**No. 86885-9**

**SUPREME COURT**
**OF THE STATE OF WASHINGTON**

---

STATE OF WASHINGTON

Respondent

vs.

STEPHEN CHRISS JOHNSON,

Petitioner,

---

# PETITIONER'S OPENING BRIEF

---


Jon E. Cushman
Kevin Hochhalter
Cushman Law Offices, P.S.
924 Capitol Way South
Olympia, WA 98501

360-534-9183

Attorneys for Petitioner



RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2012 JUL 27 P 2:24
BY RONALD R. CARPENTER
CLERK

ORIGINAL

## TABLE OF CONTENTS


I. INTRODUCTION . . . . . 1

II. ASSIGNMENTS OF ERROR . . . . . 6

III. STATEMENT OF THE CASE . . . . . 8

IV SUMMARY OF ARGUMENT . . . . . 10

V. ARGUMENT . . . . . 11

A. Mr. Johnson's Conviction Should Be Reversed Because Failure to Pay Is Not an Element of DWLS. . . . . 11

1. Failure to pay is not one of the elements enumerated in RCW 46.20.342 . . . . . 14

2. "[A]s provided in RCW 46.20.289" does not expand the meaning of the enumerated elements to include failure to pay . . . . . 15

3. "[Failure] to comply with the terms of a notice of traffic infraction or citation" does not include failure to pay . . . . . 19

4. Recent legislative changes support this plain language interpretation of the statutes . . . . . 24

5. Mr. Johnson's conviction based on a suspension for failure to pay should be reversed . . . . . 26

B. Mr Johnson's Conviction Should Be Reversed Because the Underlying Suspension Was Invalid. . . . . 27

1. The factors set forth in *Bearden v. Georgia* demonstrate that automatic suspension based on a driver's inability to pay a fine violates Due Process and Equal Protection . . . . . 28

a. The nature of the interest affected: Driving is a basic and valuable right protected under the U.S. Constitution . . . . . 30

b. The extent to which the interest is affected: Never-ending suspension of the right to drive takes a terrible toll on indigent drivers . . . . . 32

c. The rationality of the connection between means and purpose: There is no rational connection between suspending indigent drivers and collecting the fines . . . . . 34

d. The existence of alternate means for effectuating the purpose: The State has ample alternative means to collect fines . 36

2. Mr. Johnson's conviction must be reversed because his suspension was unconstitutional . . . . . 38

C. Mr. Johnson Requests Reimbursement of Attorney Fees on Appeal Because He Was Wrongfully Stripped of Appointed Counsel . . . . . 42

VI. CONCLUSION . . . . . 46

## TABLE OF AUTHORITIES

### Washington Cases

State v. Blank, 131 Wn.2d 230, 930 P.2d 1213 (1997) . . . . . 29, 30, 39

City of Bellevue v. Lee, 166 Wn.2d 581, 210 P.3d 1011 (2009) . . . . . 32

In re Cruze, 169 Wn.2d 422, 237 P.3d 274 (2010) . . . . . 13

State v. Delgado, 148 Wn.2d 723, 63 P.3d 792 (2003) . . . . . 13

State v. Dolson, 138 Wn.2d 773, 982 P.2d 100 (1999) . . . . . 28, 31, 32, 38

Eggert v. City of Seattle, 81 Wn.2d 840, 505 P.2d 801 (1973) . . . . . 30, 31

Hadfield v. Lundin, 98 Wn. 657, 662 (1917) . . . . . 31

In re Hinton, 152 Wn.2d 853, 100 P.3d 801 (2004) . . . . . 3

Jackowski v. Borchelt, — Wn.2d — , slip op. (June 14, 2012) . . . . . 19

King v. Dep't of Soc. & Health Services, 110 Wn.2d 793,
756 P.2d 1303 (1988) . . . . . 35

City of Redmond v. Moore, 151 Wn.2d 664,
91 P.3d 875 (2004) . . . . . 23, 28, 31, 32

State v. Richardson, 81 Wn.2d 111, 499 P.2d 1264 (1972) . . . . . 15

City of Seattle v. Drew, 70 Wn.2d 405, 423 P.2d 522 (1967) . . . . . 3

State v. Smith, 155 Wn.2d 496, 120 P.3d 559 (2005) . . . . . 11, 12

City of Spokane v. Port, 43 Wn.App. 273, 716 P.2d 945 (1986) . . . 30, 31

State v. Wilson, 125 Wn.2d 212, 883 P.2d 320 (1994) . . . . . 12

### U.S. Supreme Court Cases

Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006,
32 L.Ed.2d 530 (1972) . . . . . 4, 33, 42

Bearden v. Georgia, 461 U.S. 660, 103 S.Ct. 2064,
76 L.Ed.2d 221 (1983) . . . . . 28, 29, 30, 35, 36, 37, 38, 39, 40, 41

Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586,
29 L.Ed. 2d 90 (1971) . . . . . 31, 32

Douglas v. California, 372 U.S. 353, 83 S.Ct. 814,
9 L.Ed.2d 811 (1963) . . . . . 42

Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 2006,
32 L.Ed.2d 799 (1963) . . . . . 42

Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893,
47 L.Ed.2d 18 (1976) . . . . . 43

Tate v. Short, 401 U.S. 395, 91 S.Ct. 668,
28 L.Ed.2d 130 (1971) . . . . . 28, 33, 34, 35, 40

Williams v. Illinois, 399 U.S. 235, 90 S.Ct. 2018,
26 L.Ed.2d 586 (1970) . . . . . 1, 28, 33

**Statutes**

RCW 6.17.030 . . . . . 37

RCW 10.64.080 . . . . . 37

RCW 10.73.150 . . . . . 42

RCW 10.82.010 . . . . . 37

RCW 10.101.010 . . . . . 44, 45

RCW 10.101.020 . . . . . 43

RCW 46.20.245 . . . . . 27, 32

RCW 46.20.285 . . . . . 35

RCW 46.20.289 . . . . . 13, 14, 15, 16, 17, 18, 20, 24, 25, 26, 27

RCW 46.20.291 . . . . . 17, 20, 27

RCW 46.20.342 . . . . . 2, 13, 14, 20, 25, 26, 46

RCW 46.23.010 . . . . . 20, 25

RCW 46.63.070 . . . . . 16

RCW 46.63.110 . . . . . 16, 17, 24, 27, 32, 37, 39

RCW 46.63.120 . . . . . 37

RCW 46.64.020 . . . . . 23

RCW 46.64.025 . . . . . 16

RCW 46.64.027 . . . . . 23

**Court Rules**

IRLJ 6.2 . . . . . 37

**Secondary Sources**

American Civil Liberties Union, *In for a Penny: The Rise of America's New Debtor's Prisons,* pp. 6, 10 (October 2010) . . . . . 3, 4, 34, 36, 39

Alicia Bannon, et al., *Criminal Justice Debt: a Barrier to Reentry*, Brennan Center for Justice at New York University School of Law, p. 2, 5, 24-25 (October 2010) . . . . . 1, 3, 5, 35, 36, 39

Katherine Beckett, et al., *The Assessment and Consequences of Legal Financial Obligations in Washington State,* Washington State Minority and Justice Commission, pp. 3-5 (August 2008) . . . . . 3

Robert C. Boruchowitz, et al., *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts,* National Association of Criminal Defense Lawyers, p. 25-26, 29 (April 2009) . . . . . 2, 4

Alexes Harris, et al., *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States,* American Journal of Sociology, vol. 115 no.6, p. 1777 (May 2010) . . . . . 3

Austin Jenkins, Northwest New Network, *Nearly 300,000 Wash. drivers suspended for failure to pay tickets*, KPLU radio broadcast (12:13 p.m., July 23, 2011) . . . . . 2, 34

Adam Pearson, *Life Without a License*, The Chronicle, Centralia/Chehalis, Wash. (October 6, 2011, Main section pages 1 and 8) . . . . . 2, 34, 40

Washington Defender Association, *Taxpayers millions down the drain—along with Constitution,* (April 28, 2009) . . . . . 4

## APPENDIX

RCW 46.20.342 Driving while license invalidated— Penalties— Extension of invalidation . . . . . A1

RCW 46.20.289 Suspension for failure to respond, appear, etc. . . . . A7

RCW 46.63.070 Response to notice— Contesting determination— Hearing— Failure to respond or appear . . . . . A8

RCW 46.63.110 Monetary penalties . . . . . A11

RCW 46.64.025 Failure to appear— Notice to department . . . . . A18

RCW 46.20291 Authority to suspend— Grounds . . . . . A19

RCW 46.23.010 Compact established— Provisions . . . . . A21

Washington Laws, 1993, Chapter 501 . . . . . A33

House Bill Report HB 1741 (1993) . . . . . A47

Final Bill Report SHB 1741 (1993) . . . . . A50

Certification of Enrollment Substitute House Bill 1741 (1993) . . . . . A53

RCW 46.64.020 (1992, repealed by Laws 1993 ch 501) . . . . . A54

RCW 46.64.027 (1992, repealed by Laws 1993 ch 501) . . . . . A56

Engrossed Second Substitute Senate Bill 6284 (2012) . . . . . A57

RCW 10.101.010 Definitions . . . . . A67

RCW 10.101.020 Determination of indigency— Provisional appointment— Promissory note . . . . . A70

Statewide DWLS filings for 2010 . . . . . A73

Back of Defendant copy of criminal citation . . . . . A79

*Life Without a License*, The Chronicle, Centralia/Chehalis, Wash. (October 6, 2011, Main section pages 1 and 8) . . . . . A80

## I. INTRODUCTION

"[N]ew cases expose old infirmities which apathy or absence of challenge has permitted to stand. But ... constitutional imperatives ... must have priority over the comfortable convenience of the status quo." *Williams v. Illinois*, 399 U.S. 235, 245, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970).

Apathy or absence of challenge has permitted the courts of this State, in concert with the Department of Licensing ("DOL"), to operate debtor's prisons here in Washington. The State has shackled thousands of Washington residents in an unending cycle of debt, suspension, and incarceration.[1] The chain with which the State binds its prey is Driving While License Suspended in the Third Degree ("DWLS" or "DWLS 3rd"), colloquially known as "Driving While Poor." The plain language of the statute makes it a crime to drive while suspended for failure to respond to a ticket or to appear in court. Yet every day the district courts of this state convict drivers like Petitioner, Stephen Johnson, whose sole reason for suspension was failure to pay a fine—a civil debt.

---

[1] Regarding the cycle of debt, suspension, and incarceration, *see* Alicia Bannon, et al., *Criminal Justice Debt: a Barrier to Reentry*, Brennan Center for Justice at New York University School of Law, p. 2, 5, 24-25 (October 2010) *available at* http://www.brennancenter.org/page/-/Fees%20and%20Fines%20FINAL.pdf (last visited July 24, 2012)

Nearly 300,000 Washington drivers currently have their licenses suspended for failure to pay their tickets.[2] Many of these drivers feel compelled to continue driving in order to earn a living.[3] As a result, DWLS is the most charged crime in the state. In 2010, out of 294,474 misdemeanor cases filed statewide,[4] over 98,000,[5] or about one-third,[6] were for DWLS 3rd. In Lewis County, *64 percent* of district court criminal cases are DWLS.[7]

If any of these suspended drivers consulted the DWLS statute, RCW 46.20.342, to determine what penalties they might face, what they

---

[2] Austin Jenkins, Northwest News Network, *Nearly 300,000 Wash. drivers suspended for failure to pay tickets*, KPLU radio broadcast (12:13 p.m., July 23, 2011) *available at* http://www.kplu.org/post/nearly-300000-wash-drivers-suspended-failure-pay-tickets (last visited July 23, 2012).

[3] *See Id.*

[4] Caseloads of the Courts of Washington 2010 Annual Report, Cases Filed

[5] Statewide DWLS filings for 2010, JIS report compiled by the Administrative Office of the Courts (App. at ??).

[6] Jenkins (one-third);

Robert C. Boruchowitz, et al., *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts*, National Association of Criminal Defense Lawyers, p. 25-26, 29 (April 2009) *available at* http://www.law.seattleu.edu/Documents/lawclinic/DefInitReport.pdf (last visited July 23, 2012) (more than one-third).

[7] Adam Pearson, *Life Without a License*, The Chronicle, Centralia/Chehalis, Wash. (October 6, 2011, Main section pages 1 and 8) *available at* http://www.chronline.com/news/local/article_d945e6e4-f047-11e0-b570-001cc4c03286.html (last visited July 23, 2012; subscription required; reproduced for the Court's convenience in App. at 80-83.).

would find is a lengthy mess of difficult language and cross references that even the District Court described as "confusing," "extremely complicated," and "not a good situation at all." (CP at 265.) The drivers would not find any language in the statute to put them on notice that there is a criminal penalty for driving while suspended solely for failure to pay a fine. This is an infirmity of constitutional proportions.[8]

Suspension for failure to pay already takes a terrible toll on drivers who do not have the means to pay their fines.[9] The suspension takes effect automatically, without any consideration of the driver's ability to pay, and lasts indefinitely—perhaps for the rest of the driver's life. While a driver

---

[8] "A law that fails to give fair notice of what acts will be punished is violative of due process." *City of Seattle v. Drew*, 70 Wn.2d 405, 408, 423 P.2d 522 (1967). A person of reasonable understanding cannot be left to guess at the meaning of a statute. *Id.* It is also a violation of due process to convict and sentence a defendant under a statute that does not actually criminalize the defendant's conduct. *In re Hinton*, 152 Wn.2d 853, 859-60, 100 P.3d 801 (2004).

[9] *See* Bannon, at 5, 13, 27;

American Civil Liberties Union, *In for a Penny: The Rise of America's New Debtor's Prisons*, pp. 6, 10 (October 2010) *available at* http://www.aclu.org/files/assets/InForAPenny_web.pdf (last visited July 24, 2012) (cited hereafter as *"In for a Penny"*);

Katherine Beckett, et al., *The Assessment and Consequences of Legal Financial Obligations in Washington State*, Washington State Minority and Justice Commission, pp. 3-5 (August 2008) *available at* http://www.courts.wa.gov/committee/pdf/2008LFO_report.pdf (last visited July 24, 2012);

Alexes Harris, et al., *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, American Journal of Sociology, vol. 115 no. 6, p. 1777 (May 2010) *available at* http://www.soc.washington.edu/users/yharris/Blood%20from%20Stones%202010%20AJSj%20print.pdf (last visited July 24, 2012).

with means can pay the fine and never face suspension, an indigent driver has no recourse and might never drive again. This never-ending penalty violates constitutional imperatives of fundamental fairness embodied in due process and equal protection.

There is great need for guidance from this court. Misdemeanor courts have been described as an "abomination"[10] and a "black hole for justice and resources."[11] The high volume of cases in the district courts creates a preoccupation with the movement of cases—speed is substituted for care. *See Argersinger v. Hamlin*, 407 U.S. 25, 34, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972). "The misdemeanor trial is characterized by insufficient and frequently irresponsible preparation on the part of the defense, the prosecution, and the court." *Id.* at 35. All too often in misdemeanor cases, "judges emphasize expediency over justice."[12]

Traffic fines are big business for counties and the state.[13] In 2010, the state collected over $142,000,000 from traffic infraction fines and

---

[10] Boruchowitz, at 14.

[11] Washington Defender Association, *Taxpayers millions down the drain—along with Constitution*, (April 28, 2009) *available at* http://www.defensenet.org/news/taxpayers 2019-millions-down-the-drain-along-with-constitution (last visited July 23, 2012).

[12] Boruchowitz, at 44.

[13] *See In for a Penny*, at 8 ("judges view LFOs as a critical revenue stream").

about $13,500,000 from "non-DUI traffic misdemeanors" (*i.e.,* DWLS).[14] One third of the money collected from traffic infractions stays in the county to fund the courts and law enforcement. This puts district court judges in the conflicted position of collecting the fines that fund their own paychecks.[15]

In explaining its tortured interpretation of DWLS 3rd, the District Court observed, "you have to go from here to here to here to here to figure this all out. It is not a good situation at all, not for defendants, not for lawyers, not for judges, not for anybody to have it be this confusing." (CP at 265.) It is time for the confusion and injustice of the status quo to give way to constitutional imperatives and a strict interpretation of the plain language of DWLS 3rd. Mr. Johnson asks this Court to reverse his conviction and to prohibit coercive suspension of indigent drivers for failure to pay fines that they have no ability to pay.

---

[14] Caseloads of the Courts of Washington 2010 Annual Report.

[15] Bannon, at 30.

## II. ASSIGNMENTS OF ERROR

1. The district court erred in denying Mr. Johnson's pre-trial motion to dismiss the charges against him and in denying reconsideration of that decision.

2. The district court erred in denying Mr. Johnson's motion to dismiss at the close of the State's evidence.

3. The district court erred in convicting Mr. Johnson of DWLS 3rd while suspended solely for failure to pay an adjudicated traffic fine.

4. The district court erred in holding a hearing, without any advance notice, to re-determine Mr. Johnson's indigency status for purposes of appeal when he had already been found indigent and counsel appointed.

5. The district court erred in determining that Mr. Johnson was not indigent and stripping him of appointed counsel on appeal.

6. The superior court erred in affirming the above stated erroneous actions of the district court.

## Issues Pertaining to Assignments of Error

Whether the offense of third degree driving with a suspended license may be based on a suspension for failure to pay an adjudicated traffic fine (assignments of error 1, 2, 3, and 6).

Whether automatic suspension of a driver's license for failure to pay a fine is unconstitutional as applied to indigent drivers whose failure to pay is not willful (assignments of error 1, 2, 3, and 6).

Whether a court has authority, on its own motion, to deprive a criminal defendant of appointed counsel after the court has already determined the defendant is indigent and unable to contribute (assignments of error 4, 5, and 6).

Whether an indigent criminal defendant is entitled to reimbursement of fees paid to a private attorney after being wrongfully deprived of appointed counsel (assignments of error 4, 5, and 6).

## III. STATEMENT OF THE CASE

Stephen Chriss Johnson was an indigent resident of Lewis County at all times relevant to this case. He has not held a regular job since 1976, subsisting on occasional income from odd jobs. (CP at 122-23.) He lived in a dilapidated home. (CP at 123, 125.) He received food stamps, energy assistance, and medical assistance. (CP at 122, 126.)

