

CHAPTER 352

[Engrossed Senate Bill No. 3230]

DRUNK DRIVING—DEFERRED PROSECUTION—VIOLATIONS—
PENALTIES—MODIFICATION

AN ACT Relating to alcohol abuse; amending RCW 46.61.515, 46.20.599, 10.05.010, 10.05.020, 10.05.040, 10.05.050, 10.05.060, 10.05.070, 10.05.080, 10.05.090, 10.05.100, 10.05.110, 10.05.120, and 46.61.517; adding new sections to chapter 10.05 RCW; adding a new section to chapter 66.28 RCW; creating a new section; prescribing penalties; providing an effective date; and declaring an emergency.

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

Sec. 1. Section 62, chapter 155, Laws of 1965 ex. sess. as last amended by section 328, chapter 258, Laws of 1984 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 twenty-four consecutive hours nor more than one year, and by a fine of not less than two hundred fifty dollars and not more than ((seven hundred fifty)) one thousand dollars. Unless the judge finds the person to be indigent, two hundred fifty dollars of the fine shall not be suspended or deferred. 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. The convicted person shall, in addition, 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, as determined by the court. 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 convicted 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. Standards for approval for alcohol treatment programs 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.

(2) On a second or subsequent conviction 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 of not less than five hundred dollars and not more than ~~((one))~~ two thousand ~~((five-hundred))~~ dollars. District courts and courts organized under chapter 35.20 RCW are authorized to impose such fine. Unless the judge finds the person to be indigent, five hundred dollars of the fine shall not be suspended or deferred. 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, at the time of a second or subsequent conviction, the driver 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 a diagnostic evaluation 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. The report shall be forwarded to the department of licensing. 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 nondeferable 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) The license or permit to drive or any nonresident privilege of any person convicted of 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 offense, be suspended by the department until the person reaches age nineteen or for ninety days, whichever is longer. The department of licensing shall determine the person's eligibility for licensing based upon the reports provided by the designated alcoholism agency or probation department 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 offense within a five-year period, be revoked by the department for one year. The department of licensing shall determine the person's eligibility for licensing based upon the reports provided by the designated alcoholism agency or probation department 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 of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs, vehicular homicide, or vehicular assault, or any combination thereof within a five-year period, be revoked by the department for two years.

(4) In any case provided for in this section, where a driver's license is to be revoked or suspended, the 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 the conviction is sustained on appeal the revocation or suspension takes effect as of the date that the conviction becomes effective for other purposes.

Sec. 2. Section 2, chapter 219, Laws of 1984 and RCW 46.20.599 are each amended to read as follows:

(1) Whenever any person is arrested for a violation of RCW 46.61.502 or 46.61.504, the arresting officer shall, at the time of arrest, confiscate the person's Washington state license or permit to drive, if any, and issue a temporary license to replace any confiscated license or permit.

(2) Within twenty-four hours of the arrest, the arresting officer shall transmit any confiscated license or permit to the department with a report indicating the date and location of the arrest.

(3) Any temporary license issued under this section shall be dated with the same expiration date as the confiscated license or permit. A temporary license shall be valid only until the sooner of:

(a) Its expiration date; or

(b) The suspension, revocation, or denial by judicial or administrative action for any reason of the license, permit, or privilege to drive of the person holding the temporary license.

(4) The department shall return, replace, or authorize renewal of any confiscated license or permit that has not been suspended or revoked for any reason upon notification:

(a) By the law enforcement agency that made the arrest that a charge has not been filed for the offense for which the license or permit was confiscated;

(b) By the prosecuting authority of the jurisdiction in which the offense occurred that the charge has been dropped or changed to other than one for which confiscation is required under this section; or

(c) By the court in which the case has been or was to be heard that prosecution on the charge has been deferred, that the charge has been dismissed, or that the person charged has been found not guilty of the charge; or

(d) By a court that the person has been convicted of the offense for which the license or permit was confiscated, but the suspension or revocation of the license or permit has been stayed pending appeal of the conviction.

(5) If a temporary license issued under this section expires before the department receives notification under subsection (4) of this section, the department shall authorize the driver to seek renewal of the license. If the driver is qualified for renewal, the department shall issue a new temporary license with the same expiration date as the driver would have received had his or her license or permit not been confiscated.

(6) Upon receipt of a returned or replaced confiscated license from the department, the driver shall return any temporary license in his or her possession or shall sign an affidavit that the temporary license has been lost, stolen, or destroyed.

(7) No temporary license issued under this section is valid to any greater degree than the confiscated license or permit that it replaces.

(8) The department shall provide courts and law enforcement agencies with the appropriate temporary license and notice forms for use under this section.

