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.72.110; amending section 9A.72.120, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.72.120; amending section 9A.76.050, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.76.050; amending section 9A.76.070, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.76.070; amending section 9A.76.080, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.76.080; amending section 9A.76.110, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.76.110; amending section 9A.76.120, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.76.120; amending section 1, chapter 244, Laws of 1975 1st ex. sess. and RCW 10.05.010; amending section 1, chapter 5, Laws of 1973 as amended by section 13, chapter 61, Laws of 1979 and RCW 46.20.391; amending section 1, chapter 75, Laws of 1979 ex. sess. and RCW 46.61.024; amending section 62, chapter 155, Laws of 1965 ex. sess. as last amended by section 6, chapter 176, Laws of 1979 ex. sess. and RCW 46.61.515; amending section 9, chapter 8, Laws of 1982 1st ex. sess. (uncodified); adding a new section to chapter 9A.52 RCW; repealing section 777, Code of 1881, section 63, chapter 249, Laws of 1909 and RCW 10.43.010; prescribing penalties; providing an effective date; and declaring an emergency.

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

Section 1. Section 1, chapter 175, Laws of 1969 ex. sess. as amended by section 1, chapter 258, Laws of 1981 and RCW 9.41.025 are each amended to read as follows:

Any person who shall commit or attempt to commit any felony, including but not limited to assault in the first degree, rape in the first degree, burglary in the first degree, robbery in the first degree, riot, or any other

felony which includes as an element of the crime the fact that the accused was armed with a firearm, or any misdemeanor or gross-misdemeanor categorized herein as inherently dangerous, while armed with, or in the possession of any firearm, shall upon conviction, in addition to the penalty provided by statute for the crime committed without use or possession of a firearm, be imprisoned as herein provided:

(1) For the first offense the court shall impose a sentence of not less than five years, which sentence shall not be suspended or deferred;

(2) For a second offense, or if, in the case of a first conviction of violation of any provision of this section, the offender shall previously have been convicted of violation of the laws of the United States or of any other state, territory, or district relating to the use or possession of a firearm while committing or attempting to commit a crime, the offender shall be imprisoned for not less than seven and one-half years, which sentence shall not be suspended or deferred;

(3) For a third or subsequent offense, or if the offender shall previously have been convicted two or more times in the aggregate of any violation of the law of the United States or of any other state, territory, or district relating to the use or possession of a firearm while committing or attempting to commit a crime, the offender shall be imprisoned for not less than fifteen years, which sentence shall not be suspended or deferred;

(4) Misdemeanors or gross misdemeanors categorized as "inherently dangerous" as the term is used in this statute means any of the following crimes or an attempt to commit any of the same: Simple assault, coercion, vehicle prowling, escape in the third degree, obstructing a public servant, theft in the third degree, resisting arrest, and communication with a minor for immoral purposes.

(5) If any person shall resist apprehension or arrest by firing upon a law enforcement officer, such person shall in addition to the penalty provided by statute for resisting arrest, be guilty of a felony and punished by imprisonment for not less than ten years, which sentence shall not be suspended or deferred.

Sec. 2. Section 1, chapter 64, Laws of 1933 and RCW 9.41.190 are each amended to read as follows:

~~((That))~~ It ((shall be)) is unlawful for any person to manufacture, own, buy, sell, loan, furnish, transport, or have in possession(;) or under control, any machine gun, or any part thereof capable of use or assembling or repairing any machine gun: PROVIDED, HOWEVER, That such limitation shall not apply to any peace officer in the discharge of official duty, or to any officer or member of the armed forces of the United States or the state of Washington: PROVIDED FURTHER, That this section does not apply to a person, including an employee of such person, who or which is exempt from or licensed under the National Firearms Act (26 U.S.C. section 5801 et seq.), and engaged in the production, manufacture, or testing of weapons

or equipment to be used or purchased by the armed forces of the United States, and having a United States government industrial security clearance.

Sec. 3. Section 5, chapter 172, Laws of 1935 as amended by section 4, chapter 124, Laws of 1961 and RCW 9.41.050 are each amended to read as follows:

~~((No person shall carry a pistol in any vehicle unless it is unloaded or carry a pistol concealed on his person, except in his place of abode or fixed place of business, without a license therefor as hereinafter provided))~~ (1) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed weapon.