In 2007, Mr. Johnson was pulled over and issued a notice of infraction for driving without a valid operator's permit. (CP at 67-68.) The notice gave Mr. Johnson three options: 1) pay a fine of $538; 2) request a contested hearing and appear in court; or 3) request a mitigating hearing and appear in court. *Id.* Mr. Johnson requested a contested hearing and appeared in court. (CP at 232-34.) The court found Mr. Johnson had committed the infraction and ordered him to pay a penalty of $260. (CP at 67, 234-35.) Mr. Johnson was unable to pay the fine. (CP at 232.)

Shortly thereafter, DOL issued a notice of suspension for "fail[ure] to respond, appear, pay, or comply with the terms of the citation," which took effect November 1, 2007. (CP at 78.) One year later, Mr. Johnson was pulled over and arrested for DWLS 3rd. (CP at 184.) He spent four days in custody. (CP at 272.)

At trial, the State presented evidence that Mr. Johnson knowingly

drove while his privilege was suspended for failure to respond, appear, pay, or comply. (*See* CP at 77-78.) Mr. Johnson testified that he responded, appeared, and complied with the terms printed on the notice of infraction. (*See* CP at 232-37.) He argued that he could not be convicted of the crime charged because failure to pay is not an element of the crime. The District Court found Mr. Johnson guilty. (CP at 264-70.)

Mr. Johnson appealed his conviction to Superior Court. He applied for and was granted appointed counsel on appeal. (*See* Dist. Ct. CP at 8-9; CP at 14.)[16] Months later, in a hearing on Mr. Johnson's motion to replace counsel, the District Court, without warning, questioned Mr. Johnson at length under oath about his financial status. (CP at 120-29.) Shortly after, the District Court found Mr. Johnson not indigent and stripped him of appointed counsel. (Dist. Ct. CP at 1.)

On appeal, the Superior Court affirmed the conviction. (CP at 79-94.) Mr. Johnson sought discretionary review of the Superior Court's ruling. The commissioner of the Court of Appeals denied review, and a panel of judges denied Mr. Johnson's motion to modify that ruling. This court has accepted review.

---

[16] Clerks papers from the district court are distinguished herein as "Dist. Ct. CP" since they were not numbered with the clerks papers from the superior court.

## IV. SUMMARY OF ARGUMENT

A conviction of DWLS 3rd cannot be based on a suspension for failure to pay an adjudicated traffic fine. As demonstrated in Section A, failure to pay a fine is not found anywhere in the DWLS statute or other related statutes. A strict, logical reading of the plain language of the statutes yields a sensible interpretation that gives meaning to all of the statutory language but does not criminalize driving while suspended for failure to pay. This Court should reverse Mr. Johnson's conviction.

In addition, suspension of an indigent driver's license for failure to pay a fine is unconstitutional. Section B demonstrates that this never-ending suspension, intended to coerce payment of the fine, not only utterly fails to accomplish that purpose, but unfairly punishes the suspended drivers for no other reason than the fact they are poor. Since Mr. Johnson was suspended solely for his inability to pay, this Court should declare his suspension invalid.

Finally, as shown in Section C, the district court wrongfully deprived Mr. Johnson of appointed counsel on appeal, in violation of due process and contrary to law. Mr. Johnson requests reimbursement of attorney fees expended for private counsel at all levels of appeal.

## V. ARGUMENT

### A. Mr. Johnson's Conviction Should Be Reversed Because Failure to Pay Is Not an Element of DWLS.

In order to convict a criminal defendant, the State must prove every element of the crime charged beyond a reasonable doubt. *State v. Smith*, 155 Wn.2d 496, 502, 120 P.3d 559 (2005). The reason for the underlying suspension is an essential element of the crime of DWLS. *Smith*, 155 Wn.2d at 502-04. Mr. Johnson's conviction should be reversed because a suspension for failure to pay an adjudicated traffic fine is not one of the elements of DWLS 3rd.

The State's only evidence relating to the reason for suspension was a report from DOL that indicated Mr. Johnson was "[s]uspended in the third degree."[17] (CP at 77.) Attached to the report was a notice of suspension indicating that Mr. Johnson's driving privilege would be suspended because he had "failed to respond, appear, pay, or comply with the terms" of a notice of infraction. (CP at 78.) Mr. Johnson testified that he responded in a timely manner, appeared in court, and complied with the terms written on the notice of infraction but did not have the money to pay

---

[17] As noted by this Court in *State v. Smith*, 155 Wn.2d at 503-04, the statutory scheme does not authorize or describe "degrees" of suspension or revocation. While "suspended in the third degree" may be convenient shorthand for DOL, it is insufficient evidence to prove the reason for suspension element of DWLS. *Id.*

the fine ordered by the court. (CP at 232-35.)

The district court based Mr. Johnson's conviction on an erroneous interpretation of the DWLS statute. This status quo interpretation, applied by district courts throughout the state in cases of failure to pay, has no basis in the plain language of the statute as written by the legislature. Rather, it seems to have been born out of the desire of prosecutors, DOL, and "law & order" judges for escalated punishments against drivers who fail to pay their fines.[18] Despite the confusion and twisting of language required to reach the result, this false notion that DWLS 3rd includes failure to pay a fine has become the status quo across the state. The end result is debtor's prison, as drivers like Mr. Johnson are convicted and imprisoned for no other reason than their inability to pay a civil debt. This Court should break through the confusion of the status quo and provide a strict, plain language interpretation of the statute.

Questions of statutory construction are reviewed de novo. *Smith*, 155 Wn.2d at 501. "When interpreting a criminal statute, a literal and strict interpretation must be given." *State v. Wilson*, 125 Wn.2d 212, 216-17,

---

[18] Indeed, Judge Brosey of Lewis County Superior Court expressed the view that if the State could not use this statute to imprison a driver who failed to comply with the court's order to pay a fine, it would be "an invitation to anarchy." (RP at 3, 9.)

883 P.2d 320 (1994). The legislature means exactly what it says; a court "cannot add words or clauses when the legislature has chosen not to include that language." *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). The rule of lenity requires that ambiguity in a criminal statute be resolved in favor of the defendant. *See In re Cruze*, 169 Wn.2d 422, 427-28, 237 P.3d 274 (2010).

The DWLS statute, RCW 46.20.342, provides in pertinent part:

> A person who violates this section when his or her driver's license or diving privilege is, at the time of the violation, suspended or revoked solely because ... (iv) the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289 ... is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

RCW 46.20.342(1)(c).

Under a strict interpretation of the plain language of the statute, a person cannot be convicted of DWLS 3rd based on a suspension for failure to pay a fine. As will be demonstrated below, failure to pay is not one of the elements enumerated in the statute. The statute's cross-reference to RCW 46.20.289 does not bring failure to pay within the meaning of the enumerated elements. Nor does the phrase "has failed to comply with the terms of a notice of traffic infraction or citation" include failure to pay.

Recent amendments by the legislature support this interpretation.

### 1. Failure to pay is not one of the elements enumerated in RCW 46.20.342.

The State failed to prove the essential element of the reason for the underlying suspension. The relevant portion of the statute provides four possible reasons (hereafter, the "Four Reasons"): 1) the person failed to respond to a notice of infraction; 2) the person failed to appear at a requested hearing; 3) the person violated a written promise to appear; or 4) the person failed to comply with the terms of a notice of traffic infraction or citation. RCW 46.20.342(1)(c)(iv). Failure to pay a fine is not one of these Four Reasons.

The phrase that follows—"as provided in RCW 46.20.289"—does not provide a fifth reason. It does not extend the crime to reach any person whose license was "suspended as provided in RCW 46.20.289." The plain language reaches only a person whose license was "suspended solely because" of one of the Four Reasons, as those Four Reasons are set forth in Section 289. The placement of the "or" between the third and fourth reasons restricts the list to only those Four Reasons. The phrase "as provided in RCW 46.20.289," separated from the list by a comma, cannot be a fifth reason. Rather, it is a descriptive phrase that modifies the Four

Reasons that precede it.

The modifier "as provided in" is a form of reference used frequently in statutes, generally meaning "in the manner described in the referenced section." It can expand or limit the meaning of the term it modifies. For example, in *State v. Richardson*, 81 Wn.2d 111, 114-16, 499 P.2d 1264 (1972), the phrase "as provided in RCW 46.61.506" meant that its antecedent, "qualified person," was limited to those persons meeting the qualifications in RCW 46.61.506.[19] Similarly, here the phrase "as provided in RCW 46.20.289" means that its antecedents, the Four Reasons, are limited in the manner described in Section 289. Thus, to convict under the DWLS statute, the reason for the defendant's suspension must be one of the Four Reasons, as those Four Reasons are described in Section 289. Failure to pay is not one of the Four Reasons.

**2. "[A]s provided in RCW 46.20.289" does not expand the meaning of the enumerated elements to include failure to pay.**

Section 289 provides, in pertinent part:

The department shall suspend all driving privileges of a

---

[19] Note that not every provision of the referenced statute was applicable to the qualifications of a "qualified person". The reference incorporated only those provisions that dealt with the qualifications, not the entire referenced section. *Richardson*, 81 Wn.2d at 144-16. Similarly, here the reference to Section 289 does not incorporate the entire section, but only those provisions that relate to the Four Reasons.

> person when the department receives notice from a court under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 *that the person has* failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, *other than for a standing, stopping, or parking violation, provided that the traffic infraction or traffic offense is committed on or after July 1, 2005.*

RCW 46.20.289 (emphasis added).

Section 289 orders DOL to suspend a person's driving privileges when two conditions are met: 1) DOL receives notice from a court pursuant to one of the specified statutes; and 2) the notice specifies that the person has committed an act described in the Four Reasons, "other than for a standing, stopping, or parking violation, provided that the traffic infraction or traffic offense is committed on or after July 1, 2005."

Not every notice under one of the cross-referenced sections triggers DOL's ability to suspend. Consider this simplified rendering of the section, with cross-references removed:

> The department shall suspend all driving privileges of a person when the department receives notice ... that the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation...

RCW 46.20.289. The structure of the sentence requires that one of the

Four Reasons be satisfied, regardless of how the notice is received.[20] Notice under a cross-referenced section is one required condition; conduct meeting one of the Four Reasons is another.

The cross-references do not describe, qualify, or add meaning to the Four Reasons that follow. Thus they have no effect on the meaning of the DWLS statute.[21]

What does affect the DWLS statute is the limiting language that follows the Four Reasons in Section 289. As provided in this section, the person's failure to respond, appear, or comply must be related to a violation other than a standing, stopping, or parking violation, and the violation must have been committed on or after July 1, 2005.

---

[20] For example, a notice under RCW 46.63.110(6) that a person has failed to pay a fine is insufficient. It meets the first condition, being a notice from a court under one of the cross-referenced sections. But it fails the second condition, because failure to pay is not one of the Four Reasons. Thus Section 289 does not authorize DOL to suspend a license for failure to pay—and neither does RCW 46.20.291, the source of DOL's authority to suspend—though such authority may exist by implication under RCW 46.63.110(6) itself.

[21] Note that this interpretation does not render the cross-references meaningless. The cross-references in RCW 46.20.289 do not change the meaning of the DWLS statute, but they do have meaning within Section 289 itself, in relation to the Department's ability to suspend.

The district court's interpretation, in contrast, would render the Four Reasons meaningless everywhere they appear. Under the district court's interpretation, any notice from a court under any of the three cross-referenced sections would be the basis of a suspension supporting a conviction of DWLS 3rd, regardless of whether the person's conduct fell under one of the Four Reasons. The Four Reasons would have no meaning. Mr. Johnson's interpretation gives meaning to all of the words in the statutes.

This is the only effect, under the plain language of the statutes, that "as provided in RCW 46.20.289" has on the meaning of the DWLS statute. Section 289 does not expand the meaning of the Four Reasons. Rather, it limits them to exclude standing, stopping, or parking violations, and violations committed before July 1, 2005. It does not bring failure to pay within the meaning of the Four Reasons.

This interpretation is also consistent with the text on the back of the defendant copy of a criminal citation.[22] The back of the citation presents an abridged version of DWLS 3rd, in ordinary language:

> drive a motor vehicle while the license or privilege to drive is suspended or revoked for ... (4) failure to respond to a notice of traffic infraction, failure to appear at a requested hearing, violation of a written promise to appear in court, or failure to comply with the terms of a notice of traffic infraction or citation, or (5)...

This rendering indicates in ordinary language that Section 289 does not add to the meaning of DWLS 3rd and that failure to pay a fine is not included, only "failure to comply with the terms of a notice of traffic infraction or citation."

---

[22] A copy of the defendant copy of a citation is provided in App. at 79.

### 3. "[Failure] to comply with the terms of a notice of traffic infraction or citation" does not include failure to pay.

The State and the lower courts have attempted to stretch the meaning of the fourth reason—"failed to comply with the terms of a notice of traffic infraction or citation"—by using alternate language.[23] However, the legislature chose to use specific language, which the courts cannot add to or change. The legislature did not say "failed to comply with an infraction" or "failed to comply with the infraction process" or "failed to comply with the terms and conditions of an infraction" or "failed to comply with an order of the court" or "failed to pay an adjudicated fine." The legislature said: "failed to comply with the terms of a notice of traffic infraction or citation."

The meaning of that specific language "may be gleaned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Jackowski v. Borchelt*, — Wn.2d —, slip op. at 8 (June 14, 2012) (citations omitted). The ordinary meaning of the words, the legislative history, and use of the same words in related statutes lead to only one conclusion: The phrase

---

[23] *E.g.,* CP at 268 (District Court: "comply with the infraction"); RP at 6 (Superior Court: "failure to comply with the terms and conditions of a traffic offense").

means compliance with the express terms printed on the notice of infraction itself, nothing more.

The bill that added the language at issue to DWLS 3rd was enacted to fully implement the Nonresident Violator Compact, RCW 46.23.010.[24] The Compact requires member jurisdictions to suspend a driver's license for "*failure* of a motorist *to comply with the terms of a traffic citation.*" RCW 46.23.010, Art. III (emphasis added). The legislature used the very same language in the DWLS statute: "failed to comply with the terms of a notice of traffic infraction or citation." RCW 46.20.342(1)(c)(iv).

The Compact defines "terms of the citation":

> (1) "Citation" means any summons, ticket, *notice of infraction,* or other official document issued by a police officer for a traffic offense containing an order which requires the motorist to respond.
>
> . . .
>
> (11) "Terms of the citation" means *those options expressly stated upon the citation.*

RCW 46.23.010, Art. II (emphasis added).

The phrase means the same thing in the DWLS statute as it does in the Compact: a failure to comply with "those options expressly stated

---

[24] Laws of 1993 Chapter 501 (Substitute House Bill 1741) (App. at 33-46) enacted RCW 46.20.289, added subsection (5) to RCW 46.20.291, and added clause (iv) to the definition of DWLS 3rd. The purpose of these changes, according to the House Bill Report (App. at 47), was to meet the requirements of the Nonresident Violator Compact, which Washington had adopted, to obtain the full benefits of the Compact.

upon the [notice of infraction or] citation."

The terms of the notice of infraction Mr. Johnson received expressly stated that he must respond within fifteen days by checking one of three boxes and returning the form to the court. (CP at 68.) The terms included listed consequences for failure to respond or appear in court. (*Id.*) Next to each of the three check-boxes were additional terms applicable to each of the three options. (*Id.*) The terms for a contested hearing, the option Mr. Johnson selected, included information on the defendant's rights, a promise to appear in court, and the defendant's understanding that the infraction will go on his driving record if he loses at the contested hearing. (*Id.*)

The notice of infraction did not state that Mr. Johnson must pay a fine after a hearing. (*See* CP at 67-68.) It only stated that the "case may be sent to a collection agency" if he did not pay. (*Id.*) The notice did not mention any possibility of suspension for failure to pay. (*Id.*)

Since "the options expressly stated" on the notice of infraction did not require Mr. Johnson to pay the fine imposed by the court, Mr. Johnson's failure to pay was not a "fail[ure] to comply with the terms of a notice of traffic infraction" under the DWLS statute. Mr. Johnson responded, appeared, lived up to his promise to appear, and complied with

the terms expressly stated on his notice of infraction. His conduct fell outside the definition of DWLS 3rd. His conviction should be reversed.

The lower courts erroneously concluded that "fail[ure] to comply with the terms of a notice of traffic infraction" includes failure to pay. The courts reasoned that the phrase means failure to comply with any legal requirement through the entire process.[25] In doing so, the courts gave meaning to additional words or clauses that the legislature did not include in the statute. A literal and strict interpretation of the statute *cannot* include suspension for failure to pay because those words do not appear in the statute or on the notice of infraction.

The State has argued that this interpretation is absurd because it does not require an escalated punishment. This argument was addressed by the legislature when it enacted the current statutory scheme in 1993. The house committee heard testimony that decriminalizing failure to respond, appear, or comply could hamper enforcement. (App. at 49) The legislature soundly rejected this criticism, passing the bill unanimously. (App. at 52-53) Weaker enforcement is not an absurd result; rather, it is a result the

---

[25] CP at 84 (Judge Brosey held that the phrase "refers in clear and unequivocal language to non-compliance by [not] doing what the *adjudicated* infraction requires" (emphasis added), rather than what the *notice of infraction* requires.); CP at 270 (Commissioner Tripp held that failure to comply "still encompasses the failing to pay because payment on a committed infraction is part of the infraction process.")

legislature anticipated and accepted.

Laws of 1993 Chapter 501 also disposes of the State's attempted argument that failure to pay is somehow equivalent to failure to respond. At the same time it created the current statutory scheme, the legislature entirely repealed former RCW 46.64.020 (App. at 54-55) and former RCW 46.64.027 (App. at 56), which had defined the former crime of "failure to comply" and contained language equating failure to pay with failure to appear or respond. The legislature repealed "failure to comply" and its equivalency language in their entirety. No similar language has been enacted since. Failure to pay is failure to pay; it is not failure to appear or respond. The legislature also rejected "failure to comply" in favor of the language of the Nonresident Violator Compact: "failed to comply with the terms of a notice of traffic infraction or citation," which does not include failure to pay.