~~((9) This section shall expire on December 31, 1985.))~~

NEW SECTION. Sec. 3. The legislature finds that the deferred prosecution program is an alternative to punishment for persons who will benefit from a treatment program if the treatment program is provided under circumstances that do not unreasonably endanger public safety or the traditional goals of the criminal justice system. This alternative to punishment is dependent for success upon appropriate treatment and the willingness and ability of the person receiving treatment to cooperate fully with the treatment program. The legislature finds that some persons have sought deferred prosecution but have been unable or unwilling to cooperate with treatment requirements and escaped punishment because of the difficulties in resuming prosecution after significant delay due to the absence of witnesses at a later date and the congestion in courts at a later date. The legislature further finds that the deferred prosecution statutes require clarification. The purpose of sections 4 through 19 of this act is to provide specific standards and procedures for judges and prosecutors to use in carrying out the original intent of the deferred prosecution statutes.

Sec. 4. Section 1, chapter 244, Laws of 1975 1st ex. sess. as amended by section 26, chapter 47, Laws of 1982 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. The petition shall be filed with the court at least seven days before the date set for trial but, upon a written motion and affidavit establishing good cause for the delay and failure to comply with this section, the court may waive this requirement subject to the defendant's reimbursement to the court of the witness fees and expenses due for subpoenaed witnesses who have appeared on the date set for trial.

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. Separate offenses committed more than seven days apart may not be consolidated in a single program.

NEW SECTION. Sec. 5. A new section is added to chapter 10.05 RCW to read as follows:

At the time of arraignment a person charged with a violation of RCW 46.61.502 or 46.61.504 may be given a statement by the court that explains the availability, operation, and effects of the deferred prosecution program.

Sec. 6. Section 2, chapter 244, Laws of 1975 1st ex. sess. and RCW 10.05.020 are each amended to read as follows:

(1) ~~The ((petition))~~ petitioner shall allege under oath in the petition that the wrongful conduct charged is the result of or caused by ((alcohol problems)) alcoholism, drug ((problems)) addiction, or mental problems for which the person is in need of treatment and unless treated the probability of future reoccurrence is great, along with a statement that the person agrees to pay the cost of a diagnosis and treatment of the alleged problem or problems if financially able to do so. The petition shall also contain a case history ((of the person supporting the allegations)) and written assessment prepared by an approved alcoholism treatment facility as designated in chapter 70.96A RCW if the petition alleges alcoholism, an approved drug program as designated in chapter 71.24 RCW if the petition alleges drug addiction, or by an approved mental health center if the petition alleges a mental problem.

(2) Before entry of an order deferring prosecution, a petitioner shall be advised of his rights as an accused and execute, as a condition of receiving treatment, a statement that contains: (a) An acknowledgement of his rights; (b) a stipulation to the admissibility of the facts contained in the written police report; and (c) an acknowledgement that the statement will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting deferred prosecution. The petitioner shall also be advised that he may, if he proceeds to trial and is found guilty, be allowed to seek suspension of some or all of the fines and incarceration that may be

ordered upon the condition that he seek treatment and, further, that he may seek treatment from public and private agencies at any time without regard to whether or not he is found guilty of the offense charged. He shall also be advised that the court will not accept a petition for deferred prosecution from a person who sincerely believes that he is innocent of the charges or sincerely believes that he does not, in fact, suffer from alcoholism, drug addiction, or mental problems.

(3) Before entering an order deferring prosecution, the court shall make specific findings that: (a) The petitioner has stipulated to the admissibility of the facts as contained in the written police report; (b) the petitioner has acknowledged the admissibility of the stipulated facts in any criminal hearing or trial on the underlying offense or offenses held subsequent to revocation of the order granting deferred prosecution; and (c) the petitioner's statements were made knowingly and voluntarily. Such findings shall be included in the order granting deferred prosecution.

Sec. 7. Section 4, chapter 244, Laws of 1975 1st ex. sess. and RCW 10.05.040 are each amended to read as follows:

The facility (~~(or center)~~) to which such person is referred shall conduct an investigation and examination to determine:

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

Sec. 8. Section 5, chapter 244, Laws of 1975 1st ex. sess. and RCW 10.05.050 are each amended to read as follows:

The facility (~~(or center)~~) shall make a written report to the court stating its findings and recommendations after the (~~(investigation and)~~) examination required by RCW 10.05.040. If its findings and recommendations support treatment, it shall also recommend a treatment plan setting out:

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

The report with the treatment plan shall be filed with the court and a copy given to the (~~(defendant)~~) petitioner and (~~(defendant's)~~) petitioner's counsel. A copy of the treatment plan shall be given to the prosecutor by petitioner's counsel at the request of the prosecutor. The evaluation facility making the written report shall append to the report a commitment by the treatment facility that it will provide the treatment in accordance with this chapter. The facility shall agree to provide the court with a statement every

three months for the first year and every six months for the second year regarding (a) the petitioner's cooperation with the treatment plan proposed and (b) the petitioner's progress or failure in treatment. These statements shall be made as a declaration by the person who is personally responsible for providing the treatment.