(2) A person who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.

(3) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed weapon and: (a) The pistol is on the licensee's person, (b) the licensee is within the vehicle at all times that the pistol is there, or (c) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle.

NEW SECTION. Sec. 4. There is added to chapter 9.41 RCW a new section to read as follows:

(1) It is unlawful for an elementary or secondary school student under the age of twenty-one knowingly to carry onto public or private elementary or secondary school premises:

- (a) Any firearm; or
- (b) Any dangerous weapon as defined in RCW 9.41.250; or
- (c) Any device commonly known as "nun-chu-ka sticks", consisting of two or more lengths of wood, metal, plastic, or similar substance connected with wire, rope, or other means; or
- (d) Any device, commonly known as "throwing stars", which are multi-pointed, metal objects designed to embed upon impact from any aspect.

(2) Any such student violating subsection (1) of this section is guilty of a gross misdemeanor.

- (3) Subsection (1) of this section does not apply to:
 - (a) Any student of a private military academy; or
 - (b) Any student engaged in military activities, sponsored by the federal or state governments while engaged in official duties; or
 - (c) Any student who is attending a convention or firearms safety course authorized by school authorities in which the firearms of collectors or instructors are handled or displayed; or

(d) Any student who possesses nun-chu-ka sticks, throwing stars, or other dangerous weapons to be used in martial arts classes conducted on the school premises.

Sec. 5. Section 13, chapter 249, Laws of 1909 and RCW 9.92.010 are each amended to read as follows:

Every person convicted of a felony for which no punishment is specially prescribed by any statutory provision in force at the time of conviction and sentence, shall be punished by ~~((imprisonment in the state penitentiary for not more than))~~ confinement or fine which shall not exceed confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of not more than ((five)) twenty thousand dollars, or by both such confinement and fine.

Sec. 6. Section 15, chapter 249, Laws of 1909 and RCW 9.92.020 are each amended to read as follows:

Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than ((one)) five thousand dollars, or by both such imprisonment and fine.

Sec. 7. Section 785, Code of 1881 as amended by section 14, chapter 249, Laws of 1909 and RCW 9.92.030 are each amended to read as follows:

Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than ((two hundred and fifty)) one thousand dollars or both such imprisonment and fine.

Sec. 8. Section 1, chapter 24, Laws of 1905 as last amended by section 4, chapter 8, Laws of 1982 1st ex. sess. and RCW 9.92.060 are each amended to read as follows:

Whenever any person shall be convicted of any crime except murder, burglary in the first degree, arson in the first degree, robbery, carnal knowledge of a female child under the age of ten years, or rape, the court may in its discretion, at the time of imposing sentence upon such person, direct that such sentence be stayed and suspended until otherwise ordered by such court, and that the sentenced person be placed under the charge of a parole or peace officer during the term of such suspension, upon such terms as the court may determine: PROVIDED, That as a condition to suspension of sentence, the court shall require the payment of the penalty assessment required by RCW 7.68.035: PROVIDED FURTHER, That as a condition to suspension of sentence, the court may require the convicted person to make such monetary payments, on such terms as the court deems

appropriate under the circumstances, as are necessary (1) to comply with any order of the court for the payment of family support, (2) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, ((and)) (3) to pay any fine imposed and not suspended and the court or other costs incurred in the prosecution of the case, including reimbursement of the state for costs of extradition if return to this state by extradition was required, and (4) to contribute to a county or interlocal drug fund. In no case shall a sentence be suspended under the provisions of this section unless the person if sentenced to confinement in a penal institution be placed under the charge of a parole officer, who is a duly appointed and acting officer of the institution to which the person is sentenced: PROVIDED, That persons convicted in justice court may be placed under supervision of a probation officer employed for that purpose by the board of county commissioners of the county wherein the court is located. If restitution to the victim has been ordered under subsection (2) of this section, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made as ordered. If restitution has not been made, the officer shall inform the prosecutor of that violation of the terms of the suspended sentence not less than three months prior to the termination of the suspended sentence.