The State has also argued that Mr. Johnson's interpretation creates absurd results because it allows dangerous drivers to keep driving. This argument was addressed by this Court in *City of Redmond v. Moore*, 151 Wn.2d 664, 677, 91 P.3d 875 (2004):

> The State's interest in suspending an individual's driver's license for failing to appear, pay, or comply with a notice of traffic infraction is in the efficient administration of traffic

> regulation. . . . Simply put, failing to resolve a notice of traffic infraction does not pose the same threat to public safety as habitually unsafe drivers do.

Suspension for failure to respond, appear, or comply with the terms of a notice of infraction has nothing to do with keeping unsafe drivers off the road. A driver who fails to pay a speeding ticket is no more dangerous on the road than a driver who gets the same speeding ticket and pays it. Suspension is a tool to obtain payment, nothing more. Habitually unsafe drivers are subject to criminal penalties under DWLS 1st (habitual offenders) and DWLS 2nd (various unsafe acts). Mr. Johnson's interpretation of DWLS 3rd does not affect these legislatively determined penalties for unsafe driving.

**4. Recent legislative changes support this plain language interpretation of the statutes.**

The legislature has further revealed its intent through recent amendments to the statutes. Senate Bill 6284, passed in the 2012 regular session, (App. at 57-66) amends RCW 46.20.289 and RCW 46.63.110 in a way that supports the plain language interpretation above, reinforces the connection to the language of the Nonresident Violator Compact, and is entirely inconsistent with the State's arguments that failure to pay is incorporated by cross-reference or as part of failure to comply with the

terms of a notice of traffic infraction or citation. The amendments are one more indication that the legislature intended the statutes to function in the manner argued above.

The meaning of the Four Reasons in RCW 46.20.342 is not enlarged by the cross-references in RCW 46.20.289. The legislature amended Section 289 to restrict suspensions to situations of failure to respond, appear, or comply with the terms of a notice of traffic infraction or citation *"for a moving violation."* (App. at 65) If, as the lower courts held, any notice under one of the cross-referenced sections was sufficient to support a suspension, these amendments modifying the Four Reasons would be of no effect. The legislature apparently understands that it is the Four Reasons, not the cross references, which lend meaning to DWLS 3rd.

The legislature also reinforced the connection to the Nonresident Violator Compact. Under the amendments, DOL shall suspend a license "when the department receives notice from another state under Article IV of the nonresident violator compact under RCW 46.23.010." (App. at 65) Surely the legislature understood that this suspension can only be reached by DWLS 3rd if "failed to comply with the terms of a notice of traffic infraction or citation" relates to "those options expressly stated on the citation," as defined in the Compact, not to failure to pay.

### 5. Mr. Johnson's conviction based on a suspension for failure to pay should be reversed.

The DWLS statute punishes those who refuse to submit themselves to the authority of the police or the courts by refusing to respond or to appear in court. Failure to pay is not one of the elements of the crime enumerated in RCW 46.20.342. It is not drawn in to the meaning of those elements by reference to RCW 46.20.289. Nor is it a "fail[ure] to comply with the terms of a notice of traffic infraction or citation." The plain language of the statute does not punish those who, like Mr. Johnson, willingly and timely respond, appear in court, and otherwise comply with the terms printed on a notice of infraction, but who, for whatever reason, fail to pay the fine. Such people are debtors, not criminals.

This Court should cut through the confusion and injustice of the status quo and adopt a strict reading of the plain language of the statutes. Under such an interpretation, conviction of DWLS 3rd cannot be based on a suspension for failure to pay a fine. Mr. Johnson's driving privilege was suspended solely for his failure to pay an adjudicated fine after he responded, appeared, and complied with the terms of the notice of infraction. His conduct did not fit the elements of the crime. This court should reverse his conviction.

## B. Mr. Johnson's Conviction Should Be Reversed Because the Underlying Suspension Was Invalid.

Under RCW 46.63.110, DOL is ordered to suspend the license of any driver who fails to pay a traffic fine ordered by the court.[26] The suspension is only lifted when the driver satisfies the payment terms set by the court. *See* RCW 46.63.110. Suspension is automatic, without any inquiry into the driver's ability to pay. *See Id.*; RCW 46.20.245.

This automatic suspension for failure to pay has a devastating effect on indigent drivers. Since they have no means to pay the fine, they will never regain their licenses. They will be permanently cut off from employment opportunities that could provide the only legitimate means to pay the fine. Meanwhile, drivers who are able to pay may do so and never face suspension. Indigent drivers do not have this choice—they simply cannot pay.

The injustice of suspending indigent drivers for failure to pay must give way to the constitutional imperatives of due process and equal protection. Automatic suspension of indigent drivers for failure to pay is

---

[26] As noted above, neither RCW 46.20.291 (the statutory source of DOL's authority to suspend) nor RCW 46.20.289 (under which DOL purported to suspend Mr. Johnson) grants any authority to DOL to suspend a driver's license for failure to pay a traffic fine. If DOL has any authority to do so, it can only be found by implication through this mandate in RCW 46.63.110.

unconstitutional. Mr. Johnson's suspension for his inability to pay a fine was thus invalid and his conviction must be reversed. *See City of Redmond v. Moore*, 151 Wn.2d 664, 670, 91 P.3d 875 (2004); *State v. Dolson*, 138 Wn.2d 773, 782, 982 P.2d 100 (1999) ("An invalid revocation cannot later support a conviction for driving with a revoked license.").

**1. The factors set forth in *Bearden v. Georgia* demonstrate that automatic suspension based on a driver's inability to pay a fine violates Due Process and Equal Protection.**

In cases involving the treatment of indigents in the criminal justice system, "[d]ue process and equal protection principles converge in the Court's analysis." *Bearden v. Georgia*, 461 U.S. 660, 664-65, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983). The analysis "requires a careful inquiry into such factors as the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, and the existence of alternative means for effectuating the purpose." *Id.* at 666-67. The factors focus the Court's attention on the central question of whether it is fundamentally unfair or arbitrary for the State to suspend the license of an indigent driver who is unable to pay the fine. *See Id.* at 666.

Examining its previous decisions in *Williams v. Illinois*, 399 U.S. 235, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970), and *Tate v. Short*, 401 U.S.

395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971), which invalidated automatic additional penalties for indigent defendants' failure to pay fines, the Court concluded: "if the State determines a fine or restitution to be the appropriate penalty for the crime, it may not thereafter [inflict additional punishment on] a person solely because he lacked the resources to pay it." *See Bearden*, 461 U.S. at 667-68.

The Court noted that the reason for non-payment was of critical importance:

> If the probationer has willfully refused to pay the fine or restitution when he has the means to pay, the State is perfectly justified in using imprisonment as a sanction to enforce collection. ... But if the probationer [cannot pay the fine or restitution] through no fault of his own, it is fundamentally unfair to revoke probation automatically...

*Bearden*, 461 U.S. at 668-69 (citations omitted).

Applying these principles to recoupment of costs from a criminal defendant after an unsuccessful appeal, this Court emphatically held on constitutional grounds that "before enforced collection or any sanction is imposed for nonpayment, there must be an inquiry into ability to pay." *State v. Blank*, 131 Wn.2d 230, 242, 930 P.2d 1213 (1997)[27] The court

---

[27] This holding is repeated at 245 ("provided that before enforced payment or sanctions for nonpayment may be imposed, there is an opportunity to be heard regarding ability to pay"), 246 ("we hold that ability to pay (and other financial considerations) must be inquired into before enforced payment or imposition of sanctions for nonpayment"),

may only impose a sanction for nonpayment if the defendant's failure to pay is willful. *Id.* at 241.

This same rule applies to nonpayment of traffic fines. Analysis of the *Bearden* factors demonstrates that imposing the additional, coercive sanction of suspension on an indigent driver solely because he is unable to pay a fine violates the requirement of fundamental fairness embodied in the Due Process and Equal Protection clauses of the U.S. Constitution. Following *Bearden* and *Blank*, this Court should hold that suspension of an indigent driver's license for failure to pay is unconstitutional and reverse Mr. Johnson's conviction.

**a. The nature of the interest affected: Driving is a basic and valuable right protected under the U.S. Constitution.**

"Freedom of movement is at the heart of our scheme of values, for it may be as keen an interest of the individual as the choice of what he reads, says, eats or wears." *City of Spokane v. Port*, 43 Wn. App. 273, 275, 716 P.2d 945 (1986). This fundamental right to travel is an essential aspect of personal liberty protected by the U.S. Constitution. *Eggert v. City of Seattle*, 81 Wn.2d 840, 845, 505 P.2d 801 (1973); *Port*, 43 Wn. App. at

---

and 247 ("we have already explained that ability to pay must be assessed before enforced payment or sanctions are imposed for nonpayment").

274-75. The right to travel includes intrastate travel as well as interstate travel. *Eggert*, 81 Wn.2d at 845; *Port*, 43 Wn. App. at 274-75.

In addition to this fundamental right of travel, the "ordinary right of a citizen to use the streets in the usual way" (*i.e.,* driving) is "a common right." *Hadfield v. Lundin*, 98 Wn. 657, 662 (1917). The legislative power over that right is confined to *reasonable regulation* and does not extend to absolute prohibition. *Id.* at 662. "Once licenses are issued ... their continued possession may become essential in the pursuit of a livelihood." *Bell v. Burson*, 402 U.S. 535, 539, 91 S. Ct. 1586, 29 L. Ed. 2d 90 (1971). A driver's license is thus an important and valuable property interest protected by due process. *Id.*; *Dolson*, 138 Wn.2d at 776-77; *see Moore*, 151 Wn.2d at 670. The right to drive a motor vehicle on the public roadways is not a mere "privilege" that the State can revoke at will.

Nevertheless, both the State and the lower courts have incessantly repeated the mantra, "Driving is a privilege and not a right," in order to minimize and disregard Mr. Johnson's constitutional arguments. However, the case law from this Court and the United States Supreme Court is clear: regardless of whether it is denoted a "privilege" or a "right", the right to drive is a valuable interest that is constitutionally protected. *Bell*, 402 U.S.

at 539; *Dolson*, 138 Wn.2d at 776-77.[28]

**b. The extent to which the interest is affected: Never-ending suspension of the right to drive takes a terrible toll on indigent drivers.**

Suspension for failure to pay takes effect automatically, without any consideration of the driver's ability to pay. *See* RCW 46.63.110; RCW 46.20.245. The only opportunity for a hearing before the suspension takes effect is an administrative review, which only seeks to correct clerical errors and does not provide for inquiry into other issues, such as the driver's ability to pay. RCW 46.20.245; *City of Bellevue v. Lee*, 166 Wn.2d 581, 586, 210 P.3d 1011 (2009); *Lee*, 166 Wn.2d at 591 (Sanders, J., dissenting). The suspension lasts indefinitely, until the driver is able to satisfy the payment terms set by the court. *See* RCW 46.63.110.

This statutory scheme creates an invidious discrimination against the poor, punishing them severely for something they are unable to control—their inability to pay. "On its face the statute extends to all

---

[28] Despite having these modern cases before him (*e.g.*, CP at 23), Judge Rowe of Lewis County District Court repeatedly insisted that he had seen no case law that would overturn *State v. Rawson*, an antiquated 1942 opinion that held that deprivation of a driver's licence could never be unconstitutional. (CP at 152-53, 166-68.) He went so far as to argue that *City of Redmond v. Moore* was a Court of Appeals opinion that could not overturn *Rawson*, when it is, in fact, an opinion of this Court that followed this Court's previous holding in *Dolson* and the U.S. Supreme Court's 1971 holding in *Bell*, which directly contradict the antiquated and incorrect *Rawson* notion that the right to drive is a mere "privilege" that the State can revoke at will.

defendants an apparently equal opportunity [to avoid suspension] simply by [paying the fine.] In fact, this is an illusory choice for [an] indigent who, by definition, is without funds." *See Williams v. Illinois*, 399 U.S. 235, 242, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970) (modified to the present context). While a driver with means can simply pay the fine and never face suspension, an indigent driver will likely be suspended for the rest of his or her life.[29]

This never-ending suspension has devastating impacts on drivers. "Losing one's driver's license is more serious for some individuals than a brief stay in jail." *Argersinger v. Hamlin*, 407 U.S. 25, 48, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972) (Powell, J., concurring). Mr. Johnson used to subsist on occasional income from odd jobs; he cannot earn an income without driving. (*See* CP at 121-22.) He must now rely on government programs such as food stamps, energy assistance, and medical assistance to meet his basic needs. (CP at 122, 126.)

---

[29] Even fines alone, by their very nature, create an equal protection problem. *Tate*, 401 U.S. at 401 (Blackmun, J., concurring). Fines naturally impose a different burden on people of different incomes. A person with some discretionary income will feel the bite of the fine but is able to pay it. A person with more income will feel a lesser sting, because he or she gives up proportionally less in order to pay the fine. At sufficiently high incomes, the fine becomes insignificant. In contrast, for a person who is just scraping by, the sacrifice required to pay the fine is immense. For an indigent person, who does not even have the means to meet all of his or her basic needs, the burden is insurmountable.

Mr. Johnson's story is not unusual.[30] Suspension bars the indigent from employment opportunities. It entangles them forever in debt and the threat of incarceration. Suspension has a devastating and fundamentally unfair impact on indigent drivers.

**c. The rationality of the connection between means and purpose: There is no rational connection between suspending indigent drivers and collecting the fines.**

There is no rational connection between automatic, coercive suspension of an indigent driver and collection of the fines owed. The United States Supreme Court pointed out this lack of a rational connection between coercive sanctions and collection of fines from the indigent in *Tate v. Short*, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971):

> [The statutory scheme] cannot, consistently with the Equal Protection Clause, limit the punishment to payment of the fine if one is able to pay it, yet convert the fine into a prison term for an indigent defendant without the means to pay his fine. Imprisonment in such a case is not imposed to further any penal objective of the State. It is imposed to augment the State's revenues [by coercing payment of the fine] *but obviously does not serve that purpose; the defendant cannot pay because he is indigent* and his imprisonment, rather than aiding collection of the revenue, saddles the State with the cost of feeding and housing him for the period of his imprisonment.

---

30 *See* Jenkins; Pearson; *In for a Penny.*

*Tate*, 401 U.S. at 399 (emphasis added).

In the same way, suspension for failure to pay is not imposed for any penal objective; its sole purpose is to coerce payment of the fine. But it is irrational to think that any length of suspension will lead to payment of the fine by a person who simply does not have the means to pay.[31] "Revoking the [right to drive] of someone who through no fault of his own is unable to [pay a fine] will not make [payment] suddenly forthcoming." *See Bearden*, 461 U.S. at 670-71 (modified to fit the present context).

The legislature has determined that the appropriate penalty for an infraction is a fine, not suspension.[32] Suspension for failure to pay is only a tool to coerce the driver to comply with the order to pay. But to suspend a driver for omitting an act he is powerless to perform makes the sanction purely punitive because it cannot possibly have the desired coercive effect. *See King v. Dep't of Soc. & Health Servs.*, 110 Wn.2d 793, 804, 756 P.2d 1303 (1988). It becomes a punishment imposed for the sole reason that the driver is indigent—the very thing condemned in *Bearden*.

---

[31] Bannon, at 2, identifies "suspending driver's licenses for failure to pay" and "incarcerating those who have failed to pay" as some of the "Top Penny-Wise, Pound-Foolish Practices" in American criminal justice.

[32] Note that the penalty for some crimes includes mandatory license suspension in addition to fines or incarceration. *See* RCW 46.20.285 (vehicular assault: one year suspension; vehicular homicide: two years; DUI: from 90 days to four years).

Not only does the suspension not serve to aid in collecting the fine from an indigent driver, but it saddles the State with additional costs. Mr. Johnson now receives over $3,000 per year in public assistance as a result of his suspension, which was imposed to collect a $260 fine. The State economy loses the productivity of suspended drivers who can no longer work. In addition, police, prosecutors, and the courts lose credibility with the public and become glorified revenue agents, collecting the funds to pay their own salaries.[33] They spend countless hours dealing with DWLS 3rd instead of crimes that actually threaten public safety.[34]

There is absolutely no rational connection between the State's purpose of collecting fines from indigent drivers and its chosen means of coercive suspension.

**d. The existence of alternate means for effectuating the purpose: The State has ample alternative means to collect fines.**

The State has ample alternative means available to attempt to collect fines from indigent drivers without the same devastating impacts as suspension. The U.S. Supreme Court noted in *Bearden*: "[T]he State is not

---

[33] *In for a Penny,* at 9 ("it creates an appearance of impropriety when judges must rely in part on collecting LFOs from poor defendants to keep their courts running").

[34] *See Id.*; Bannon at 13, 25 ("Expending personnel and resources to collect debt from people who lack the ability to pay is a waste of scarce criminal justice funds.")

powerless to enfoce judgments against those financially unable to pay a fine. For example, the sentencing court could extend the time for making payments, or reduce the fine, or direct that the [person] perform some form of labor or public service in lieu of the fine." *Bearden*, 461 U.S. at 672.

The courts of this State can do the same. The court hearing a traffic infraction has discretion to reduce the fine, particularly where the driver is indigent. IRLJ 6.2(a) ("The court may impose on a defendant a lesser penalty in an individual case."); RCW 46.63.110 (allowing the court to reduce, waive, or suspend certain additional penalties if the driver is indigent). Payment plans and community service are also available in lieu of immediate payment or suspension. RCW 46.63.110

In addition, fines are civil in nature and can be enforced just as a civil judgment. *See* RCW 46.63.120, RCW 10.82.010. The fine can become a lien on real estate. RCW 10.64.080. The State may execute on the driver's non-exempt personal property. RCW 6.17.030. The State may garnish the driver's wages or bank accounts. *Id.*

These alternate methods will not impose the kind of devastating effects on the indigent driver that suspension does. They will also have a greater chance of successfully collecting the fine, since they do not cut off the driver's opportunities to earn money with which to pay.

