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NO. 86885-9

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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

STEPHEN CHRISS JOHNSON,

Petitioner.

BRIEF OF AMICUS CURIAE STATE OF WASHINGTON,
DEPARTMENT OF LICENSING

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FILED
SUPREME COURT
STATE OF WASHINGTON
2013 FEB 25 P 12:59
BY RONALD R. CARPENTER
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I. INTRODUCTION

Stephen Johnson committed the crime of driving while license suspended. The underlying suspension was based on Johnson's failure to pay an adjudicated traffic fine. Johnson argues that there is no legitimate state interest for such a suspension. However, Washington's license suspension scheme achieves several policy goals including protection of the public against financially irresponsible drivers, timely payment of traffic fines and protecting Washington drivers in other states by honoring an interstate license suspension compact.

Washington has an interest in protecting the public from financially irresponsible drivers. The Legislature reasonably concluded that a driver who is unable to pay a traffic fine will also be unable to maintain liability insurance or meet a future obligation arising from a traffic accident.

Washington also has a legitimate interest in ensuring that traffic fines are timely paid. The Legislature reasonably concluded that the threat of a suspension will increase the State's efficiency in collecting traffic fines.

Finally, Washington, as a party to the Nonresident Violator Compact, has agreed to suspend a person's driving privilege for failure to pay a traffic fine incurred in another compact state. In return, a

Washington driver is not subject to post a bond or face imprisonment when cited for a traffic violation in another compact state. Therefore, Washington has an interest in honoring the compact and avoiding the imprisonment of its citizens in other states.

Johnson generally argues that Washington's license suspension scheme violates his right to drive and discriminates against the indigent, even though it is well settled that a driver's use of highways is subject to regulation. More specifically, Johnson argues that the Department of Licensing is constitutionally required to inquire into his ability to pay prior to suspending his license. However, a driver's reasons for non-payment are irrelevant when the Department of Licensing reviews a license suspension. An inquiry into ability to pay is only constitutionally required when a person faces additional incarceration after criminal sentencing, not when a person faces a regulatory license suspension. In any event, Johnson's ability to pay can be considered by the infraction court, which has the authority to stop a suspension on a showing of good cause. As a result, this Court should affirm Johnson's conviction.

II. IDENTITY AND INTEREST OF AMICUS CURAIE

The Washington State Department of Licensing (Department) administers and enforces Washington's motor vehicle laws under chapter 46 RCW, including the statutes related to the issuance, suspension and

revocation of driver's licenses (chapter 46.20 RCW), financial responsibility (chapter 46.29 RCW), and the Nonresident Violator Compact (chapter 46.23 RCW).

The Department has an interest in proper interpretation, analysis, and implementation of chapter 46 RCW to ensure highway safety and compensation for person's injured in traffic accidents.

III. ISSUES ADDRESSED BY AMICUS

The Department agrees with the Lewis County Prosecutor's comprehensive analysis that a person who drives with a suspended license for failure to pay an adjudicated traffic fine is guilty of driving while suspended in the third degree. Accordingly, the Department will provide no further briefing on that issue. Instead, the Department's brief develops the constitutional issues raised by Johnson with particular emphasis on the State's rationale for suspending a driver's license for failure to pay.

1. Upon receiving notice of an infraction, a driver has the opportunity at the infraction court to request a hearing and ask for a payment plan if a fine is imposed. In light of the process already afforded by the infraction court, is the Department's subsequent notice of a suspension based on failure to pay and the driver's right to contest ministerial errors sufficient to satisfy due process?

2. Does a license suspension for failure to pay an traffic fine and a subsequent conviction for driving while license suspended create a wealth based classification when those laws apply to rich and poor alike?
3. May the State, consistent with substantive due process, suspend a person's driving privilege for failure to pay a traffic fine as a means of protecting persons against the threat of financially irresponsible drivers, ensuring timely payment of adjudicated fines and upholding the State's obligation, as a member of an interstate compact, to suspend for a driver's failure to pay?
4. Is it fundamentally unfair to administratively suspend a driver's license for failure to pay an adjudicated traffic fine without inquiring into the driver's ability to pay when such an inquiry can be made by the infraction and sentencing courts?