Sec. 9. Section 2, chapter 188, Laws of 1971 ex. sess. and RCW 9.92-.064 are each amended to read as follows:

In the case of a person granted a suspended sentence under the provisions of RCW 9.92.060, the court shall establish a definite termination date for the suspended sentence. The court shall set a date no later than the time the original sentence would have elapsed and may provide for an earlier termination of the suspended sentence. Prior to the entry of an order formally terminating a suspended sentence the court may modify the terms and conditions of the suspension or extend the period of the suspended sentence.

Sec. 10. Section 1, chapter 19, Laws of 1980 as last amended by section 5, chapter 8, Laws of 1982 1st ex. sess. and RCW 9.95.210 are each amended to read as follows:

The court in granting probation, may suspend the imposing or the execution of the sentence and may direct that such suspension may continue for such period of time, not exceeding the maximum term of sentence, except as hereinafter set forth and upon such terms and conditions as it shall determine.

The court in the order granting probation and as a condition thereof, may in its discretion imprison the defendant in the county jail for a period

not exceeding one year or may fine the defendant any sum not exceeding one thousand dollars plus the costs of the action, and may in connection with such probation impose both imprisonment in the county jail and fine and court costs. As a condition of probation, the court shall require the payment of the penalty assessment required by RCW 7.68.035. The court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary (1) to comply with any order of the court for the payment of family support, (2) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, (3) to pay such fine as may be imposed and court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required, and (4) to contribute to a county or interlocal drug fund, and may require bonds for the faithful observance of any and all conditions imposed in the probation. The court shall order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of said probation to follow implicitly the instructions of the secretary. If the probationer has been ordered to make restitution, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of such person during the term of his probation: PROVIDED, That for defendants found guilty in justice court, like functions as the secretary performs in regard to probation may be performed by probation officers employed for that purpose by the ((board of)) county ((commissioners)) legislative authority of the county wherein the court is located.

Sec. 11. Section 6, chapter 227, Laws of 1957 and RCW 9.95.230 are each amended to read as follows:

The court shall have authority at any time (~~during the course of~~) prior to the entry of an order terminating probation to (1) revoke, modify, or change its order of suspension of imposition or execution of sentence; (2) it may at any time, when the ends of justice will be subserved thereby, and when the reformation of the probationer shall warrant it, terminate the period of probation, and discharge the person so held.

Sec. 12. Section 9A.20.030, chapter 260, Laws of 1975 1st ex. sess. as amended by section 3, chapter 29, Laws of 1979 and RCW 9A.20.030 are each amended to read as follows:

(1) If a person has gained money or property or caused a victim to lose money or property through the commission of a crime, upon conviction thereof or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement, the court, in lieu of imposing the fine authorized for the offense under RCW 9A.20.020, may order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain or victim's loss from the commission of a crime. Such amount may be used to provide restitution to the victim at the order of the court. It shall be the duty of the prosecuting attorney to investigate the alternative of restitution, and to recommend it to the court, when the prosecuting attorney believes that restitution is appropriate and feasible. If the court orders restitution, the court shall make a finding as to the amount of the defendant's gain or victim's loss from the crime, and if the record does not contain sufficient evidence to support such finding the court may conduct a hearing upon the issue. For purposes of this section, the terms "gain" or "loss" refer to the amount of money or the value of property or services gained or lost.

(2) Notwithstanding any other provision of law, this section also applies to any corporation or joint stock association found guilty of any crime.

NEW SECTION. Sec. 13. There is added to chapter 9A.52 RCW a new section to read as follows:

(1) A person is guilty of vehicle prowling in the first degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a motor home, as defined in RCW 46.04.305, or in a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities

(2) Vehicle prowling in the first degree is a class C felony.

Sec. 14. Section 9A.52.100, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.52.100 are each amended to read as follows:

(1) A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property therein, he enters or remains unlawfully in a vehicle other than a motor home, as defined in RCW 46.04.305, or a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Vehicle prowling in the second degree is a gross misdemeanor.