Analysis of the *Bearden* factors leads inexorably to the conclusion that it is fundamentally unfair and arbitrary to suspend an indigent driver for his or her inability to pay a fine. Suspension permanently deprives the indigent of an important and valuable right, with devastating effect, while utterly failing to accomplish the purpose of the suspension. All this when there are other less harmful methods available with greater chances of successfully collecting the fine. Suspension of an indigent driver for inability to pay is unconstitutional.

**2. Mr. Johnson's conviction must be reversed because his suspension was unconstitutional.**

In a prosecution for DWLS, the State has the burden of proving that the underlying suspension complied with due process. *State v. Dolson*, 138 Wn.2d 773, 777, 982 P.2d 100 (1999). A suspension that does not comply with due process is void and cannot support a conviction for DWLS. *Id.* There is no evidence of any inquiry into Mr. Johnson's ability to pay prior to his suspension. Inquiry would have revealed that Mr. Johnson did not have any money to pay the fine. (*See* CP at 232.) Since, as noted above, suspension of an indigent driver for failure to pay is unconstitutional, Mr. Johnson's suspension was invalid. The invalid suspension cannot support a conviction for DWLS. This Court should

reverse both the conviction and the underlying suspension.

The district courts hearing infractions are best positioned to make inquiry into a driver's ability to pay. As noted above, this inquiry is a requirement of due process prior to suspension when the driver is indigent. *State v. Blank*, 131 Wn.2d 230, 242, 930 P.2d 1213 (1997) ("before enforced collection or any sanction is imposed for nonpayment, there must be an inquiry into ability to pay.") By statute, the courts manage the payment of fines for infractions. *See* RCW 46.63.110. The courts are to determine whether the driver is able to pay the fine in full or needs a payment plan or other alternative arrangements. *Id.* When a driver fails to pay a fine, it is the court that initiates the suspension process by notifying DOL of the failure to pay. *Id.* It is only proper, then, for the court (not DOL) to conduct the constitutionally mandated inquiry into a driver's ability to pay.

Unfortunately, the lower courts have shown themselves incapable of determining whether a driver's failure to pay is willful.[35] Judge Brosey of Lewis County Superior Court expressed his inability to tell the

---

[35] *In for a Penny*, at 65 ("Although these laws [referring to *Bearden* and *Blank*] purport to provide some minimal due process protections before defendants are jailed for unpaid legal debts, Washington courts do not consistently follow them."); *accord* Bannon, at 13 ("in practice, many courts routinely fail to consider a defendant's ability to pay").

difference between a scofflaw and someone who is truly indigent:

> How do I know that the situation with Mr. Johnson in not paying the fine is any different from somebody who basically said, I don't care if I can pay this or not, I'm not going to do it, so they choose not to do it? ... The only difference is that by the person who has money has decided by his own volition not to pay it, where you claim Mr. Johnson is indigent and can't pay it. I don't see a distinction.

(RP at 4:6-10.) Judge Buzzard of Lewis County District Court has publicly expressed his opinion that all failure to pay is willful: "I don't think it's a financial issue, I think it's a responsibility issue."[36]

These statements are reminiscent of the trial court judge in *Bearden*, whose conduct was condemned by the U.S. Supreme Court:

> [T]he court curtly rejected counsel's suggestion that the time for making the payments be extended, saying that "the fallacy in that argument" is that the petitioner has long known he had to pay the $550 and yet did not comply with the court's prior order to pay. The court declared that "I don't know any way to enforce the prior orders of the Court but one way," which was to sentence him to imprisonment.
>
> The focus of the court's concern, then was that the petitioner had disobeyed a prior court order to pay the fine, and for that reason must be imprisoned. But this is no more than imprisoning a person solely because he lacks funds to pay the fine, a practice we condemned in *Williams* and *Tate*. By sentencing petitioner to imprisonment simply because he could not pay the fine, without considering the

---

[36] Pearson at Main 8 (App. at 82).

> reasons for the inability to pay or the propriety of reducing the fine or extending the time for payments or making alternative orders, the court automatically turned a fine into a prison sentence."

*Bearden v. Georgia*, 461 U.S. 660, 674, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983). The lower courts cannot be allowed to continue to turn fines into never-ending suspensions—and imprisonment by way of DWLS—without considering the reasons for a driver's failure to pay. Only where the court can determine that a driver's failure to pay is willful can it order suspension for failure to pay.

Mr. Johnson was indigent when he failed to pay the fine for his infraction. There is no evidence that the State engaged in any inquiry into his ability to pay before suspending him. Without a determination that his failure to pay was willful, the suspension is void and cannot form the basis of a conviction for DWLS 3rd. This Court should reverse the conviction and hold that suspension for failure to pay is unconstitutional when the driver is indigent and unable to pay. This Court should require the courts hearing infractions to inquire into a driver's ability to pay the adjudicated fine and only order suspension or enforced civil collection if the driver's failure to pay is willful.

### C. Mr. Johnson Requests Reimbursement of Attorney Fees on Appeal Because He Was Wrongfully Stripped of Appointed Counsel.

It is a well-settled constitutional principle that criminal defendants have a right to the assistance of counsel at trial. *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). The right to counsel applies to misdemeanors as well as felonies. *Argersinger v. Hamlin*, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972). The right to counsel also applies to appeals. *Douglas v. California*, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963). By statute, the right to counsel provided at state expense is extended to indigent criminal defendants at all levels of appeals. RCW 10.73.150.

Mr. Johnson was wrongfully stripped of his appointed counsel on appeal of his conviction to superior court. As a result, he has been compelled to prosecute his appeal all the way to this Court at his own expense, liquidating his retirement to cover the cost of private counsel. Because he was wrongfully deprived of the assistance of counsel provided at State expense, Mr. Johnson respectfully requests this court order the State to reimburse him for attorney fees paid to private counsel on appeal.

At the beginning of Mr. Johnson's appeal, the district court found him indigent and appointed counsel. (CP at 14; Dist. Ct. CP at 8-9.)

Months later, dissatisfied with counsel's dilatory performance, Mr. Johnson brought a motion to replace counsel. (CP at 113.) The district court, without advance notice, inquired at length into Mr. Johnson's financial situation. (CP at 120-29.) Based on this inquiry, the court found Mr. Johnson not indigent and deprived him of his appointed counsel. (Dist. Ct. CP at 1.)

This impromptu indigency hearing was entirely invalid. By statute, the determination of indigency is made upon defendant's initial contact with the court. RCW 10.101.020(3). That was done; Judge Buzzard himself approved and signed the form. There is no provision in the indigency statute that allows the court to initiate an indigency hearing on its own volition after a defendant has already been found indigent. *See* RCW 10.101.020. In addition, the court failed to provide Mr. Johnson with any meaningful notice or opportunity to be heard, in violation of his right to due process. *See Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.").

The court's decision to deprive Mr. Johnson of appointed counsel was also contrary to law. A person is indigent under the statute if one of

four conditions is met:

> (1) "Indigent" means a person who, at any stage of a court proceeding, is:
>
> (a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, *food stamps or food stamp benefits transferred electronically,* refugee resettlement benefits, medicaid, or supplemental security income; *or*
>
> (b) Involuntarily committed to a public mental health facility; *or*
>
> (c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; *or*
>
> (d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

RCW 10.101.010 (emphasis added). If any one of the conditions in paragraphs (a), (b), or (c) is met, the person is indigent, and there is no need to inquire into "available funds" under paragraph (d). The "Determination of Indigency Report" used in Lewis County District Court follows this logic: If one of the first three paragraphs applies, the applicant is instructed to skip sections dealing with monthly income and expenses and liquid assets. (Dist. Ct. CP at 8-9 ("If Section III, a, b, or c applies,

complete only Sections VIII, X and XI.").)

Mr. Johnson's "Determination of Indigency Report" indicated that his annual income after taxes was $0, which is 125 percent or less of the federally established poverty level. (Dist. Ct. CP at 8.) This alone qualified him as indigent under RCW 10.101.010(1)(c). Mr. Johnson testified at the hearing that he was receiving food stamp benefits. (CP at 122.) This also qualified him as indigent, under paragraph (1)(a). Because the statutory list is disjunctive, Mr. Johnson's receipt of food stamps (paragraph (1)(a)) or his zero income (paragraph (1)(c)) alone determines the outcome, without any need to analyze "available funds" under paragraph (1)(d).

Mr. Johnson was indigent. He had a constitutional and statutory right to appointed counsel at all levels of appeal. Because the district court deprived him of appointed counsel on appeal, in violation of his due process rights and contrary to the applicable statute, Mr. Johnson was forced to prosecute his appeal at his own expense. He asks this court order the State to reimburse his reasonable attorney fees incurred at every level of appeal.

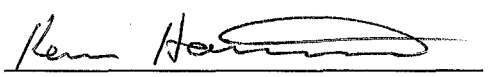
## VI. CONCLUSION

Suspensions and DWLS 3rd have been destroying the lives of poor Washingtonians for far too long. The "comfortable convenience" of the status quo must give way to constitutional imperatives and a proper reading of the applicable statutes.

This Court should reverse Mr. Johnson's conviction and hold that RCW 46.20.342 does not criminalize driving with a license suspended for failure to pay an adjudicated traffic fine. This Court should declare Mr. Johnson's underlying suspension invalid and hold that suspension of a driver's license or privilege for failure to pay is unconstitutional unless the court determines prior to suspension that the driver's failure to pay is willful. This court should grant Mr. Johnson reimbursement of attorney fees to compensate for the wrongful deprivation of his right to counsel at public expense, in violation of due process and contrary to law.

Respectfully Submitted this 27th day of July, 2012.

CUSHMAN LAW OFFICES, P.S.



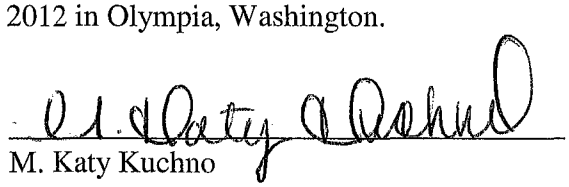
Kevin Hochhalter, WSBA #43124
Attorney for Stephen Johnson

## CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on July 27, 2012, I caused to be served a true copy of the foregoing Brief, by the method indicated below, and addressed to each of the following:

| | | |
|---|---|---|
| original: | Supreme Court<br>Temple of Justice<br>415 12th Avenue SW<br>Olympia, WA 98504 | ____ U.S. Mail, Postage Prepaid<br>_XX___ Hand Delivery<br>_____ Overnight Mail<br>_____ Facsimile<br>_____ Electronic Mail |
| copy: | Shane Michael O'Rourke,<br>Lewis County Prosecuting<br>Atty's Office<br>345 W. Main St, 2nd Floor<br>Chehalis, WA 98532-1900 | _XX U.S. Mail, Postage Prepaid<br>____ Legal Messenger<br>_____ Overnight Mail<br>_____ Facsimile<br>_XX_ Electronic Mail |

DATED this 27th day of July, 2012 in Olympia, Washington.



M. Katy Kuchno
Paralegal to Kevin Hochhalter

# APPENDIX

## RCW 46.20.342 (2008)

**46.20.342 Driving while license invalidated—Penalties—Extension of invalidation. (Effective until January 1, 2009.)**

(1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be an habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one hundred eighty days. If the person is also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum

sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW 46.65.080.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. This subsection applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

(i) A conviction of a felony in the commission of which a motor vehicle was used;

(ii) A previous conviction under this section;

(iii) A notice received by the department from a court or diversion unit as provided by RCW 46.20.265, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;

(iv) A conviction of RCW 46.20.410, relating to the violation of

restrictions of an occupational or a temporary restricted driver's license;

(v) A conviction of RCW 46.20.345, relating to the operation of a motor vehicle with a suspended or revoked license;

(vi) A conviction of RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(vii) A conviction of RCW 46.61.024, relating to attempting to elude pursuing police vehicles;

(viii) A conviction of RCW 46.61.500, relating to reckless driving;

(ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a person under the influence of intoxicating liquor or drugs;

(x) A conviction of RCW 46.61.520, relating to vehicular homicide;

(xi) A conviction of RCW 46.61.522, relating to vehicular assault;

(xii) A conviction of RCW 46.61.527(4), relating to reckless endangerment of roadway workers;

(xiii) A conviction of RCW 46.61.530, relating to racing of vehicles on highways;

(xiv) A conviction of RCW 46.61.685, relating to leaving children in an unattended vehicle with motor running;

(xv) A conviction of RCW 46.61.740, relating to theft of motor

vehicle fuel;

(xvi) A conviction of RCW 46.64.048, relating to attempting, aiding, abetting, coercing, and committing crimes;

(xvii) An administrative action taken by the department under chapter 46.20 RCW; or

(xviii) A conviction of a local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state, of an offense substantially similar to a violation included in this subsection.

(c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (i) the person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program, (ii) the person must furnish proof of financial responsibility for the future as provided by chapter 46.29 RCW, (iii) the person has failed to comply with the provisions of chapter 46.29 RCW relating to uninsured accidents, (iv) the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289, (v) the person has

committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license, (vi) the person has been suspended or revoked by reason of one or more of the items listed in (b) of this subsection, but was eligible to reinstate his or her driver's license or driving privilege at the time of the violation, or (vii) the person has received traffic citations or notices of traffic infraction that have resulted in a suspension under RCW 46.20.267 relating to intermediate drivers' licenses, or any combination of (i) through (vii), is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

(2) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section, the department shall:

(a) For a conviction of driving while suspended or revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter 46.65 RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(c) Not extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was under subsection (1)(a) or (b) of this section and the court recommends against the extension and the convicted person has obtained a valid driver's license, the period of suspension or revocation shall not be extended.

## RCW 46.20.289 (2008)

**46.20.289 Suspension for failure to respond, appear, etc.**

The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 that the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, other than for a standing, stopping, or parking violation, provided that the traffic infraction or traffic offense is committed on or after July 1, 2005. A suspension under this section takes effect pursuant to the provisions of RCW 46.20.245, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311. In the case of failure to respond to a traffic infraction issued under RCW 46.55.105, the department shall suspend all driving privileges until the person provides evidence from the court that all penalties and restitution have been paid. A suspension under this section does not take effect if, prior to the effective date of the suspension, the department receives a certificate from the court showing that the case has been adjudicated.

## RCW 46.63.070 (2008)

**46.63.070 Response to notice—Contesting determination—Hearing—Failure to respond or appear.**

(1) Any person who receives a notice of traffic infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) If the person determined to have committed the infraction does not contest the determination the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department in accordance with RCW 46.20.270.

(3) If the person determined to have committed the infraction wishes to contest the determination the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the

hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.

(4) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

(5)(a) Except as provided in (b) and (c) of this subsection, in hearings conducted pursuant to subsections (3) and (4) of this section, the court may defer findings, or in a hearing to explain mitigating circumstances may defer entry of its order, for up to one year and impose conditions upon the defendant the court deems appropriate. Upon deferring findings, the court may assess costs as the court deems appropriate for administrative processing. If at the end of the deferral period the defendant has met all conditions and has not been determined to have committed another traffic infraction, the court may dismiss the infraction.

(b) A person may not receive more than one deferral within a

seven-year period for traffic infractions for moving violations and more than one deferral within a seven-year period for traffic infractions for nonmoving violations.

(c) A person who is the holder of a commercial driver's license or who was operating a commercial motor vehicle at the time of the violation may not receive a deferral under this section.

(6) If any person issued a notice of traffic infraction:

(a) Fails to respond to the notice of traffic infraction as provided in subsection (2) of this section; or

(b) Fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section;

the court shall enter an appropriate order assessing the monetary penalty prescribed for the traffic infraction and any other penalty authorized by this chapter and shall notify the department in accordance with RCW 46.20.270, of the failure to respond to the notice of infraction or to appear at a requested hearing.

## RCW 46.63.110 (2008)

**46.63.110 Monetary penalties.**

(1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this chapter or title.

(2) The monetary penalty for a violation of (a) RCW 46.55.105(2) is two hundred fifty dollars for each offense; (b) RCW 46.61.210(1) is five hundred dollars for each offense. No penalty assessed under this subsection (2) may be reduced.

(3) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(4) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to this chapter. A local legislative body may set a monetary penalty not to exceed

twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordinance, regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(5) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size, weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(6) Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation is imposed by a court under this chapter it is immediately payable. If the court determines, in its discretion, that a person is not able to pay a monetary obligation in full, and not more than one year has passed since the later of July 1, 2005, or the date the monetary obligation initially became due and payable, the court shall enter into a payment plan with the person, unless the person has previously been granted a payment plan with respect to the same monetary obligation, or unless the person is in noncompliance of any existing or prior payment plan, in which case the court may, at its discretion, implement a payment plan. If the court has notified the department that the person has failed to

pay or comply and the person has subsequently entered into a payment plan and made an initial payment, the court shall notify the department that the infraction has been adjudicated, and the department shall rescind any suspension of the person's driver's license or driver's privilege based on failure to respond to that infraction. "Payment plan," as used in this section, means a plan that requires reasonable payments based on the financial ability of the person to pay. The person may voluntarily pay an amount at any time in addition to the payments required under the payment plan.

(a) If a payment required to be made under the payment plan is delinquent or the person fails to complete a community restitution program on or before the time established under the payment plan, unless the court determines good cause therefor and adjusts the payment plan or the community restitution plan accordingly, the court shall notify the department of the person's failure to meet the conditions of the plan, and the department shall suspend the person's driver's license or driving privilege until all monetary obligations, including those imposed under subsections (3) and (4) of this section, have been paid, and court authorized community restitution has been completed, or until the department has been notified that the court has entered into a new time

payment or community restitution agreement with the person.

(b) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court shall notify the department of the delinquency. The department shall suspend the person's driver's license or driving privilege until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section.

(c) If the payment plan is to be administered by the court, the court may assess the person a reasonable administrative fee to be wholly retained by the city or county with jurisdiction. The administrative fee shall not exceed ten dollars per infraction or twenty-five dollars per payment plan, whichever is less.

(d) Nothing in this section precludes a court from contracting with outside entities to administer its payment plan system. When outside entities are used for the administration of a payment plan, the court may assess the person a reasonable fee for such administrative services, which fee may be calculated on a periodic, percentage, or other basis.