Sec. 9. Section 6, chapter 244, Laws of 1975 1st ex. sess. as amended by section 4, chapter 158, Laws of 1979 and RCW 10.05.060 are each amended to read as follows:

If the report recommends treatment, the court shall examine the treatment plan. If it approves the plan and the ~~((defendant))~~ petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the person's court docket showing that the person has been accepted for deferred prosecution. A copy of the treatment plan shall be attached to the docket, which shall then be removed from the regular court dockets and filed in a special court deferred prosecution file. If the charge be one that an abstract ~~((is required to be sent to the department of licensing, an abstract))~~ of the docket showing the charge and the date of ~~((defendant's))~~ petitioner's acceptance ~~((for deferred prosecution shall))~~ is required to be sent to the department of licensing, ((which)) an abstract shall be sent, and the department of licensing shall make an entry of the charge and of the ((defendant's)) petitioner's acceptance for deferred prosecution on the department's driving record of the ((defendant)) petitioner. The department shall maintain the record for five years from date of entry of the order granting deferred prosecution.

Sec. 10. Section 7, chapter 244, Laws of 1975 1st ex. sess. and RCW 10.05.070 are each amended to read as follows:

When treatment is either not recommended or not approved by the judge, or the ~~((defendant))~~ petitioner declines to accept the treatment plan, the ~~((defendant))~~ petitioner shall be arraigned on the charge.

Sec. 11. Section 8, chapter 244, Laws of 1975 1st ex. sess. and RCW 10.05.080 are each amended to read as follows:

If the petition is not approved or is withdrawn before approval, evidence pertaining to or resulting from the petition and/or investigation is inadmissible in any trial on the charges, but shall be available for use after a conviction in determining a sentence.

Sec. 12. Section 9, chapter 244, Laws of 1975 1st ex. sess. and RCW 10.05.090 are each amended to read as follows:

If a ~~((defendant))~~ petitioner, who has been accepted for a deferred prosecution, fails or neglects to carry out and fulfill any term or condition of the ~~((defendant's))~~ petitioner's treatment plan, the facility, center, institution, or agency administering the treatment shall immediately report such

breach to the court, the prosecutor, and the petitioner or petitioner's attorney of record, together with its recommendation. The court upon receiving such a report shall hold a hearing to determine whether the ~~((defendant))~~ petitioner should be removed from the deferred prosecution program. At the hearing, evidence shall be taken of the ~~((defendant's))~~ petitioner's alleged failure to comply with the treatment plan and the ~~((defendant))~~ petitioner shall have the right to present evidence on his or her own behalf. The court shall either order that the ~~((defendant))~~ petitioner continue on the treatment plan or be removed from deferred prosecution. If removed from deferred prosecution, the ~~((defendant's docket shall be returned to the regular court files and the defendant shall be arraigned on the original charge))~~ court shall enter judgment pursuant to RCW 10.05.020.

Sec. 13. Section 10, chapter 244, Laws of 1975 1st ex. sess. and RCW 10.05.100 are each amended to read as follows:

If a ~~((defendant))~~ petitioner is subsequently convicted ~~((in any court of an)) of a similar offense ((similar and committed subsequent to the one for which the defendant is))~~ while in a deferred prosecution program, upon notice the court ~~((in which the defendant is under deferred prosecution shall upon notice of conviction in another court))~~ shall remove the ~~((defendant's))~~ petitioner's docket from the deferred prosecution file and ~~((require the defendant to enter a plea to the original charge))~~ the court shall enter judgment pursuant to RCW 10.05.020.

Sec. 14. Section 11, chapter 244, Laws of 1975 1st ex. sess. and RCW 10.05.110 are each amended to read as follows:

Delay in bringing a case to trial caused by a ~~((defendant))~~ petitioner requesting deferred prosecution as provided for in this chapter shall not be grounds for dismissal.

Sec. 15. Section 12, chapter 244, Laws of 1975 1st ex. sess. as amended by section 45, chapter 165, Laws of 1983 and RCW 10.05.120 are each amended to read as follows:

Upon proof of successful completion of the two-year treatment program, the court shall dismiss the charges pending against the petitioner.

Five years from the date of the court's approval of a deferred prosecution program for an individual ~~((defendant))~~ petitioner, those ~~((dockets))~~ entries that remain in the ~~((special court deferred prosecution file))~~ department of licensing records relating to such ~~((defendant))~~ petitioner shall be ~~((dismissed and the records))~~ removed. A deferred prosecution may be considered for enhancement purposes when imposing mandatory penalties and suspensions under RCW 46.61.515 for subsequent offenses within a five-year period.