Sec. 15. Section 9A.56.040, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.56.040 are each amended to read as follows:

(1) A person is guilty of theft in the second degree if he commits theft of:

(a) Property or services which exceed(s) two hundred and fifty dollars in value, but does not exceed one thousand five hundred dollars in value; or

(b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant;
or

(c) A credit card; or

(d) A motor vehicle, of a value less than one thousand five hundred dollars; or

(e) A firearm, of a value less than one thousand five hundred dollars.

(2) Theft in the second degree is a class C felony.

Sec. 16. Section 9A.72.090, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.72.090 are each amended to read as follows:

(1) A person is guilty of bribing a witness if he offers, confers, or agrees to confer any benefit upon a witness or a person he has reason to believe is about to be called as a witness in any official proceeding or upon a person whom he has reason to believe may have information relevant to a criminal investigation, with intent to:

(a) Influence the testimony of that person; or

(b) Induce that person to avoid legal process summoning him to testify;

or

(c) Induce that person to absent himself from an official proceeding to which he has been legally summoned.

(2) Bribing a witness is a class B felony.

Sec. 17. Section 9A.72.100, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.72.100 are each amended to read as follows:

(1) A witness or a person who has reason to believe he is about to be called as a witness in any official proceeding or that he may have information relevant to a criminal investigation is guilty of bribe receiving by a witness if he requests, accepts, or agrees to accept any benefit pursuant to an agreement or understanding that:

(a) His testimony will thereby be influenced; or

(b) He will attempt to avoid legal process summoning him to testify; or

(c) He will attempt to absent himself from an official proceeding to which he has been legally summoned.

(2) Bribe receiving by a witness is a class B felony.

Sec. 18. Section 9A.72.110, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.72.110 are each amended to read as follows:

(1) A person is guilty of intimidating a witness if, by use of a threat directed to a witness or a person he has reason to believe is about to be called as a witness in any official proceeding or to a person whom he has reason to believe may have information relevant to a criminal investigation, he attempts to:

(a) Influence the testimony of that person; or

(b) Induce that person to elude legal process summoning him to testify;
or

(c) Induce that person to absent himself from such proceedings.

(2) "Threat" as used in this section means

(a) to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or

(b) threats as defined in RCW 9A.04.110(25).

(3) Intimidating a witness is a class B felony.

Sec. 19. Section 9A.72.120, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.72.120 are each amended to read as follows:

(1) A person is guilty of tampering with a witness if he attempts to induce a witness or person he has reason to believe is about to be called as a witness in any official proceeding or a person whom he has reason to believe may have information relevant to a criminal investigation to:

(a) Testify falsely or, without right or privilege to do so, to withhold any testimony; or

(b) Absent himself from such proceedings.

(2) Tampering with a witness is a class C felony.

Sec. 20. Section 9A.76.050, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.76.050 are each amended to read as follows:

As used in RCW 9A.76.070, 9A.76.080, and 9A.76.090, a person "renders criminal assistance" if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he knows has committed a crime or juvenile offense or is being sought by law enforcement officials for the commission of a crime or juvenile offense or has escaped from a detention facility, he:

(1) Harbors or conceals such person; or

(2) Warns such person of impending discovery or apprehension; or

(3) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension; or

(4) Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person; or

(5) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person; or

(6) Provides such person with a weapon.

Sec. 21. Section 9A.76.070, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.76.070 are each amended to read as follows:

(1) A person is guilty of rendering criminal assistance in the first degree if he renders criminal assistance to a person who has committed or is being sought for murder in the first degree or any class A felony or equivalent juvenile offense.

(2) Rendering criminal assistance in the first degree is:

(a) A gross misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060;

(b) A class C felony in all other cases.

Sec. 22. Section 9A.76.080, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.76.080 are each amended to read as follows:

(1) A person is guilty of rendering criminal assistance in the second degree if he renders criminal assistance to a person who has committed or is being sought for a class B or class C felony or an equivalent juvenile offense or to someone being sought for violation of parole, probation, or community supervision.

(2) Rendering criminal assistance in the second degree is:

(a) A misdemeanor if it is established by a preponderance of the evidence that the actor is a relative as defined in RCW 9A.76.060;

(b) A gross misdemeanor in all other cases.