(e) If a court authorized community restitution program for offenders is available in the jurisdiction, the court may allow conversion of

all or part of the monetary obligations due under this section to court authorized community restitution in lieu of time payments if the person is unable to make reasonable time payments.

(7) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction shall be assessed:

(a) A fee of five dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the emergency medical services and trauma care system trust account under RCW 70.168.040;

(b) A fee of ten dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the Washington auto theft prevention authority account; and

(c) A fee of two dollars per infraction. Revenue from this fee shall be forwarded to the state treasurer for deposit in the traumatic brain injury account established in RCW 74.31.060.

(8)(a) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction other than of RCW 46.61.527

shall be assessed an additional penalty of twenty dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a court authorized community restitution program for offenders is available in the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this subsection (8) by participation in the court authorized community restitution program.

(b) Eight dollars and fifty cents of the additional penalty under (a) of this subsection shall be remitted to the state treasurer. The remaining revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this subsection to the state treasurer must be deposited as provided in RCW 43.08.250. The balance of the revenue received by the county or city treasurer under this subsection must be deposited into the county or city current expense fund. Moneys retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060.

(9) If a legal proceeding, such as garnishment, has commenced to collect any delinquent amount owed by the person for any penalty imposed by the court under this section, the court may, at its discretion, enter into a payment plan.

(10) The monetary penalty for violating RCW 46.37.395 is: (a) Two hundred fifty dollars for the first violation; (b) five hundred dollars for the second violation; and (c) seven hundred fifty dollars for each violation thereafter.

## RCW 46.64.025 (2008)

**46.64.025 Failure to appear—Notice to department.**

Whenever any person served with a traffic citation willfully fails to appear for a scheduled court hearing, the court in which the defendant failed to appear shall promptly give notice of such fact to the department of licensing. Whenever thereafter the case in which the defendant failed to appear is adjudicated, the court hearing the case shall promptly file with the department a certificate showing that the case has been adjudicated.

## RCW 46.20.291 (2008)

**46.20.291 Authority to suspend—Grounds.**

The department is authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation or suspension of license is provided by law;

(2) Has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any person or serious property damage;

(3) Has been convicted of offenses against traffic regulations governing the movement of vehicles, or found to have committed traffic infractions, with such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways;

(4) Is incompetent to drive a motor vehicle under RCW 46.20.031(3);

(5) Has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in RCW 46.20.289;

(6) Is subject to suspension under RCW 46.20.305 or 9A.56.078;

(7) Has committed one of the prohibited practices relating to drivers' licenses defined in RCW 46.20.0921; or

(8) Has been certified by the department of social and health services as a person who is not in compliance with a child support order or a residential or visitation order as provided in RCW 74.20A.320.

## RCW 46.23.010 (2008)

**46.23.010 Compact established—Provisions.**

The nonresident violator compact, hereinafter called "the compact," is hereby established in the form substantially as follows, and the Washington state department of licensing is authorized to enter into such compact with all other jurisdictions legally joining therein:

NONRESIDENT VIOLATOR COMPACT

Article I — Findings, Declaration of Policy, and Purpose

(a) The party jurisdictions find that:

(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction: Must post collateral or bond to secure appearance for trial at a later date; or if unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or is taken directly to court for his trial to be held.

(2) In some instances, the motorist's driver's license may be deposited as collateral to be returned after he has complied with the terms of the citation.

(3) The purpose of the practices described in paragraphs (1) and (2) above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic

citation, could return to him [his] home jurisdiction and disregard his duty under the terms of the traffic citation.

(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

(5) The practice described in paragraph (1) above, causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some arrangement can be made.

(6) The deposit of a driver's license as a bail bond, as described in paragraph (2) above, is viewed with disfavor.

(7) The practices described herein consume an undue amount of law enforcement time.

(b) It is the policy of the party jurisdictions to:

(1) Seek compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

(3) Extend cooperation to its fullest extent among the jurisdictions for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

(4) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in paragraph (b) above in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

Article II — Definitions

As used in the compact, the following words have the meaning indicated, unless the context requires otherwise.

(1) "Citation" means any summons, ticket, notice of infraction, or other official document issued by a police officer for a traffic offense

containing an order which requires the motorist to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic offense.

(3) "Court" means a court of law or traffic tribunal.

(4) "Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(5) "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.

(6) "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

(7) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(9) "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

(10) "Police officer" means any individual authorized by the party

jurisdiction to issue a citation for a traffic offense.

(11) "Terms of the citation" means those options expressly stated upon the citation.

Article III — Procedure for Issuing Jurisdiction

(a) When issuing a citation for a traffic violation or infraction, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, subject to the exceptions noted in paragraph (b) of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist's personal recognizance that he or she will comply with the terms of the citation.

(b) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it must take place immediately following issuance of the citation.

(c) Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and insofar as practical shall contain information as specified in the compact manual as minimum requirements

for effective processing by the home jurisdiction.

(d) Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist the information in a form and content substantially conforming to the compact manual.

(e) The licensing authority of the issuing jurisdiction may not suspend the privilege of a motorist for whom a report has been transmitted.

(f) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

(g) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

Article IV — Procedure for Home Jurisdiction

(a) Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the

motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be accorded.

(b) The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the compact manual.

Article V — Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to licenses to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party jurisdiction and a nonparty jurisdiction.

Article VI — Compact Administrator Procedures

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each party jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by the jurisdiction executive and will

serve and be subject to removal in accordance with the laws of the jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of his identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority of the party jurisdictions are represented.

(c) The board shall elect annually, from its membership, a chairman and a vice chairman.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any jurisdiction, the United States, or any other governmental agency, and may

receive, utilize, and dispose of the same.

(f) The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, person, firm, or corporation, or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

Article VII — Entry into Compact and Withdrawal

(a) This compact shall become effective when it has been adopted by at least two jurisdictions.

(b) Entry into the compact shall be made by a resolution of ratification executed by the department of licensing and submitted to the chairman of the board. The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(1) A citation of the authority by which the jurisdiction is empowered to become a party to this compact.

(2) Agreement to comply with the terms and provisions of the compact.

(3) That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

(c) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than sixty days after notice has been given by the chairman of the board of compact administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

(d) A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until ninety days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

Article VIII — Exceptions

The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations, and violations of law governing the transportation of hazardous materials.

Article IX — Amendments to the Compact

(a) This compact may be amended from time to time.

Amendments shall be presented in resolution form to the chairman of the board of compact administrators and may be initiated by one or more party jurisdictions.

(b) Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective thirty days after the date of the last endorsement.

(c) Failure of a party jurisdiction to respond to the compact chairman within one hundred twenty days after receipt of the proposed amendment shall constitute endorsement.

Article X — Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party jurisdiction or of the United States or the applicability thereof to any government, agency, person, or circumstance, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.

## Article XI — Title

This compact shall be known as the nonresident violator compact.

Passed the House April 20, 1993.
Passed the Senate April 1, 1993.
Approved by the Governor May 18, 1993, with the exception of certain items which were vetoed.
Filed in Office of Secretary of State May 18, 1993.

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

"I am returning herewith, without my approval as to section 10, Substitute House Bill No. 1528 entitled:

"AN ACT Relating to cash management;"

Section 10 of Substitute House Bill No. 1528 requires the State Treasurer to prepare and submit to the Legislature a cost-benefit report on the implementation of this act. While I agree the information generated by such an analysis would be useful, I question the need for a specific statutory requirement for the Treasurer to perform this duty. Of primary concern is that no additional funds were provided to the Treasurer for this function. With agencies facing severe funding and staffing limitations in the coming biennium, the resources available to carry out these kinds of duties will be in short supply.

Also, some of the required study items in section 10 relate to functions assigned to the Office of Financial Management, so the requirement that the State Treasurer submit the report is somewhat misdirected. Much of the information should be developed and submitted jointly by the State Treasurer and the Office of Financial Management. I have, therefore, directed the Office of Financial Management to work with the State Treasurer's office to provide the legislative fiscal committees with progress reports, as needed, on the implementation of this act.

For these reasons, I have vetoed section 10 of Substitute House Bill No. 1528.

With the exception of section 10, Substitute House Bill No. 1528 is approved."

---

## CHAPTER 501

[Substitute House Bill 1741]

TRAFFIC LAW ENFORCEMENT—REVISIONS

**Effective Date: 7/25/93**

AN ACT Relating to enforcement of traffic laws; amending RCW 46.20.031, 46.20.207, 46.20.291, 46.20.311, 46.20.342, 46.61.515, 46.63.020, 46.63.060, 46.63.070, 46.63.110, and 46.52.120; adding a new section to chapter 46.20 RCW; repealing RCW 46.64.020 and 46.64.027; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 46.20 RCW to read as follows:

The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(5) or 46.64.025 that the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, other than for a notice of a standing, stopping, or parking violation. A

suspension under this section takes effect thirty days after the date the department mails notice of the suspension, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311. A suspension under this section does not take effect if, prior to the effective date of the suspension, the department receives a certificate from the court showing that the case has been adjudicated.

**Sec. 2.** RCW 46.20.031 and 1985 c 101 s 1 are each amended to read as follows:

The department shall not issue a driver's license hereunder:

(1) To any person who is under the age of sixteen years;

(2) To any person whose license has been suspended during such suspension, nor to any person whose license has been revoked, except as provided in RCW 46.20.311;

(3) ((~~To any person when the department has been notified by a court that such person has violated his written promise to appear in court, unless the department has received a certificate from the court in which such person promised to appear, showing that the case has been adjudicated. The deposit of bail by a person charged with a violation of any law regulating the operation of motor vehicles on highways shall be deemed an appearance in court for the purpose of this section;~~

~~(4)~~)) To any person who has been evaluated by a program approved by the department of social and health services as being an alcoholic, drug addict, alcohol abuser and/or drug abuser: PROVIDED, That a license may be issued if the department determines that such person has been granted a deferred prosecution, pursuant to chapter 10.05 RCW, or is satisfactorily participating in or has successfully completed an alcohol or drug abuse treatment program approved by the department of social and health services and has established control of his or her alcohol and/or drug abuse problem;

((~~(5)~~)) (4) To any person who has previously been adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease, and who has not at the time of application been restored to competency by the methods provided by law: PROVIDED, HOWEVER, That no person so adjudged shall be denied a license for such cause if the superior court should find him able to operate a motor vehicle with safety upon the highways during such incompetency;

((~~(6)~~)) (5) To any person who is required by this chapter to take an examination, unless such person shall have successfully passed such examination;

((~~(7)~~)) (6) To any person who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

((~~(8)~~)) (7) To any person when the department has good and substantial evidence to reasonably conclude that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways; subject to review by a court of competent jurisdiction.

**Sec. 3.** RCW 46.20.207 and 1991 c 293 s 4 are each amended to read as follows:

(1) The department is authorized to cancel any driver's license upon determining that the licensee was not entitled to the issuance of the license, or that the licensee failed to give the required or correct information in his or her application, or that the licensee is incompetent to drive a motor vehicle for any of the reasons under RCW 46.20.031 ((~~(5) and (8)~~)) (4) and (7).

(2) Upon such cancellation, the licensee must surrender the license so canceled to the department.

**Sec. 4.** RCW 46.20.291 and 1991 c 293 s 5 are each amended to read as follows:

The department is authorized to suspend the license of a driver upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation or suspension of license is provided by law;

(2) Has, by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in death or injury to any person or serious property damage;

(3) Has been convicted of offenses against traffic regulations governing the movement of vehicles, or found to have committed traffic infractions, with such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways;

(4) Is incompetent to drive a motor vehicle ((~~for any of the reasons enumerated in subsection (4) of~~)) under RCW 46.20.031(3); or

(5) Has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in section 1 of this act; or

(6) Has committed one of the prohibited practices relating to drivers' licenses defined in RCW 46.20.336.

**Sec. 5.** RCW 46.20.311 and 1990 c 250 s 45 are each amended to read as follows:

(1) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as permitted under RCW 46.20.342 or 46.61.515. Except for a suspension under section 1 of this act and RCW 46.20.291(5), whenever the license or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of

twenty dollars. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, the reissue fee shall be fifty dollars.

(2) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege renewed or restored until: (a) After the expiration of one year from the date the license or privilege to drive was revoked; (b) after the expiration of the applicable revocation period provided by RCW 46.61.515(3) (b) or (c); (c) after the expiration of two years for persons convicted of vehicular homicide; (d) after the expiration of one year in cases of revocation for the first refusal within five years to submit to a chemical test under RCW 46.20.308; (e) after the expiration of two years in cases of revocation for the second or subsequent refusal within five years to submit to a chemical test under RCW 46.20.308; or (f) after the expiration of the applicable revocation period provided by RCW 46.20.265. After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reissue fee in the amount of twenty dollars, but if the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be fifty dollars. Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways.

(3) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020 or section 1 of this act or RCW 46.20.291(5), the department shall not issue to the person any new or renewal license until the person pays a reissue fee of twenty dollars. If the suspension is the result of a violation of the laws of ((~~another~~)) this or any other state, province, or other jurisdiction involving (a) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (b) the refusal to submit to a chemical test of the driver's blood alcohol content, the reissue fee shall be fifty dollars.

**Sec. 6.** RCW 46.20.342 and 1992 c 130 s 1 are each amended to read as follows:

(1) It is unlawful for any person to drive a motor vehicle in this state while that person is in a suspended or revoked status or when his or her privilege to drive is suspended or revoked in this or any other state. Any person who has a valid Washington driver's license is not guilty of a violation of this section.

(a) A person found to be an habitual offender under chapter 46.65 RCW, who violates this section while an order of revocation issued under chapter 46.65

RCW prohibiting such operation is in effect, is guilty of driving while license suspended or revoked in the first degree, a gross misdemeanor. Upon the first such conviction, the person shall be punished by imprisonment for not less than ten days. Upon the second conviction, the person shall be punished by imprisonment for not less than ninety days. Upon the third or subsequent conviction, the person shall be punished by imprisonment for not less than one ((~~year~~)) hundred eighty days. If the person is also convicted of the offense defined in RCW 46.61.502 or 46.61.504, when both convictions arise from the same event, the minimum sentence of confinement shall be not less than ninety days. The minimum sentence of confinement required shall not be suspended or deferred. A conviction under this subsection does not prevent a person from petitioning for reinstatement as provided by RCW 46.65.080.

(b) A person who violates this section while an order of suspension or revocation prohibiting such operation is in effect and while the person is not eligible to reinstate his or her driver's license or driving privilege, other than for a suspension for the reasons described in (c) of this subsection, is guilty of driving while license suspended or revoked in the second degree, a gross misdemeanor. This subsection applies when a person's driver's license or driving privilege has been suspended or revoked by reason of:

(i) A conviction of a felony in the commission of which a motor vehicle was used;

(ii) A previous conviction under this section;

(iii) A notice received by the department from a court or diversion unit as provided by RCW 46.20.265, relating to a minor who has committed, or who has entered a diversion unit concerning an offense relating to alcohol, legend drugs, controlled substances, or imitation controlled substances;

(iv) A conviction of RCW 46.20.410, relating to the violation of restrictions of an occupational driver's license;

(v) A conviction of RCW 46.20.420, relating to the operation of a motor vehicle with a suspended or revoked license;

(vi) A conviction of RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(vii) A conviction of RCW 46.61.024, relating to attempting to elude pursuing police vehicles;

(viii) A conviction of RCW 46.61.500, relating to reckless driving;

(ix) A conviction of RCW 46.61.502 or 46.61.504, relating to a person under the influence of intoxicating liquor or drugs;

(x) A conviction of RCW 46.61.520, relating to vehicular homicide;

(xi) A conviction of RCW 46.61.522, relating to vehicular assault;

(xii) A conviction of RCW 46.61.530, relating to racing of vehicles on highways;

(xiii) A conviction of RCW 46.61.685, relating to leaving children in an unattended vehicle with motor running;

(xiv) A conviction of RCW 46.64.048, relating to attempting, aiding, abetting, coercing, and committing crimes; or

(xv) An administrative action taken by the department under chapter 46.20 RCW.

(c) A person who violates this section when his or her driver's license or driving privilege is, at the time of the violation, suspended or revoked solely because (i) the person must furnish proof of satisfactory progress in a required alcoholism or drug treatment program, (ii) the person must furnish proof of financial responsibility for the future as provided by chapter 46.29 RCW, (iii) the person has failed to comply with the provisions of chapter 46.29 RCW relating to uninsured accidents, (iv) the person has failed to respond to a notice of traffic infraction, failed to appear at a requested hearing, violated a written promise to appear in court, or has failed to comply with the terms of a notice of traffic infraction or citation, as provided in section 1 of this act, (v) the person has committed an offense in another state that, if committed in this state, would not be grounds for the suspension or revocation of the person's driver's license, or ((~~(v)~~)) (vi) the person has been suspended or revoked by reason of one or more of the items listed in (b) of this subsection, but was eligible to reinstate his or her driver's license or driving privilege at the time of the violation, or any combination of (i) through ((~~(v)~~)) (vi), is guilty of driving while license suspended or revoked in the third degree, a misdemeanor.

(2) Upon receiving a record of conviction of any person or upon receiving an order by any juvenile court or any duly authorized court officer of the conviction of any juvenile under this section, the department shall:

(a) For a conviction of driving while suspended or revoked in the first degree, as provided by subsection (1)(a) of this section, extend the period of administrative revocation imposed under chapter 46.65 RCW for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(b) For a conviction of driving while suspended or revoked in the second degree, as provided by subsection (1)(b) of this section, not issue a new license or restore the driving privilege for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license or have his or her driving privilege restored; or

(c) Not extend the period of suspension or revocation if the conviction was under subsection (1)(c) of this section. If the conviction was under subsection (1) (a) or (b) of this section and the court recommends against the extension and the convicted person has obtained a valid driver's license, the period of suspension or revocation shall not be extended.

**Sec. 7.** RCW 46.61.515 and 1985 c 352 s 1 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 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 substantial 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 34.05 RCW. The ((~~courts~~)) department of social and health services shall periodically review the costs of alcohol information schools and treatment programs ((~~within their jurisdictions~~)) as part of the approval process.