IV. ARGUMENT

A. The Department's Notice of a Suspension Based on Failure to Pay and the Driver's Right to Contest Ministerial Errors Is Sufficient to Satisfy Due Process

Johnson argues that a driver's license suspension for failure to pay is "automatic" and that "once imposed, a suspension will last forever." Pet'r's Opening Br. at 27, 34. Without explicitly raising the issue, Johnson suggests that the administrative review process available to the

driver prior to a suspension does not provide meaningful opportunity to be heard. This suggestion is incorrect.

A driver's license is a property interest protected by due process and suspending a driver's license must comply with procedural due process. *City of Redmond v. Bagby*, 155 Wn.2d 59, 62, 117 P.3d 1126 (2005) (citation omitted). This Court has already held that the administrative review process provided under RCW 46.20.245 for a mandatory suspension for failure to pay a traffic fine satisfies due process. *City of Bellevue v. Lee*, 166 Wn.2d 581, 585–589, 210 P.3d 1011 (2009). This Court previously invalidated failure to pay suspensions where no pre-deprivation process was provided. *City of Redmond v. Moore*, 151 Wn.2d 664, 677, 91 P.3d 875 (2004). The drivers there successfully argued they did not have meaningful redress for clerical errors and un-credited payments. *Id.* at 669. In response, the Legislature provided an administrative review process designed to identify ministerial errors. RCW 46.20.245, .289. This Court found that the new process satisfied due process. *Lee*, 166 Wn.2d at 585–589.

The scope of the administrative review is limited because the driver has already been afforded an opportunity to be heard on the underlying traffic infraction in court. *See, e.g., City of Redmond v. Bagby*, 155 Wn.2d 59, 64, 117 P.3d 1126 (2005) (automatic suspension based on

the Department's receipt of a conviction does not create a risk of erroneous deprivation because due process is provided in the corollary criminal proceeding); *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 218, 143 P.3d 571 (2006) (administrative suspension process is adequate where driver had meaningful opportunity to be heard regarding his child support arrearage in the corollary child support proceeding).

Far from being automatic, a driver is provided ample process before a suspension occurs. Initially, the driver is entitled to adjudication on the merits of the underlying traffic infraction. IRLJ 3.4. The court then imposes a monetary penalty that is immediately payable unless the court determines that a person is not able to pay. RCW 46.63.110(6). If a person is unable to pay, the court has one year from the date the sanction was imposed to order a payment plan. *Id.* If a payment plan is entered into, the infraction court notifies the Department that any previous suspension for non-payment of the infraction should be rescinded. *Id.* Even when the person is delinquent under a payment plan, a court may determine whether good cause exists to adjust the terms of the payment plan, further delaying suspension. *Id.* Once a driver either fails to pay the monetary obligation or adhere to the terms of the payment plan, the court is required to notify the Department of the delinquency which then triggers the administrative review process. RCW 46.63.110.

A driver need not be given an opportunity to raise his financial circumstances in the administrative setting because that issue may be raised with the infraction court. Johnson's only complaint about the limited administrative license suspension review process is that the infraction court fails to find inability to pay with the degree of regularity he deems appropriate. Pet'r's Opening Br. 39–40. If a driver is aggrieved by the process afforded him by an infraction court, the driver may appeal that decision to a higher court. Under the license suspension scheme, it is not the Department's role or the sentencing court's role to set aside fines imposed by an infraction court.