Sec. 23. Section 9A.76.110, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.76.110 are each amended to read as follows:

(1) A person is guilty of escape in the first degree if, being detained pursuant to a conviction of a felony or an equivalent juvenile offense, he escapes from custody or a detention facility.

(2) Escape in the first degree is a class B felony.

Sec. 24. Section 9A.76.120, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.76.120 are each amended to read as follows:

(1) A person is guilty of escape in the second degree if:

(a) He escapes from a detention facility; or

(b) Having been charged with a felony or an equivalent juvenile offense, he escapes from custody.

(2) Escape in the second degree is a class C felony.

Sec. 25. Section 1, chapter 75, Laws of 1979 ex. sess. and RCW 46.61-.024 are each amended to read as follows:

Any driver of a motor vehicle who wilfully fails or refuses to immediately bring his vehicle to a stop and who drives his vehicle in a manner indicating a wanton (~~and~~) or wilful disregard for the lives or property of others while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and his vehicle shall be appropriately marked showing it to be an official police vehicle.

Sec. 26. Section 1, chapter 244, Laws of 1975 1st ex. sess. and RCW 10.05.010 are each amended to read as follows:

Upon arraignment in a court of limited jurisdiction a person charged with a misdemeanor or gross misdemeanor may petition the court to be considered for a deferred prosecution program. A person charged with a

traffic infraction, misdemeanor, or gross misdemeanor under Title 46 RCW shall not be eligible for a deferred prosecution program unless the court makes specific findings pursuant to RCW 10.05.020. Such person shall not be eligible for a deferred prosecution program more than once in any five-year period.

Sec. 27. Section 62, chapter 155, Laws of 1965 ex. sess. as last amended by section 6, chapter 176, Laws of 1979 ex. sess. and RCW 46.61.515 are each amended to read as follows:

(1) Every person who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall be punished by imprisonment for not less than ~~((one day))~~ twenty-four consecutive hours nor more than one year, and by a fine of not more than five hundred dollars. The person shall, in addition, be required to complete a course at an alcohol information school approved by the department of social and health services. ~~((One day))~~ If, after completing an alcohol evaluation at the alcohol information school, the convicted person is found to have a serious alcohol problem, the alcohol information school may recommend more intensive alcoholism treatment in a program approved by the department of social and health services. In the alternative, the court may bypass alcohol information school if the court determines that more intensive alcoholism treatment in a program approved by the department of social and health services is appropriate. Standards for approval shall be prescribed by rule under the administrative procedure act, chapter 34.04 RCW. The courts shall periodically review the costs of alcohol information schools and treatment programs within their jurisdictions. Twenty-four consecutive hours of the jail sentence shall not be suspended or deferred unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being. Whenever the mandatory jail sentence is suspended or deferred, the judge must state, in writing, the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. The court may impose conditions of probation that may include nonrepetition, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate.

(2) On a second or subsequent conviction ~~((under RCW 46.61.502 or 46.61.504))~~ for driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs within a five year period a person shall be punished by imprisonment for not less than seven days nor more than one year and by a fine not more than one thousand dollars. The jail sentence shall not be suspended or deferred unless the judge finds that the imposition of the jail sentence will pose a risk to the defendant's physical or mental well-being. Whenever the mandatory jail sentence is suspended or deferred, the judge must state, in writing, the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. If such person at the time of a second or subsequent conviction is without a license or permit because of a previous suspension or

revocation, the minimum mandatory sentence shall be ninety days in jail and a two hundred dollar fine. The penalty so imposed shall not be suspended or deferred. The person shall, in addition, be required to complete diagnostic evaluation at an alcoholism program approved by the department of social and health services or other diagnostic evaluation as the court designates. If the person is found to have an alcohol or drug problem requiring treatment, the person shall complete treatment at an approved alcoholism treatment facility or approved drug treatment center.

In addition to any nonsuspendable and nondeferrable jail sentence required by this subsection, the court shall sentence a person to a term of imprisonment not exceeding one hundred eighty days and shall suspend but shall not defer the sentence for a period not exceeding two years. The suspension of the sentence may be conditioned upon 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 suspension during the suspension period.