(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 two thousand 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 minimum jail sentence shall not be suspended or deferred unless the judge finds that the imposition of the jail sentence will pose a substantial 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 the arrest on a second or subsequent ((~~conviction~~)) offense, the driver is without a license or permit because of a previous suspension or revocation for a reason listed in RCW 46.20.342(1) (a) or (b), or because of a previous suspension or revocation

for a reason listed in RCW 46.20.342(1)(c) if the original suspension or revocation was the result of a conviction of RCW 46.61.502 or 46.61.504, the minimum mandatory sentence shall be ninety days in jail and a ((~~two~~)) five 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~~)) program or approved drug treatment center.

In addition to any nonsuspendable and nondeferrable jail sentence required by this subsection, whenever the court imposes less than one year in jail, the court shall ((~~sentence a person to a term of imprisonment not exceeding one hundred eighty days and shall~~)) also suspend but shall not defer ((~~the sentence~~)) a period of confinement 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. 8.** RCW 46.63.020 and 1992 c 32 s 4 are each 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;

(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 (8) 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;

(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, storagemen, 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 46.61.520 relating to vehicular homicide by motor vehicle;

(36) RCW 46.61.522 relating to vehicular assault;

(37) RCW 46.61.525 relating to negligent driving;

(38) RCW 46.61.530 relating to racing of vehicles on highways;

(39) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;

(40) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;

(41) ((~~RCW 46.64.020 relating to nonappearance after a written promise;~~

~~(42) RCW 46.64.027 relating to failure to comply;~~

~~(43)~~)) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;

((~~(44)~~)) (42) Chapter 46.65 RCW relating to habitual traffic offenders;

((~~(45)~~)) (43) 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)~~)) (44) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;

((~~(47)~~)) (45) Chapter 46.80 RCW relating to motor vehicle wreckers;

((~~(48)~~)) (46) Chapter 46.82 RCW relating to driver's training schools;

((~~(49)~~)) (47) 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)~~)) (48) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

**Sec. 9.** RCW 46.63.060 and 1984 c 224 s 2 are each amended to read as follows:

(1) A notice of traffic infraction represents a determination that an infraction has been committed. The determination will be final unless contested as provided in this chapter.

(2) The form for the notice of traffic infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that a traffic infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that a traffic infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction; that the penalty for a traffic infraction may include sanctions against the person's driver's license including suspension, revocation, or denial; that the penalty for a traffic infraction related to standing, stopping, or parking may include nonrenewal of the vehicle license;

(c) A statement of the specific traffic infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the traffic infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses including the officer who issued the notice of infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person will be deemed to have committed the infraction and may not subpoena witnesses;

(h) A statement that the person must respond to the notice as provided in this chapter within fifteen days or the person's driver's license or driving privilege will ((~~not~~)) be ((~~renewed~~)) suspended by the department until any penalties imposed pursuant to this chapter have been satisfied;

(i) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in the ((~~refusal of the department to renew~~)) suspension of the person's driver's license or driving privilege, or in the case of a standing, stopping, or parking violation, refusal of the department to renew the vehicle license, until any penalties imposed pursuant to this chapter have been satisfied;

(j) A statement, which the person shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter((~~;~~

~~(k) A statement that failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail~~)).

**Sec. 10.** RCW 46.63.070 and 1984 c 224 s 3 are each amended to read as follows:

(1) Any person who receives a notice of traffic infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) If the person determined to have committed the infraction does not contest the determination the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response and order shall be furnished to the department in accordance with RCW 46.20.270.

(3) If the person determined to have committed the infraction wishes to contest the determination the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.

(4) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

(5) ((~~(a)~~)) If any person issued a notice of traffic infraction:

((~~(i)~~)) (a) Fails to respond to the notice of traffic infraction as provided in subsection (2) of this section; or

((~~(ii)~~)) (b) Fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section;

the court shall enter an appropriate order assessing the monetary penalty prescribed for the traffic infraction and any other penalty authorized by this chapter and shall notify the department in accordance with RCW 46.20.270, of the failure to respond to the notice of infraction or to appear at a requested hearing.

((~~(b) The department may not renew the driver's license, or in the case of a standing, stopping, or parking violation the vehicle license, of any person for whom the court has entered an order pursuant to (a) of this subsection until any penalties imposed pursuant to this chapter have been satisfied. For purposes of~~

~~driver's license nonrenewal only, the lessee of a vehicle shall be considered to be the person to whom a notice of a standing, stopping, or parking violation has been issued for such violations of the vehicle incurred while the vehicle was leased or rented under a bona fide commercial lease or rental agreement between a lessor engaged in the business of leasing vehicles and a lessee who is not the vehicle's registered owner, if the lease agreement contains a provision prohibiting anyone other than the lessee from operating the vehicle. Such a lessor shall, upon the request of the municipality issuing the notice of infraction, supply the municipality with the name and driver's license number of the person leasing the vehicle at the time of the infraction.~~))

**Sec. 11.** RCW 46.63.110 and 1986 c 213 s 2 are each amended to read as follows:

(1) A person found to have committed a traffic infraction shall be assessed a monetary penalty. No penalty may exceed two hundred and fifty dollars for each offense unless authorized by this chapter or title.

(2) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(3) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to this chapter. A local legislative body may set a monetary penalty not to exceed twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordinance, regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(4) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size, weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(5) Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may, in its discretion, grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment the court shall notify the department of the failure to pay the penalty, and the department ((~~may not renew~~)) <u>shall suspend</u> the person's driver's license <u>or driving privilege</u> until the penalty has been paid and the penalty provided in subsection (3) of this section has been paid.

**Sec. 12.** RCW 46.52.120 and 1992 c 32 s 3 are each amended to read as follows:

(1) The director shall keep a case record on every motor vehicle driver licensed under the laws of this state, together with information on each driver, showing all the convictions and findings of traffic infractions certified by the courts, together with an index cross-reference record of each accident reported relating to such individual with a brief statement of the cause of the accident. The chief of the Washington state patrol shall furnish the index cross-reference record to the director, with reference to each driver involved in the reported accidents.

(2) The records shall be for the confidential use of the director, the chief of the Washington state patrol, the director of the Washington traffic safety commission, and for such police officers or other cognizant public officials as may be designated by law. Such case records shall not be offered as evidence in any court except in case appeal is taken from the order of the director, suspending, revoking, canceling, or refusing a vehicle driver's license ((~~or to provide proof of a person's failure to appear under RCW 46.64.020 or failure to comply under RCW 46.64.027~~)).

(3) The director shall tabulate and analyze vehicle driver's case records and suspend, revoke, cancel, or refuse a vehicle driver's license to a person when it is deemed from facts contained in the case record of such person that it is for the best interest of public safety that such person be denied the privilege of operating a motor vehicle. Whenever the director orders the vehicle driver's license of any such person suspended, revoked, or canceled, or refuses the issuance of a vehicle driver's license, such suspension, revocation, cancellation, or refusal is final and effective unless appeal from the decision of the director is taken as provided by law.

NEW SECTION. **Sec. 13.** The following acts or parts of acts are each repealed:

(1) RCW 46.64.020 and 1992 c 32 s 1, 1990 c 250 s 61, 1990 c 210 s 1, 1988 c 38 s 1, 1987 c 345 s 1, 1986 c 213 s 1, 1980 c 128 s 8, & 1961 c 12 s 46.64.020; and

(2) RCW 46.64.027 and 1992 c 32 s 2.

Passed the House March 11, 1993.
Passed the Senate April 20, 1993.
Approved by the Governor May 18, 1993.
Filed in Office of Secretary of State May 18, 1993.

---

# HOUSE BILL REPORT

# HB 1741

As Reported By House Committee On:
Judiciary

**Title:** An act relating to enforcement of traffic laws.

**Brief Description:** Revising penalties for ignoring traffic tickets.

**Sponsors:** Representatives Appelwick, Ludwig, Johanson and Orr.

**Brief History:**
Reported by House Committee on:
Judiciary, March 2, 1993, DPS.

## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

**Staff:** Bill Perry (786-7123).

**Background:** Many traffic laws have been "decriminalized" and made civil infractions instead of crimes. For these infractions, no jail time may be imposed, but civil punishment includes fines and in some instances loss of driving privileges. Although infractions themselves are not crimes, failing to respond to a notice of infraction is a crime.

Under the "Nonresident Violator Compact," a state may agree to release motorists from another state who are cited for traffic law violations without requiring the motorists to post appearance bonds. Such an agreement is dependent, however, on the home state of a cited motorist having a law which requires driver's license suspension for failing to comply with a traffic citation. Washington has adopted the compact, but does not have a law that would require license suspension for Washington drivers who fail to comply with citations issued by other participants in the compact.

Washington does have a law that prohibits renewal of a license for a person who has failed to comply.

The state's motor vehicle code has various escalating penalties for driving without a license and for DWI. The crime of driving while a license is suspended or revoked may be committed in any one of three degrees, depending on the offense for which the license was suspended or revoked. Driving without a license that was suspended for being an habitual traffic offender is first-degree driving while suspended or revoked. The second-degree offense involves driving following the loss of a license for DWI and other relatively serious traffic offenses for which a license may be suspended or revoked. The third-degree offense involves driving after a license has been suspended or revoked solely for secondary reasons such as failure to furnish proof of financial responsibility, or failure to renew a license after a period of suspension has expired.

**Summary of Substitute Bill:** Crimes relating to failure to respond to a traffic infraction and failure to comply with a traffic citation are repealed. The offenses are made infractions for which the Department of Licensing (DOL) is to suspend a driver's license. The suspension continues until the driver responds or complies, shows proof of financial responsibility, and pays a $20 reinstatement fee.

The mandatory minimum jail term for first-degree driving while suspended or revoked as the result of being an habitual offender is reduced from one year to 180 days. The crime of driving while suspended or revoked in the third degree is amended to include persons who drive while their licenses are suspended as the result of failing to respond to a notice of a traffic infraction or failing to comply with a citation.

Several changes are made with respect to the crime of DWI:

First, the ground for suspending the otherwise mandatory jail time for DWI is changed. The required risk to a defendant's physical or mental well-being must be "substantial."

Second, the Department of Social and Health Services, instead of the court, is to review periodically the alcohol information schools attended by DWI offenders.

Third, for persons convicted of DWI while they were driving with a suspended or revoked license in the first or second degree, the minimum mandatory fine is raised from $200 to $500. This fine, and its accompanying mandatory 90 days in jail, no longer apply to persons

convicted of DWI while driving without a license as a result of third-degree driving while suspended or revoked.

Fourth, a change is made to the requirement that a court impose, in addition to the mandatory jail time for DWI, a suspendible term of imprisonment of up to 180 days "for a period not exceeding two years." This provision is changed to require that the additional suspendible term of confinement be for up to two years.

Various changes are made to the form requirements for notices of traffic infractions and citations in order to reflect the changes made in the substantive provisions described above.

**Substitute Bill Compared to Original Bill:** The original bill would have raised the maximum fine for a DWI to $5,000. The substitute bill also makes a number of technical corrections.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The bill allows Washington to take advantage of an interstate compact. The bill also makes important clarifications in ambiguities in current law.

**Testimony Against:** Decriminalizing failure to respond, appear, or comply may hamper enforcement.

**Witnesses:** Judge Robert McBeth, Washington State District and Municipal Court Judges Association (pro); and Matt Thomas, Washington Association of Prosecuting Attorneys.

# FINAL BILL REPORT

# SHB 1741

Synopsis as Enacted
C 501 L 93

**Brief Description:** Revising penalties for ignoring traffic tickets.

By House Committee on Judiciary (originally sponsored by Representatives Appelwick, Ludwig, Johanson and Orr).

House Committee on Judiciary
Senate Committee on Law & Justice

**Background:** Many traffic laws have been "decriminalized" and made civil infractions instead of crimes. For these infractions, no jail time may be imposed, but civil punishment includes fines and in some instances loss of driving privileges. Although infractions themselves are not crimes, failing to respond to a notice of infraction is a crime.

Under the "Nonresident Violator Compact," a state may agree to release motorists from another state who are cited for traffic law violations without requiring the motorists to post appearance bonds. Such an agreement is dependent, however, on the home state of a cited motorist having a law which requires driver's license suspension for failing to comply with a traffic citation. Washington has adopted the compact, but does not have a law that would require license suspension for Washington drivers who fail to comply with citations issued by other participants in the compact. Washington does have a law that prohibits renewal of a license for a person who has failed to comply.

The state's motor vehicle code has various escalating penalties for driving without a license and for driving while intoxicated (DWI). The crime of driving while a license is suspended or revoked may be committed in any one of three degrees, depending on the offense for which the license was suspended or revoked. Driving without a license that was suspended for being an habitual traffic offender is first-degree driving with a suspended or revoked license. The second-degree offense involves driving following the loss of a license for DWI or other relatively serious traffic offenses. The third-degree offense involves driving after a license has been suspended or revoked solely for secondary reasons such as failure to furnish proof of

financial responsibility, or failure to renew a license after a period of suspension has expired.

**Summary**: Crimes relating to failure to respond to a traffic infraction and failure to comply with a traffic citation are repealed. The offenses are made infractions for which the Department of Licensing (DOL) is to suspend a driver's license. If a Washington driver fails to respond or comply in the case of an out-of-state offense, DOL will also suspend the driver's license. A suspension continues until the driver responds or complies, shows proof of financial responsibility, and pays a $20 reinstatement fee.

The mandatory minimum jail term for first-degree driving with a suspended or revoked license as the result of being an habitual offender is reduced from one year to 180 days. The crime of driving with a suspended or revoked license in the third degree is amended to include persons who drive while their licenses are suspended as the result of failing to respond to a notice of a traffic infraction or failing to comply with a citation.

Several changes are made with respect to the crime of DWI:

(1) The ground for suspending the otherwise mandatory jail time for DWI is changed. The required risk to a defendant's physical or mental well-being must be "substantial."

(2) The Department of Social and Health Services, instead of the court, must periodically review the alcohol information schools attended by DWI offenders.

(3) For persons convicted of DWI while they were driving with a suspended or revoked license in the first or second degree, the minimum mandatory fine is raised from $200 to $500. This fine and its accompanying mandatory 90 days in jail no longer apply to persons convicted of DWI while driving without a license as a result of third-degree driving with a suspended or revoked license.

(4) A change is made to an ambiguous requirement that a court impose, in addition to the mandatory jail time for DWI, a suspendible term of imprisonment "not exceeding 180 days" that is suspendible but not deferrable "for a period not exceeding two years." This provision is changed to require that the additional suspendible term of confinement be for a period of up to two years.

Various changes are made to the form requirements for notices of traffic infractions and citations in order to reflect the changes made in the substantive provisions described above.

**Votes on Final Passage:**

| | | | |
|---|---|---|---|
| House | 98 | 0 | |
| Senate | 47 | 0 | (Senate amended) |
| House | | | (House refused to concur) |
| Senate | 47 | 0 | (Senate receded) |

**Effective:** July 25, 1993

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1741**

Chapter 501, Laws of 1993

53rd Legislature
1993 Regular Session

TRAFFIC LAW ENFORCEMENT--REVISIONS

EFFECTIVE DATE: 7/25/93

Passed by the House March 11, 1993
Yeas 98 Nays 0

BRIAN EBERSOLE
**Speaker of the House of Representatives**

Passed by the Senate April 20, 1993
Yeas 47 Nays 0

JOEL PRITCHARD
**President of the Senate**

Approved May 18, 1993

MIKE LOWRY
**Governor of the State of Washington**

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1741** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
**Chief Clerk**

FILED

May 18, 1993 - 2:32 p.m.

**Secretary of State**
**State of Washington**

## RCW 46.64.020 (1992, repealed by Laws 1993 ch 501)

(1) The legislature finds that:

(a) Traffic laws are necessary for the safe and expeditious flow of motor vehicle traffic.

(b) For traffic laws to be effective, they must be judiciously and fairly enforced. This enforcement includes the issuance of notices of infraction and citations and the assessment of fines and penalties.

(c) The adjudication of notices of infraction through a written and signed promise to respond, and of citations through a written and signed promise to appear, as provided in this title is an integral and important part of the traffic law system.

(d) Approximately twenty percent of all people issued notices of infraction and citations violate their written and signed promise to respond or appear and obtain notices of failure to respond or appear on their driving records. Through their actions, these people are destroying the effectiveness of the traffic law system and undermining the department of licensing regulatory control of drivers' licenses.

(e) Notices of failure to respond or appear accumulated on a person's driving record shall be considered if they were issued after July 25, 1987.

(2) Any person violating his or her written and signed promise to appear in court or his or her written and signed promise to respond to a notice of traffic infraction, as provided in this title, is guilty of a misdemeanor regardless of the disposition of the charge upon which he or she was originally arrested or the disposition of the notice of infraction: PROVIDED, That a written promise to appear in court or a written promise to respond to a notice of traffic infraction may be complied with by an appearance by counsel: PROVIDED FURTHER, That a person charged under RCW 46.20.021 with driving with an expired driver's license may respond by mailing to the court within fifteen days of the violation, a copy of the person's currently valid driver's license. Any person who has been issued a notice of infraction pursuant to RCW 46.63.030(3) and who fails to respond as provided in this title is guilty of a misdemeanor regardless of the disposition of the notice of infraction.

## RCW 46.64.027 (1992, repealed by Laws 1993 ch 501)

(1) A person who drives a motor vehicle within the state and has accumulated two or more notices of failure to appear or respond on his or her driving record maintained by the department of licensing in a five-year period as a result of noncompliance with the traffic laws in a jurisdiction or court within Washington, or in a jurisdiction or court within other states that are signatories with Washington in a nonresident violator compact or reciprocal agreement under chapter 46.23 RCW, is guilty of failure to comply, a gross misdemeanor. A person is not subject to this section for failure to pay a penalty for a pedestrian, bicycling, or parking offense.

(2) Probable cause for arrest under this section is established by the officer obtaining, orally or in writing, information from the department of licensing that two or more notices of failure to appear or respond are on the person's driving record. For purposes of this chapter, failure to satisfy a penalty imposed under this title is considered equivalent to failure to appear or respond.