B. Washington's License Suspension Scheme Does Not Create a Wealth Based Classification

Johnson claims his underlying suspension for failure to pay an adjudicated traffic fine violates equal protection because those laws apply unequally to indigents. Equal protection requires that similarly situated individuals receive similar treatment under the law. *Harris v. Charles*, 171 Wn.2d 455, 462, 256 P.3d 328 (2011); U.S. Const. amend. XIV, § 1; Wash. Const. art. I, § 12. To establish an equal protection violation here, Johnson must show that the challenged law establishes a wealth-based classification. *See, e.g., Madison v. State*, 161 Wn.2d 85, 103, 163 P.3d 757 (2007). A law does not implicate equal protection so long as the law

does not distinguish between rich and poor and is applied equally to both. *Riggins v. Rhay*, 75 Wn.2d 271, 282–85, 450 P.2d 806 (1969). In *Riggins*, this Court held that an indigent parolee does not have a statutory right to court-appointed counsel even though affluent parolees would be able to obtain private counsel. *Id.* The Court found that the State is not required to eliminate all disparities between rich and poor in criminal matters. *Id.*

Here, the similarly situated are persons whose driving privileges were suspended for non-payment of adjudicate traffic fines. On its face, the law does not create separate classes or distinguish between the indigent and the wealthy. As in *Riggins*, equal protection is not violated merely because the driving privilege may be more readily available to those with adequate means. Even if there were a wealth based classification, the law would be subject to rational basis review.

C. Washington May, Consistent with Substantive Due Process, Suspend a Person's Driving Privilege for Failure to Pay a Traffic Fine

Johnson claims the driver's license suspension for failure to pay a fine impermissibly burdens his privilege to drive. A claim of disparate treatment based on poverty is often analyzed alongside a claim that the same treatment resulted in the deprivation of a basic legal right in violation of substantive due process. *See, e.g., Madison*, 161 Wn.2d at

104. Generally, substantive due process protects against arbitrary and capricious government action. *Amunrud*, 158 Wn.2d at 219.

“When state action does not affect a fundamental right, the proper standard of review is rational basis.” *Amurund*, 158 Wn.2d at 222 (citations omitted).¹ Far from being a fundamental right, driving is a privilege subject to reasonable regulation. *See, e.g., State v. Scheffel*, 82 Wn.2d 872, 880, 514 P.2d 1052 (1973). The relative importance of the driving privilege is considered alongside the State’s interest in highway safety. *See, e.g., State v. Clifford*, 57 Wn. App. 127, 133, 787 P.2d 571 (1990) (“[L]icensing statute serves a compelling state interest in law enforcement as well as a compelling state interest in highway safety.”).

“The rational basis test is the most relaxed form of judicial scrutiny.” *Amunrud*, 158 Wn.2d at 223 (citation omitted). Under this test, the challenged law must be rationally related to a legitimate state interest. *Id.* at 222 (citations omitted). “A court may assume the existence of any necessary state of facts which it can reasonably conceive in determining whether a rational relationship exists between the challenged law and a legitimate state interest.” *Id.* (citations omitted).

¹ Johnson incorrectly asserts that the Court must also determine “the existence of alternative means for effectuating the purpose,” a more stringent level of review used by the U.S. Supreme Court in *Bearden v. Georgia*, 461 U.S. 660, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983). However, *Bearden* is inapplicable because it dealt with automatic imprisonment for failure to pay a fine, not deprivation of the driving privilege.

Johnson has no fundamental right to drive. Therefore, the Court should review Johnson's initial suspension and subsequent conviction under rational basis review.

1. Washington's license suspension scheme is rationally related to ensuring the protection of the public against financially irresponsible drivers

The Legislature, in its exercise of police power, has tasked the Department with regulating the driving privilege in Washington State. RCW 46.01.030. Generally, the United State Supreme Court has approved any "appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway." *Reitz v. Mealey*, 314 U.S. 33, 37, 62 S. Ct. 24, 86 L. Ed. 21 (1941), *overruled in part on other grounds by Perez v. Campbell*, 402 U.S. 637, 652-54, 91 S. Ct. 1704, 29 L. Ed. 2d 233 (1971). Highway safety is the primary objective of Washington's license suspension scheme. *See, e.g., Scheffel*, 82 Wn.2d at 880. However, this Court has approved license suspensions with mixed legislative purposes and purposes that are unrelated to highway safety. For example, Washington's financial responsibility law primarily ensures that compensation will be available to victims of traffic accidents. *Johnson v. Dep't of Licensing*, 46 Wn. App. 701, 707, 731 P.2d 1097 (1986). Following a traffic accident, an at-fault

driver without liability insurance is required to deposit security with the Department or face a license suspension. RCW 46.29.060– 080.