(3) There shall be levied and paid into the highway safety fund of the state treasury a penalty assessment in the minimum amount of twenty-five percent of, and which shall be in addition to, any fine, bail forfeiture, or costs on all offenses involving a violation of any state statute or city or county ordinance relating to driving a motor vehicle while under the influence of intoxicating liquor or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor: PROVIDED, That all funds derived from such penalty assessment shall be in addition to and exclusive of assessments made under RCW 46.81.030 and shall be for the exclusive use of the department for driver services programs and for a state-wide alcohol safety action program, or other similar programs designed primarily for the rehabilitation or control of traffic offenders. Such penalty assessment shall be included in any bail schedule and shall be included by the court in any pronouncement of sentence.

(4) Notwithstanding the provisions contained in chapters 3.16, 3.46, 3.50, 3.62, or 35.20 RCW, or any other section of law, the penalty assessment provided for in subsection (3) of this section shall not be suspended, waived, modified, or deferred in any respect, and all moneys derived from such penalty assessments shall be forwarded to the highway safety fund to be used exclusively for the purposes set forth in subsection (3) of this section.

(5) The license or permit to drive or any nonresident privilege of any person convicted of ~~((either of the offenses named in RCW 46.61.502 or 46.61.504))~~ driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs shall:

(a) On the first conviction under either such offense, be suspended by the department for not less than thirty days: PROVIDED, That the court may recommend that no suspension action be taken. The treatment agency

shall forward a copy of the completed diagnostic evaluation and treatment report to the department of licensing before the department may reinstate the person's driver's license. The department of licensing shall determine the person's eligibility for licensing based upon these reports and shall deny reinstatement until enrollment and participation in an approved program has been established and the person is otherwise qualified;

(b) On a second conviction under either such offense within a five year period, be suspended by the department for not less than sixty days. The treatment agency shall forward a copy of the completed diagnostic evaluation and treatment report to the department of licensing before the department may reinstate the person's driver's license. The department of licensing shall determine the person's eligibility for licensing based upon these reports as provided in RCW 46.20.031 and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified;

(c) On a third or subsequent conviction under either such offense within a five year period, be revoked by the department.

(6) In any case provided for in this section, where a driver's license is to be revoked or suspended, such revocation or suspension shall be stayed and shall not take effect until after the determination of any appeal from the conviction which may lawfully be taken, but in case such conviction is sustained on appeal such revocation or suspension shall take effect as of the date that the conviction becomes effective for other purposes.

~~((7) The provisions of this section limiting the authority of a court to defer or suspend a sentence shall not take effect until January 1, 1980. The division of criminal justice, no later than December 31, 1980, shall submit a study to the house of representatives and to the senate which details the impact of the sentencing provisions established by this section. The impact study shall include, but shall not be limited to, the following information: The impact of the provisions upon county jail conditions and bed space, the cost impact of the provisions upon local and state governments, and the existence of alternative facilities to which individuals sentenced under this section may be committed:))~~

NEW SECTION. Sec. 28. Section 777, Code of 1881, section 63, chapter 249, Laws of 1909 and RCW 10.43.010 are each repealed.

Sec. 29. Section 9, chapter 8, Laws of 1982 1st ex. sess. (uncodified) is amended to read as follows:

~~((This act))~~ Chapter 8, Laws of 1982 1st ex. sess. is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except sections 2 ~~((through))~~, 3, and 6 of ~~((this act))~~ chapter 8, Laws of 1982 1st ex. sess. shall take effect on January 1, 1983.