NEW SECTION. Sec. 16. A new section is added to chapter 10.05 RCW to read as follows:

As a condition of granting a deferred prosecution petition, the court shall order that the petitioner shall not operate a motor vehicle upon the public highways without a valid operator's license and proof of liability insurance. The amount of liability insurance shall be established by the court at not less than that established by RCW 46.29.490. As a condition of granting a deferred prosecution petition, the court may order the petitioner to make restitution. The court may terminate the deferred prosecution program upon violation of this section.

NEW SECTION. Sec. 17. A new section is added to chapter 10.05 RCW to read as follows:

A deferred prosecution program for alcoholism shall be for a two-year period and shall include, but not be limited to, the following requirements:

(1) Total abstinence from alcohol and all other nonprescribed mind-altering drugs;

(2) Participation in an intensive inpatient or intensive outpatient program in a state-approved alcoholism treatment facility;

(3) Participation in a minimum of two meetings per week of an alcoholism self-help recovery support group, as determined by the assessing agency, for the duration of the treatment program;

(4) Participation in an alcoholism self-help recovery support group, as determined by the assessing agency, from the date of court approval of the plan to entry into intensive treatment;

(5) Not less than weekly approved outpatient counseling, group or individual, for a minimum of six months following the intensive phase of treatment;

(6) Not less than monthly outpatient contact, group or individual, for the remainder of the two-year deferred prosecution period;

(7) The decision to include the use of prescribed drugs, including disulfiram, as a condition of treatment shall be reserved to the treating facility and the petitioner's physician;

(8) All treatment within the purview of this section shall occur within or be approved by a state-approved alcoholism treatment facility as described in chapter 70.96A RCW;

(9) Signature of the petitioner agreeing to the terms and conditions of the treatment program.

NEW SECTION. Sec. 18. A new section is added to chapter 10.05 RCW to read as follows:

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

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

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

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

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

NEW SECTION. Sec. 19. A new section is added to chapter 10.05 RCW to read as follows:

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

(1) If the charge for which deferral is granted relates to operation of a motor vehicle, at least once every six months request from the department of licensing an abstract of the petitioner's driving record; and

(2) At least once every month make contact with the petitioner or with any agency to which the petitioner has been directed for treatment as a part of the deferral.

NEW SECTION. Sec. 20. A new section is added to chapter 66.28 RCW to read as follows:

No liquor manufacturer, importer, wholesaler, retailer, agent thereof, or campus representative of any of the foregoing, may conduct promotional activities for any liquor product on the campus of any college or university nor may any such entities engage in activities that facilitate or promote the consumption of alcoholic beverages by the students of the college or university at which the activity takes place. This section does not prohibit the following:

(1) The sale of alcoholic beverages, by retail licensees on their licensed premises, to persons of legal age and condition to consume alcoholic beverages;

(2) Sponsorship of broadcasting services for events on a college or university campus;

(3) Liquor advertising in campus publications; or

(4) Financial assistance to an activity and acknowledgment of the source of the assistance, if the assistance, activity, and acknowledgment are each approved by the college or university administration.

Sec. 21. Section 27, chapter 165, Laws of 1983 and RCW 46.61.517 are each amended to read as follows:

The refusal of a person to submit to a test of the alcoholic content of his blood under RCW 46.20.308 is admissible into evidence at a subsequent

criminal trial without any comment (~~and with a jury instruction, where applicable, that there shall be no speculation as to the reason for the refusal and that no inference is to be drawn from the refusal~~)).

NEW SECTION. Sec. 22. 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. 23. This act 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 for section 1 of this act, which shall take effect July 1, 1985.

Passed the Senate April 28, 1985.

Passed the House April 28, 1985.

Approved by the Governor May 20, 1985.

Filed in Office of Secretary of State May 20, 1985.

CHAPTER 353

[Substitute Senate Bill No. 3007]

MOTOR VEHICLE LICENSE REGISTRATION

AN ACT Relating to motor vehicles; amending RCW 46.63.020, 46.85.060, 82.12.0251, and 82.12.045; adding a new section to chapter 46.16 RCW; prescribing penalties; declaring an emergency; 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 46.16 RCW to read as follows:

(1) For the purposes of vehicle license registration, a resident is a person who:

(a) Owns a vehicle that is licenseable under this chapter and that is physically present in the state of Washington more than six months in any continuous twelve-month period; or

(b) Resides in this state more than six months in any continuous twelve-month period; or

(c) Becomes a registered voter in this state; or

(d) Receives benefits under one of the Washington public assistance programs; or

(e) Declares himself to be a resident for the purpose of obtaining a state license or tuition fees at resident rates.

(2) A resident of the state shall register under chapters 46.12 and 46.16 RCW a motor vehicle to be operated on the highways of the state.

(3) It is a misdemeanor for a person to violate this section.