A driver's failure to pay a judgment arising from a motor vehicle accident can also result in a suspension. RCW 46.29.330, *Rawson v. Dep't of Licenses*, 15 Wn.2d 364, 130 P.2d 876 (1942). In *Rawson*, judgment was taken against the vehicle owner and the at-fault driver. *Id.* The vehicle owner's license was suspended on non-payment of a judgment under the financial responsibility law. *Id. at* 365. This Court found the purpose of financial responsibility law was to render the highways as safe as possible but also favorably recognized that "protection in securing redress for injured highway travelers is a proper subject of police regulation, as well as protection from being injured." *Id. at* 368 (quoting *Rosenblum v. Griffin*, 89 N.H. 314, 197 A. 701, 703–04 (1938)); *see also Floyd v. Motor Vehicles Div.*, 27 Or. App. 41, 554 P.2d 1024, 1026 (1976) ("[Oregon's financial responsibility law] is rationally calculated to achieve a legitimate state interest, the protection of the public from financial loss due to improper use of motor vehicles.").

Washington has an interest in ensuring that only financially responsible drivers use State highways. As in *Rawson*, a person may be subject to a license suspension without having demonstrated any particular act of unsafe driving. It would be rational for the Legislature to conclude

that, in the event of a future accident, those drivers who are unable to pay fines are also unable to maintain liability insurance or personally compensate an injured driver. Therefore, payment of a traffic fine, as a condition for maintaining a driver's license, and the subsequent suspension is rationally connected to securing compensation for victims of traffic accidents.

2. Washington's license suspension scheme is rationally related to ensuring driver compliance with adjudicated traffic fines

The State also has an interest in efficient enforcement of its traffic regulations. It is rational for the legislature to conclude that the threat of a suspension will increase timely payment of traffic fines. This Court has said that "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 regulations and in ensuring offending drivers appear in court, pay applicable fines, and comply with court orders." *City of Redmond v. Moore*, 151 Wn.2d 664, 677, 91 P.3d 875 (2004).

In other license suspension contexts, this Court has recognized that Washington's suspension laws are intended to achieve multiple purposes that include highway safety. *State v. Shawn*, 122 Wn.2d 553, 859 P.2d 1220 (1993). At issue in *Shawn* was an "abuse and lose" law that

mandated license revocations for persons aged 13-18 who were convicted of an alcohol offense unrelated to driving. *Shawn*, 122 Wn.2d at 556. The Court noted that the uncontroverted purpose of the suspension was to “deter unlawful use of alcohol or drugs by juveniles and to promote highway safety.” *Id.* at 563. In *Shawn*, deterring juvenile drug use was, in some respects, distinct from the state interest in highway safety.

This Court has also recognized interests that are unrelated to highway safety. In *Amunrud*, this Court considered a commercial driver’s license suspension for failure to pay child support. 158 Wn.2d at 226. The Court found the State has a legitimate interest in assuring compliance with support orders, and a license suspension can be rationally related to achieving an interest unrelated to highway safety. *Id.* at 223–25. The Court held that a license suspension was rationally related to that objective because it incentivized child support payments. *Id.*

The State’s interest in ensuring payment of traffic fines is an important one. It is rational to conclude that the threat of a suspension would encourage payment without courts having to resort solely to traditional methods of civil enforcement of judgments.

Johnson cites to *Tate v. Short* for the broad principle that the threat of a license suspension cannot be used as a coercive tool for collecting on unpaid traffic fines. Pet’r’s Opening Br. at 34. However, *Tate* involved

imprisonment as a coercive tool. However, the “suspension or revocation of a driver's license is not penal in nature and is not intended as punishment, but is designed solely for the protection of the public in the use of the highways.” *Scheffel*, 82 Wn.2d at 879 (citations omitted).