***Sec. 30. Section 1, chapter 5, Laws of 1973 as amended by section 13, chapter 61, Laws of 1979 and RCW 46.20.391 are each amended to read as follows:**

(1) Any person licensed under this chapter who is convicted of an offense relating to motor vehicles for which suspension or revocation of the driver's license is mandatory, other than negligent homicide, may petition the court for a stay of the effect of the mandatory suspension or revocation for the purpose of submitting to the department an application for an occupational driver's license. Any person who is convicted or pleads guilty to a charge under RCW 46.61.502 and whose license has been revoked under RCW 46.20-.308 may petition the court to stay the effect of the revocation for the purpose of submitting to the department an application for an occupational driver's license. The court upon determining the petitioner is engaged in an occupation or trade which makes it essential that the petitioner operate a motor vehicle may stay the effect of the mandatory suspension or revocation, notwithstanding RCW 46.20.270, for a period of not more than thirty days and may set definite restrictions as to hours of the day which may not exceed twelve hours in any one day, days of the week, type of occupation, and areas or routes of travel permitted under the occupational driver's license.

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

(a) Within one year immediately preceding the present conviction the applicant has not been convicted of any offense relating to motor vehicles for which suspension or revocation of a driver's license is mandatory; and

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

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

(3) The department, upon receipt of an application and the prescribed fee, may issue an occupational driver's license to any person eligible under this section for a period of not more than one year which permits the operation of a motor vehicle only within the limits established by the court and only when the operation is essential to the licensee's occupation or trade.

(4) The director shall cancel an occupational driver's license upon receipt of notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, or of an offense which pursuant to chapter 46.20 RCW would warrant suspension or revocation of a regular driver's license. Such cancellation shall be effective as of the date of such conviction, and shall continue with the same force and effect as any suspension or revocation under this title.

***Sec. 30 was vetoed, see message at end of chapter.**

NEW SECTION. Sec. 31. 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.

NEW SECTION. Sec. 32. Sections 29 and 30 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 institutions, and shall take effect immediately.

Passed the House April 6, 1982.

Passed the Senate April 5, 1982.

Approved by the Governor April 20, 1982 with the exception of Section 30, which is vetoed.

Filed in Office of Secretary of State April 20, 1982.

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

"I am returning herewith without my approval as to Section 30 of House Bill No. 600, entitled:

"AN ACT Relating to crimes"

The Implied Consent Law, passed by the voters of this state in 1969, provides that a person's privilege to drive is conditioned on a promise to take a breathalyzer test when suspected of driving under the influence of alcohol. Failure to take the test results in a six-month loss of license.

Section 30 would undermine the Implied Consent Law. It would permit persons who refuse the breathalyzer and who subsequently are found guilty of DWI to apply for an occupational driver's license. Ironically, those who were acquitted of the charges could not apply for the occupational permit.

If we are to have an Implied Consent Law—and I believe we should—we must enforce it. There must be a clear consequence to refusing the breathalyzer; otherwise, the Implied Consent Law will be intolerably weakened.

With the exception of Section 30, which I have vetoed, House Bill No. 600 is approved."

CHAPTER 48

[Substitute House Bill No. 1230]

CAPITAL FACILITIES APPROPRIATIONS

AN ACT Relating to appropriations; providing for the planning, acquisition, construction, remodeling, furnishing, and equipping of facilities for state agencies and a state fire service training center; providing for the financing thereof by the issuance of bonds; providing appropriations for a fire service training center, waste disposal facilities, and capital improvements for agencies of the state; providing prioritization of bond issuances; amending section 1, chapter 225, Laws of 1979 ex. sess. and RCW 28C.51.010; amending section 27, chapter 143, Laws of 1981 (uncodified); amending section 74, chapter 340, Laws of 1981 (uncodified); amending section 2, chapter 143, Laws of 1981 (uncodified); amending section 13, chapter 143, Laws of 1981 (uncodified); amending section 9, chapter 233, Laws of 1981 and RCW 28B.14G.900; amending section 7, chapter 143, Laws of 1981 (uncodified); amending section 15, chapter 143, Laws of 1981 (uncodified); amending section 8, chapter 17, Laws of 1967 as last amended by section 111, chapter 136, Laws of 1981 and RCW 72.65.080; amending section 1, chapter 235, Laws of 1981 and RCW 43-.83.172; adding new sections to chapter 143, Laws of 1981; creating new sections; repealing section 39, chapter 143, Laws of 1981 (uncodified); repealing section 114, chapter ... (ESSB 4369), Laws of 1982 1st ex. sess.; and declaring an emergency.