(3) Venue for prosecution is in the court with jurisdiction in the area of apprehension.

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE SENATE BILL 6284**

Chapter 82, Laws of 2012

62nd Legislature
2012 Regular Session

NONSAFETY CIVIL TRAFFIC INFRACTIONS--PROCESS

EFFECTIVE DATE: 06/07/12 (Contingent) - Except sections 1-3 and 5 which take effect 06/01/13.

Passed by the Senate February 11, 2012
YEAS 35 NAYS 11

BRAD OWEN

**President of the Senate**

Passed by the House March 8, 2012
YEAS 69 NAYS 29

FRANK CHOPP

**Speaker of the House of Representatives**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 6284** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

**Secretary**

Approved March 23, 2012, 12:11 p.m.

FILED

March 23, 2012

CHRISTINE GREGOIRE

**Governor of the State of Washington**

**Secretary of State**
**State of Washington**

**ENGROSSED SECOND SUBSTITUTE SENATE BILL 6284**

Passed Legislature - 2012 Regular Session

**State of Washington** **62nd Legislature** **2012 Regular Session**

**By** Senate Transportation (originally sponsored by Senators Kline, Harper, Litzow, Kohl-Welles, Keiser, and Hargrove)

READ FIRST TIME 02/07/12.

1 AN ACT Relating to reforming Washington's approach to certain
2 nonsafety civil traffic infractions by authorizing a civil collection
3 process for unpaid traffic fines and removing the requirement for law
4 enforcement intervention for the failure to appear and pay a traffic
5 ticket; amending RCW 46.63.110, 46.20.391, 46.20.289, and 46.64.025;
6 adding a new section to chapter 46.20 RCW; and providing an effective
7 date.

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

9 **Sec. 1.** RCW 46.63.110 and 2010 c 252 s 5 are each amended to read
10 as follows:
11 (1) A person found to have committed a traffic infraction shall be
12 assessed a monetary penalty. No penalty may exceed two hundred and
13 fifty dollars for each offense unless authorized by this chapter or
14 title.
15 (2) The monetary penalty for a violation of (a) RCW 46.55.105(2) is
16 two hundred fifty dollars for each offense; (b) RCW 46.61.210(1) is
17 five hundred dollars for each offense. No penalty assessed under this
18 subsection (2) may be reduced.

(3) The supreme court shall prescribe by rule a schedule of monetary penalties for designated traffic infractions. This rule shall also specify the conditions under which local courts may exercise discretion in assessing fines and penalties for traffic infractions. The legislature respectfully requests the supreme court to adjust this schedule every two years for inflation.

(4) There shall be a penalty of twenty-five dollars for failure to respond to a notice of traffic infraction except where the infraction relates to parking as defined by local law, ordinance, regulation, or resolution or failure to pay a monetary penalty imposed pursuant to this chapter. A local legislative body may set a monetary penalty not to exceed twenty-five dollars for failure to respond to a notice of traffic infraction relating to parking as defined by local law, ordinance, regulation, or resolution. The local court, whether a municipal, police, or district court, shall impose the monetary penalty set by the local legislative body.

(5) Monetary penalties provided for in chapter 46.70 RCW which are civil in nature and penalties which may be assessed for violations of chapter 46.44 RCW relating to size, weight, and load of motor vehicles are not subject to the limitation on the amount of monetary penalties which may be imposed pursuant to this chapter.

(6) Whenever a monetary penalty, fee, cost, assessment, or other monetary obligation is imposed by a court under this chapter, it is immediately payable <u>and is enforceable as a civil judgment under Title 6 RCW</u>. If the court determines, in its discretion, that a person is not able to pay a monetary obligation in full, and not more than one year has passed since the later of July 1, 2005, or the date the monetary obligation initially became due and payable, the court shall enter into a payment plan with the person, unless the person has previously been granted a payment plan with respect to the same monetary obligation, or unless the person is in noncompliance of any existing or prior payment plan, in which case the court may, at its discretion, implement a payment plan. If the court has notified the department that the person has failed to pay or comply and the person has subsequently entered into a payment plan and made an initial payment, the court shall notify the department that the infraction has been adjudicated, and the department shall rescind any suspension of the person's driver's license or driver's privilege based on failure to

respond to that infraction. "Payment plan," as used in this section, means a plan that requires reasonable payments based on the financial ability of the person to pay. The person may voluntarily pay an amount at any time in addition to the payments required under the payment plan.

(a) If a payment required to be made under the payment plan is delinquent or the person fails to complete a community restitution program on or before the time established under the payment plan, unless the court determines good cause therefor and adjusts the payment plan or the community restitution plan accordingly, the court ((~~shall notify the department of the person's failure to meet the conditions of the plan, and the department shall suspend the person's driver's license or driving privilege~~)) may refer the unpaid monetary penalty, fee, cost, assessment, or other monetary obligation for civil enforcement until all monetary obligations, including those imposed under subsections (3) and (4) of this section, have been paid, and court authorized community restitution has been completed, or until the ((~~department has been notified that the~~)) court has entered into a new time payment or community restitution agreement with the person. For those infractions subject to suspension under RCW 46.20.289, the court shall notify the department of the person's failure to meet the conditions of the plan, and the department shall suspend the person's driver's license or driving privileges.

(b) If a person has not entered into a payment plan with the court and has not paid the monetary obligation in full on or before the time established for payment, the court ((~~shall notify the department of the delinquency. The department shall suspend the person's driver's license or driving privilege~~)) may refer the unpaid monetary penalty, fee, cost, assessment, or other monetary obligation to a collections agency until all monetary obligations have been paid, including those imposed under subsections (3) and (4) of this section, or until the person has entered into a payment plan under this section. For those infractions subject to suspension under RCW 46.20.289, the court shall notify the department of the person's delinquency, and the department shall suspend the person's driver's license or driving privileges.

(c) If the payment plan is to be administered by the court, the court may assess the person a reasonable administrative fee to be

wholly retained by the city or county with jurisdiction. The administrative fee shall not exceed ten dollars per infraction or twenty-five dollars per payment plan, whichever is less.

(d) Nothing in this section precludes a court from contracting with outside entities to administer its payment plan system. When outside entities are used for the administration of a payment plan, the court may assess the person a reasonable fee for such administrative services, which fee may be calculated on a periodic, percentage, or other basis.

(e) If a court authorized community restitution program for offenders is available in the jurisdiction, the court may allow conversion of all or part of the monetary obligations due under this section to court authorized community restitution in lieu of time payments if the person is unable to make reasonable time payments.

(7) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction shall be assessed:

(a) A fee of five dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the emergency medical services and trauma care system trust account under RCW 70.168.040;

(b) A fee of ten dollars per infraction. Under no circumstances shall this fee be reduced or waived. Revenue from this fee shall be forwarded to the state treasurer for deposit in the Washington auto theft prevention authority account; and

(c) A fee of two dollars per infraction. Revenue from this fee shall be forwarded to the state treasurer for deposit in the traumatic brain injury account established in RCW 74.31.060.

(8)(a) In addition to any other penalties imposed under this section and not subject to the limitation of subsection (1) of this section, a person found to have committed a traffic infraction other than of RCW 46.61.527 or 46.61.212 shall be assessed an additional penalty of twenty dollars. The court may not reduce, waive, or suspend the additional penalty unless the court finds the offender to be indigent. If a court authorized community restitution program for offenders is available in the jurisdiction, the court shall allow offenders to offset all or a part of the penalty due under this

subsection (8) by participation in the court authorized community restitution program.

(b) Eight dollars and fifty cents of the additional penalty under (a) of this subsection shall be remitted to the state treasurer. The remaining revenue from the additional penalty must be remitted under chapters 2.08, 3.46, 3.50, 3.62, 10.82, and 35.20 RCW. Money remitted under this subsection to the state treasurer must be deposited in the state general fund. The balance of the revenue received by the county or city treasurer under this subsection must be deposited into the county or city current expense fund. Moneys retained by the city or county under this subsection shall constitute reimbursement for any liabilities under RCW 43.135.060.

(9) If a legal proceeding, such as garnishment, has commenced to collect any delinquent amount owed by the person for any penalty imposed by the court under this section, the court may, at its discretion, enter into a payment plan.

(10) The monetary penalty for violating RCW 46.37.395 is: (a) Two hundred fifty dollars for the first violation; (b) five hundred dollars for the second violation; and (c) seven hundred fifty dollars for each violation thereafter.

**Sec. 2.** RCW 46.20.391 and 2010 c 269 s 2 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 vehicular homicide, vehicular assault, driving while under the influence of intoxicating liquor or any drug, or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, may submit to the department an application for a temporary restricted driver's license. The department, upon receipt of the prescribed fee and upon determining that the petitioner is eligible to receive the license, may issue a temporary restricted driver's license and may set definite restrictions as provided in RCW 46.20.394.

(2)(a) A person licensed under this chapter whose driver's license is suspended administratively due to failure to appear or pay a traffic ticket under RCW 46.20.289; a violation of the financial responsibility

laws under chapter 46.29 RCW; or for multiple violations within a specified period of time under RCW 46.20.291, may apply to the department for an occupational driver's license.

(b) ((~~If the suspension is for failure to respond, pay, or comply with a notice of traffic infraction or conviction, the applicant must enter into a payment plan with the court.~~

~~(c)~~)) An occupational driver's license issued to an applicant described in (a) of this subsection shall be valid for the period of the suspension or revocation.

(3) An applicant for an occupational or temporary restricted driver's license who qualifies under subsection (1) or (2) of this section is eligible to receive such license only if:

(a) Within seven years immediately preceding the date of the offense that gave rise to the present conviction or incident, the applicant has not committed vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522; and

(b) The applicant demonstrates that it is necessary for him or her to operate a motor vehicle because he or she:

(i) Is engaged in an occupation or trade that makes it essential that he or she operate a motor vehicle;

(ii) Is undergoing continuing health care or providing continuing care to another who is dependent upon the applicant;

(iii) Is enrolled in an educational institution and pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion;

(iv) Is undergoing substance abuse treatment or is participating in meetings of a twelve-step group such as Alcoholics Anonymous that requires the petitioner to drive to or from the treatment or meetings;

(v) Is fulfilling court-ordered community service responsibilities;

(vi) Is in a program that assists persons who are enrolled in a WorkFirst program pursuant to chapter 74.08A RCW to become gainfully employed and the program requires a driver's license;

(vii) Is in an apprenticeship, on-the-job training, or welfare-to-work program; or

(viii) Presents evidence that he or she has applied for a position in an apprenticeship or on-the-job training program for which a driver's license is required to begin the program, provided that a

license granted under this provision shall be in effect for no longer than fourteen days; and

(c) The applicant files satisfactory proof of financial responsibility under chapter 46.29 RCW; and

(d) Upon receipt of evidence that a holder of an occupational driver's license granted under this subsection is no longer enrolled in an apprenticeship or on-the-job training program, the director shall give written notice by first-class mail to the driver that the occupational driver's license shall be canceled. If at any time before the cancellation goes into effect the driver submits evidence of continued enrollment in the program, the cancellation shall be stayed. If the cancellation becomes effective, the driver may obtain, at no additional charge, a new occupational driver's license upon submittal of evidence of enrollment in another program that meets the criteria set forth in this subsection; and

(e) The department shall not issue an occupational driver's license under (b)(iv) of this subsection if the applicant is able to receive transit services sufficient to allow for the applicant's participation in the programs referenced under (b)(iv) of this subsection.

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

(5) The director shall cancel an occupational or temporary restricted driver's license after receiving notice that the holder thereof has been convicted of operating a motor vehicle in violation of its restrictions, no longer meets the eligibility requirements, or has been convicted of or found to have committed a separate offense or any other act or omission that under this chapter would warrant suspension or revocation of a regular driver's license. The department must give notice of the cancellation as provided under RCW 46.20.245. A person whose occupational or temporary restricted driver's license has been canceled under this section may reapply for a new occupational or temporary restricted driver's license if he or she is otherwise qualified under this section and pays the fee required under RCW 46.20.380.

**Sec. 3.** RCW 46.20.289 and 2005 c 288 s 5 are each amended to read as follows:

The department shall suspend all driving privileges of a person when the department receives notice from a court under RCW 46.63.070(6), 46.63.110(6), or 46.64.025 that the person has failed to respond to a notice of traffic infraction for a moving violation, failed to appear at a requested hearing for a moving violation, violated a written promise to appear in court for a notice of infraction for a moving violation, or has failed to comply with the terms of a notice of traffic infraction or citation for a moving violation, or when the department receives notice from another state under Article IV of the nonresident violator compact under RCW 46.23.010 or from a jurisdiction that has entered into an agreement with the department under RCW 46.23.020, other than for a standing, stopping, or parking violation, provided that the traffic infraction or traffic offense is committed on or after July 1, 2005. A suspension under this section takes effect pursuant to the provisions of RCW 46.20.245, and remains in effect until the department has received a certificate from the court showing that the case has been adjudicated, and until the person meets the requirements of RCW 46.20.311. In the case of failure to respond to a traffic infraction issued under RCW 46.55.105, the department shall suspend all driving privileges until the person provides evidence from the court that all penalties and restitution have been paid. A suspension under this section does not take effect if, prior to the effective date of the suspension, the department receives a certificate from the court showing that the case has been adjudicated.

NEW SECTION. **Sec. 4.** A new section is added to chapter 46.20 RCW to read as follows:

The department of licensing in consultation with the administrative office of the courts must adopt and maintain rules, by November 1, 2012, in accordance with chapter 34.05 RCW that define a moving violation for the purposes of this act. "Moving violation" shall be defined pursuant to Title 46 RCW. Upon adoption of these rules, the department must provide written notice to affected parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the department.

**Sec. 5.** RCW 46.64.025 and 2006 c 270 s 4 are each amended to read as follows:

Whenever any person served with a traffic citation willfully fails to appear ((~~for a scheduled court hearing~~)) at a requested hearing for a moving violation or fails to comply with the terms of a notice of traffic citation for a moving violation, the court in which the defendant failed to appear shall promptly give notice of such fact to the department of licensing. Whenever thereafter the case in which the defendant failed to appear is adjudicated, the court hearing the case shall promptly file with the department a certificate showing that the case has been adjudicated. For the purposes of this section, "moving violation" is defined by rule pursuant to section 4 of this act.

NEW SECTION. **Sec. 6.** Except for section 4 of this act, this act takes effect June 1, 2013. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2012, in the transportation appropriations act, this act is null and void.

Passed by the Senate February 11, 2012.
Passed by the House March 8, 2012.
Approved by the Governor March 23, 2012.
Filed in Office of Secretary of State March 23, 2012.

## RCW 10.101.010 (2008)

**10.101.010 Definitions.**

The following definitions shall be applied in connection with this chapter:

(1) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(2) "Indigent and able to contribute" means a person who, at any stage of a court proceeding, is unable to pay the anticipated cost of counsel

for the matter before the court because his or her available funds are less than the anticipated cost of counsel but sufficient for the person to pay a portion of that cost.

(3) "Anticipated cost of counsel" means the cost of retaining private counsel for representation on the matter before the court.

(4) "Available funds" means liquid assets and disposable net monthly income calculated after provision is made for bail obligations. For the purpose of determining available funds, the following definitions shall apply:

(a) "Liquid assets" means cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in motor vehicles. A motor vehicle necessary to maintain employment and having a market value not greater than three thousand dollars shall not be considered a liquid asset.

(b) "Income" means salary, wages, interest, dividends, and other earnings which are reportable for federal income tax purposes, and cash payments such as reimbursements received from pensions, annuities, social security, and public assistance programs. It includes any contribution received from any family member or other person who is domiciled in the same residence as the defendant and who is helping to

defray the defendant's basic living costs.

(c) "Disposable net monthly income" means the income remaining each month after deducting federal, state, or local income taxes, social security taxes, contributory retirement, union dues, and basic living costs.

(d) "Basic living costs" means the average monthly amount spent by the defendant for reasonable payments toward living costs, such as shelter, food, utilities, health care, transportation, clothing, loan payments, support payments, and court-imposed obligations.

## RCW 10.101.020 (2008)

**10.101.020 Determination of indigency—Provisional appointment—Promissory note.**

(1) A determination of indigency shall be made for all persons wishing the appointment of counsel in criminal, juvenile, involuntary commitment, and dependency cases, and any other case where the right to counsel attaches. The court or its designee shall determine whether the person is indigent pursuant to the standards set forth in this chapter.

(2) In making the determination of indigency, the court shall also consider the anticipated length and complexity of the proceedings and the usual and customary charges of an attorney in the community for rendering services, and any other circumstances presented to the court which are relevant to the issue of indigency. The appointment of counsel shall not be denied to the person because the person's friends or relatives, other than a spouse who was not the victim of any offense or offenses allegedly committed by the person, have resources adequate to retain counsel, or because the person has posted or is capable of posting bond.

(3) The determination of indigency shall be made upon the defendant's initial contact with the court or at the earliest time circumstances permit. The court or its designee shall keep a written record

of the determination of indigency. Any information given by the accused under this section or sections shall be confidential and shall not be available for use by the prosecution in the pending case.

(4) If a determination of eligibility cannot be made before the time when the first services are to be rendered, the court shall appoint an attorney on a provisional basis. If the court subsequently determines that the person receiving the services is ineligible, the court shall notify the person of the termination of services, subject to court-ordered reinstatement.

(5) All persons determined to be indigent and able to contribute, shall be required to execute a promissory note at the time counsel is appointed. The person shall be informed whether payment shall be made in the form of a lump sum payment or periodic payments. The payment and payment schedule must be set forth in writing. The person receiving the appointment of counsel shall also sign an affidavit swearing under penalty of perjury that all income and assets reported are complete and accurate. In addition, the person must swear in the affidavit to immediately report any change in financial status to the court.

(6) The office or individual charged by the court to make the determination of indigency shall provide a written report and opinion as to

indigency on a form prescribed by the office of public defense, based on information obtained from the defendant and subject to verification. The form shall include information necessary to provide a basis for making a determination with respect to indigency as provided by this chapter.

# Statewide DWLS filings for 2010

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342.1A.C - DWLS 1ST DEGREE AID/ABET | - | 1 |
| | AM - Amended | 3 |
| | CV - Change of Venue | 1 |
| | D - Dismissed | 1 |
| | G - Guilty | 2 |
| 46.20.342.1A.C - DWLS 1ST DEGREE AID/ABET | Sum: | 8 |

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342(1)(A) - DRIVING WHILE LICENSE SUSPENDED-1 | - | 16 |
| | D - DISMISSED | 45 |
| | G - GUILTY | 49 |
| | NG - NOT GUILTY | 1 |
| 46.20.342(1)(A) - DRIVING WHILE LICENSE SUSPENDED-1 | Sum: | 111 |

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342.1A - DWLS 1ST DEGREE | - | 608 |
| | AM - Amended | 461 |
| | AS - Awaiting Sentencing | 11 |
| | CV - Change of Venue | 7 |
| | D - Dismissed | 236 |
| | DO - Dismissed W/O Prejudice | 100 |
| | DP - Deferred Prosecution | 41 |
| | DW - Dismissed W/Prejudice | 88 |
| | GD - Guilty Defrd Pros Revoked | 7 |
| | G - Guilty | 1,498 |
| | GO - Guilty Oth Defrl Revoked | 2 |
| | NG - Not Guilty | 7 |
| | OD - Other Deferral | 33 |
| | V - Vacated | 1 |
| 46.20.342.1A - DWLS 1ST DEGREE | Sum: | 3,100 |



The Administrative Office of the Courts, the Washington Courts, and the Washington State County Clerks: 1) Do not warrant that the data or information is accurate or complete; 2) Make no representations regarding the identity of any persons whose names appear in data or information; and 3) Do not assume any liability whatsoever resulting from the release or use of the data or information. The user should verify the information by personally consulting the "official" record reposing at the court of record.

## Statewide DWLS filings for 2010

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342.1B.C - DWLS 2ND DEGREE AID/ABET | - | 1 |
| | AM - Amended | 2 |
| | D - Dismissed | 2 |
| | DO - Dismissed W/O Prejudice | 1 |
| | OD - Other Deferral | 1 |
| 46.20.342.1B.C - DWLS 2ND DEGREE AID/ABET | Sum: | 7 |

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342(1)(B) - DRIVING WHILE LICENSE SUSPENDED-2 | - | 23 |
| | D - DISMISSED | 44 |
| | G - GUILTY | 67 |
| 46.20.342(1)(B) - DRIVING WHILE LICENSE SUSPENDED-2 | Sum: | 134 |

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342.1B - DWLS 2ND DEGREE | - | 1,282 |
| | AM - Amended | 2,586 |
| | AS - Awaiting Sentencing | 29 |
| | BF - Bail Forfeiture | 14 |
| | CV - Change of Venue | 13 |
| | D - Dismissed | 736 |
| | DO - Dismissed W/O Prejudice | 221 |
| | DP - Deferred Prosecution | 161 |
| | DW - Dismissed W/Prejudice | 317 |
| | GD - Guilty Defrd Pros Revoked | 13 |
| | G - Guilty | 3,048 |
| | GO - Guilty Oth Defrl Revoked | 2 |
| | NG - Not Guilty | 4 |
| | OD - Other Deferral | 147 |
| | V - Vacated | 1 |
| 46.20.342.1B - DWLS 2ND DEGREE | Sum: | 8,574 |



The Administrative Office of the Courts, the Washington Courts, and the Washington State County Clerks: 1) Do not warrant that the data or information is accurate or complete; 2) Make no representations regarding the identity of any persons whose names appear in data or information; and 3) Do not assume any liability whatsoever resulting from the release or use of the data or information. The user should verify the information by personally consulting the "official" record reposing at the court of record.

## Statewide DWLS filings for 2010

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342.1C.C - DWLS 3RD DEGREE AID/ABET | - | 1 |
| | AM - Amended | 6 |
| | D - Dismissed | 5 |
| | DO - Dismissed W/O Prejudice | 4 |
| | DW - Dismissed W/Prejudice | 3 |
| | G - Guilty | 4 |
| 46.20.342.1C.C - DWLS 3RD DEGREE AID/ABET | Sum: | 23 |

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342(1)(C) - DRIVING WHILE LICENSE SUSPENDED-3 | - | 58 |
| | D - DISMISSED | 175 |
| | G - GUILTY | 74 |
| | NG - NOT GUILTY | 1 |
| | P - PENDING | 1 |
| 46.20.342(1)(C) - DRIVING WHILE LICENSE SUSPENDED-3 | Sum: | 309 |

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342.1.C - DRIVING WHILE SUSPENDED 3RD | AM - Amended | 3 |
| 46.20.342.1.C - DRIVING WHILE SUSPENDED 3RD | Sum: | 3 |



The Administrative Office of the Courts, the Washington Courts, and the Washington State County Clerks: 1) Do not warrant that the data or information is accurate or complete; 2) Make no representations regarding the identity of any persons whose names appear in data or information; and 3) Do not assume any liability whatsoever resulting from the release or use of the data or information. The user should verify the information by personally consulting the "official" record reposing at the court of record.

## Statewide DWLS filings for 2010

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342.1C - DWLS 3RD DEGREE | - | 11,669 |
| | AM - Amended | 34,444 |
| | AS - Awaiting Sentencing | 492 |
| | BF - Bail Forfeiture | 2,009 |
| | CV - Change of Venue | 113 |
| | D - Dismissed | 9,083 |
| | DO - Dismissed W/O Prejudice | 2,898 |
| | DP - Deferred Prosecution | 300 |
| | DW - Dismissed W/Prejudice | 3,383 |
| | GD - Guilty Defrd Pros Revoked | 14 |
| | G - Guilty | 28,953 |
| | GO - Guilty Oth Defrl Revoked | 114 |
| | NG - Not Guilty | 14 |
| | OD - Other Deferral | 792 |
| | V - Vacated | 3 |
| 46.20.342.1C - DWLS 3RD DEGREE | Sum: | 94,281 |

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342.1CRP - RELICENSING PROGRAM - DWLS3 | - | 141 |
| | AM - Amended | 1,206 |
| | D - Dismissed | 2,451 |
| | DO - Dismissed W/O Prejudice | 102 |
| | DW - Dismissed W/Prejudice | 191 |
| | V - Vacated | 1 |
| 46.20.342.1CRP - RELICENSING PROGRAM - DWLS3 | Sum: | 4,092 |

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342.2 - DWLS 2ND DEGREE | G - Guilty | 1 |
| 46.20.342.2 - DWLS 2ND DEGREE | Sum: | 1 |



The Administrative Office of the Courts, the Washington Courts, and the Washington State County Clerks: 1) Do not warrant that the data or information is accurate or complete; 2) Make no representations regarding the identity of any persons whose names appear in data or information; and 3) Do not assume any liability whatsoever resulting from the release or use of the data or information. The user should verify the information by personally consulting the "official" record reposing at the court of record.

## Statewide DWLS filings for 2010

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342.3 - DWLS 3RD DEGREE | - | 2 |
| | AM - Amended | 7 |
| | D - Dismissed | 1 |
| | DW - Dismissed W/Prejudice | 2 |
| | G - Guilty | 1 |
| 46.20.342.3 - DWLS 3RD DEGREE | Sum: | 13 |

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342AA - AID/ABET DRIVING W/SUSPENDED LICENS | AM - Amended | 1 |
| | D - Dismissed | 1 |
| 46.20.342AA - AID/ABET DRIVING W/SUSPENDED LICENS | Sum: | 2 |

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342 - DRIVING WHILE SUSPENDED OR REVOKED | - | 2 |
| | AM - Amended | 8 |
| | BF - Bail Forfeiture | 1 |
| | D - Dismissed | 4 |
| | DO - Dismissed W/O Prejudice | 2 |
| | DP - Deferred Prosecution | 1 |
| | G - Guilty | 3 |
| 46.20.342 - DRIVING WHILE SUSPENDED OR REVOKED | Sum: | 21 |



The Administrative Office of the Courts, the Washington Courts, and the Washington State County Clerks: 1) Do not warrant that the data or information is accurate or complete; 2) Make no representations regarding the identity of any persons whose names appear in data or information; and 3) Do not assume any liability whatsoever resulting from the release or use of the data or information. The user should verify the information by personally consulting the "official" record reposing at the court of record.

## Statewide DWLS filings for 2010

| RCW | Disposition | Total Count |
|---|---|---|
| 46.20.342 - DRIVING WITH INVALIDATED LICENSE | - | 59 |
| | AM - Amended | 109 |
| | BF - Bail Forfeiture | 6 |
| | D - Dismissed | 77 |
| | DO - Dismissed W/O Prejudice | 10 |
| | DP - Deferred Prosecution | 2 |
| | DW - Dismissed W/Prejudice | 12 |
| | G - Guilty | 51 |
| | GO - Guilty Oth Defrl Revoked | 1 |
| | OD - Other Deferral | 3 |
| 46.20.342 - DRIVING WITH INVALIDATED LICENSE | Sum: | 330 |
| | Sum: | 111,009 |



The Administrative Office of the Courts, the Washington Courts, and the Washington State County Clerks: 1) Do not warrant that the data or information is accurate or complete; 2) Make no representations regarding the identity of any persons whose names appear in data or information; and 3) Do not assume any liability whatsoever resulting from the release or use of the data or information. The user should verify the information by personally consulting the "official" record reposing at the court of record.

## CRIMINAL CITATION

You are charged with the crime(s) described on the other side of this form. You must respond in one of the two ways listed below. Your response will depend on what is printed in the MANDATORY or BAIL box on the front of this form.

### DOLLAR AMOUNT ($) - Bail Forfeitable Offenses

If a dollar ($) amount appears in the box marked BAIL you do not have to appear in court. Instead, send a check or money order, in U.S. funds, for the full amount to the court listed on the front.

**You must do this within fifteen (15) days.**
**Be sure to enclose this form.**
**This will close your case.**
**Traffic citations may go on your driving record.**

If you would rather appear in court, follow the directions for "Mandatory Appearance Offenses" below.

### MANDATORY APPEARANCE OFFENSES

If the Mandatory box is checked on the front of this form, one of the following options applies:

1. If there is a **date** in the appearance date box you must appear in court at that date and time.
2. If there is a **number** in the appearance date box you must appear in court within the number of days indicated.
3. If the appearance date box is **blank**, the court will notify you in writing when to appear. If you do not receive a notice within fifteen (15) days please contact the court immediately.

When you appear, you will be advised of your constitutional rights and the possible penalties if you are convicted. You also may be asked to enter a plea of **NOT GUILTY** or **GUILTY**.

### IF YOU DO NOT APPEAR

THIS MAY RESULT IN A WARRANT FOR YOUR ARREST AND DETENTION IN JAIL.

NSF CHECKS WILL BE TREATED AS A FAILURE TO PAY.

ALSO, IF "TRAFFIC" IS CHECKED ON THE FRONT YOU WILL LOSE YOUR DRIVER'S LICENSE/PRIVILEGE.

### IF RCW LISTED ON FRONT APPEARS BELOW PLEASE READ

**RCW 46.61.502 Driving Under the Influence (DUI)** - drive a motor vehicle and either: have a 0.08 breath or blood alcohol content within 2 hours after driving, or be under the influence of or affected by liquor, any drug, or a combination of liquor and any drug.

**RCW 46.20.342(1) First Degree Driving While Suspended/Revoked (DWLS)** - be an habitual traffic offender and drive a motor vehicle while an order of revocation issued under chapter 46.65 RCW prohibiting such operation is in effect.

**RCW 46.20.342(2) Second Degree Driving While Suspended/Revoked (DWLS)** - drive a motor vehicle while an order of suspension or revocation prohibiting such operation is in effect, and not be eligible to reinstate the license or driving privilege.

**RCW 46.20.342(3) Third Degree Driving While Suspended/Revoked (DWLS)** - drive a motor vehicle while the license or privilege to drive is suspended or revoked for (1) failure to furnish proof of satisfactory progress in a required alcoholism or drug treatment program; or (2) failure to furnish proof of financial responsibility pursuant to chapter 46.29 RCW; or (3) failure to comply with chapter 46.29 RCW relating to uninsured accidents; or (4) failure to respond to a notice of traffic infraction, failure to appear at a requested hearing, violation of a written promise to appear in court; or failure to comply with the terms of a notice of traffic infraction or citation; or (5) suspension or revocation in another state that would not result in suspension or revocation in this state; or (6) failure to reinstate the driver's license or privilege after suspension or revocation in the second degree; or (7) any combination of the above.

**Traffic citations may go on your driving record.**

**PLEASE NOTIFY THE COURT IMMEDIATELY IF YOUR MAILING ADDRESS HAS CHANGED OR IS INCORRECT.**

January 2003

# Life Without a License

**By Adam Pearson apearson@chronline.com | Posted: Thursday, October 6, 2011 11:21 am**

There are 4,616 people in Lewis County who have had their driver's licenses suspended or revoked, according to the state Department of Licensing.

If caught driving, some face jail time.

For Bob Rice, it was 36 days last January.

This summer a cop recognized Steven Clokey as he was behind the wheel of an old Honda Accord. He was pulled over and arrested.

Clokey now bikes to work and hopes he can talk the judge into home monitoring when he goes to court for sentencing.

"I do jail time once a year," Clokey, 40, said.

Of the 62,684 driver's licenses issued in Lewis County, 6.3 percent are suspended or revoked.

The state average is 5.7 percent.

The high rate jams up Lewis County District Court. There, 64 percent of criminal cases are related to suspended and revoked driver's licenses. The state average is 33 percent.

Unemployment, not just criminality, may play a large role in the high rate of driving scofflaws in the county.

"More people are out of work," Lewis County Deputy Prosecutor Eric Eisenberg said.

Rice, a 27-year-old unemployed father of four, pays both the city of Bonney Lake and Mason County $50 each month for prior arrests on driving with a suspended license. The payments stop new arrest warrants from being issued.

"It'll be years before I can pay all that stuff and get a license," said Rice, of Chehalis. "At this point, I'm just interested in staying out of jail."

There are three typical ways a driver can lose his or her license: The first, and most common, is to ignore a traffic ticket and never pay it. The second is to have three major traffic violations — driving while intoxicated or attempting to elude, for example — within five years. And the third is a penalty for not paying child support or adhering to probation guidelines.

Driving while intoxicated can garner a suspension of about 90 days.

Driving with a suspended license is a criminal offense. But first-time offenders can typically work it down to an infraction if they obey the judge's orders.

**Bigger Counties, More Slack**

Unlike Lewis County, larger counties such as Pierce and King have relicensing courts where repeat offenders are allowed to do community service and knock down their fines.

Relicensing courts are diversion programs that work like drug court.

In some cases, clients of such courts get their licenses reinstated while they have a remaining balance — as long as they have a proven track record of making payments.

A fine for driving with a suspended license is about $1,500. If not paid, fines can double when they go to collections.

Clokey figures he owes at least $6,000 to district court for driving fines, not counting collection fees.

However, his driving fines are not a top priority. Child support garnishes about 50 percent of Clokey's wages because he had fallen in arrears a couple of years ago.

"I know I'm not getting my license back," said Clokey, who considers himself homeless and gets about seven to eight months'work a year framing houses.

Authorities in Lewis County say a relicensing court is unnecessary.

"We work exhaustively for people to get their license back,"Judge R.W. Buzzard said.

For example, if a person's fines go to collections, and that person has medical bills in collections too, Buzzard said the court can contact the collections agency and request a deferment on the medical bills so the driving fines can be paid first.

Judges and prosecutors also work to arrange repayment plans with offenders, Buzzard said.

But there's a common refrain among offenders when such arrangements are made: "I'm unemployed and I can't afford it,"according to Eisenberg.

**Decriminalization**

Rice, who takes the bus to the occasional landscaping job, said he agrees it should be criminal to have multiple driving offenses. He's had several.

But Rice argues for decriminalizing the first offense. Make it a ticket infraction, he says — people still have to get around.

"How are you supposed to pay (the fine) if you have no way to get to work?" Rice said.

Judges and prosecutors bristle at the notion. Besides it being a state law, they say, maintaining the first driving offense as a criminal one is the only leverage they have to encourage people to pay their traffic tickets.

Otherwise, they'd just get tossed out of windows.

"It's a coercive thing to make you comply with (the Department of Licensing's) rules," Eisenberg said.

Even two public defenders who were approached for their views on decriminalization of the first offense share no sympathy for those who lose their driving privileges. It takes several notices from the court and the Department of Licensing to reach that low.

"I don't think it's a financial issue, I think it's a responsibility issue," Buzzard said.

Even Rice and Clokey agree on the responsibility point.

But for Clokey, child support came first when he got two tickets in 2006 for speeding and no insurance.

"I just stopped paying on the tickets — call me irresponsible," Clokey said. "But once you get in (collections), it's hard to get out."

•••

Adam Pearson: (360) 807-8208

**The Details on Driving While License Suspended**

By Adam Pearson

apearson@chronline.com

For the 373,563 people in Washington who have had their driver's license suspended or revoked, losing their driving privileges was a circuitous route.

Traffic tickets can be contested or mitigated in court hearings, and payment plans are optional for those who can't afford fines up front.

However, stopping payment on a traffic ticket is just as detrimental as disregarding a ticket altogether. The end result invalidates a driver's driving privileges and that person —whenever he or she is behind the wheel — is then considered by the state as Driving While License Suspended 3rd Degree.

It also takes several mailed notices, both from court and the Department of Licensing, to get to that point.

Driving with a suspended license in the third degree, commonly referred to as DWLS3, can also be a penalty for failure to pay child support. The charge comes about when the driver is still eligible to have his driver's license reinstated.

More severe is driving with a suspended license in the second degree. This charge typically comes after a driver who has had his license suspended for a court sanction or driving offense, like driving while intoxicated, is found driving again while he is not eligible to have his driver's license reinstated.

Then there's driving with a suspended license in the first degree. This charge is for habitual offenders and carries a mandatory jail sentence of 10, 90 or 180 days — depending on number of convictions.