Johnson’s citation to *King v. Dep’t of Social & Health Services* is likewise insufficient. *King* also addressed imprisonment as a coercive tool. 110 Wn.2d 793, 794–95, 756 P.2d 1303 (1998). There, a parent was jailed by a court indefinitely after he was found in contempt for refusing to bring his son to a dependency hearing. *Id.* *King* created guidelines for determining when a coercive purpose is no longer served by indefinite detention. *Id.* at 802–805.

Unlike *Tate* and *King*, Johnson’s imprisonment was not ordered by the Department or the infraction court and the considerations in those cases are inapplicable here. The Legislature is free to use the threat of a license suspension as a means of achieving a legitimate interest unrelated to driving. Therefore, the State may use the threat of a suspension as a means of encouraging timely payment of traffic fines, even though the interest in timely payment is unrelated to highway safety.

3. Washington has an interest in upholding its agreement under the Nonresident Violator Compact and ensuring its drivers are not jailed in sister states

Washington adopted the Nonresident Violator Compact in 1982 because Washington drivers cited for a traffic violation outside of this State would often be required to post a bond to secure appearance or be taken into custody. Law of 1982, ch. 212 § 1 *codified at* RCW 46.23.010 (Art. I, (a)(1)). States joining the compact found that this common practice caused “unnecessary inconvenience and, at times, a hardship for the motorist.” RCW 46.23.010 (Art. I, (a)(5)). In lieu of imprisonment, the alternative coercive mechanism adopted by party states was reciprocal suspension laws. *Id.* (Art. I, (c)(1)). As a party to the compact, Washington was required to initiate a suspension action “in accordance with [Washington’s] procedures” when it received notice that one of its drivers had not complied with the terms of a traffic citation in another compact state. *Id.* (Art. IV, (a)).

Prior to the 1993 enactment of the failure to respond, appear, or pay suspension statute, RCW 46.20.289, a Washington driver’s license could not be issued or renewed if the driver had failed to appear in court for a violation of a motor vehicle law. Former RCW 46.20.031. Washington’s implementation of suspension for failure to pay was intended to bring Washington into compliance with the compact. Final

Senate Bill Report SHB 1741, 53rd Leg., at 1 (1993) (attached as Exhibit A).

Washington has a legitimate interest in upholding agreements with sister states. Washington also has an interest in preventing other states from taking Washington drivers into custody after a traffic stop. The failure to pay suspension is rationally related to those legitimate State interests.

4. Washington has a legitimate interest in criminalizing driving while license suspended

Washington's interests in regulatory license suspensions and criminalizing driving while suspended are distinct. After a suspension for non-payment occurs, the State has the additional interest of restraining suspended drivers from the act of driving. To achieve that goal, the Legislature decided that the threat of punishment would deter suspended drivers from getting behind the wheel. Additionally, the Legislature could have rationally concluded that a person's decision to drive despite a suspension undermines the authority of Washington courts and the Department's regulatory control of drivers. Accordingly, criminalizing driving while suspended deters suspended driving and reinforces the integrity of Washington's traffic law.

D. It Is Not Fundamentally Unfair to Administratively Suspend a Driver's License for Failure to Pay an Adjudicated Traffic Fine Without Inquiring Into the Drivers Ability to Pay

Johnson argues that a driver's license suspension for failure to pay a fine without an inquiry into the reasons for failure to pay violates the principle of fundamental fairness articulated by the U.S. Supreme Court in *Bearden v. Georgia*, 461 U.S. 660, 661, 103 S. Ct. 2064, 76 L. Ed. 2d 221 (1983). *Johnson* is mistaken, and his reliance on *Bearden* is misplaced.

Bearden addressed an issue, not involved here, whether a state could constitutionally revoke an indigent defendant's probation for failure to pay a fine without first determining the willfulness of the failure to pay. *Id.* at 661. The Court held that a state must either inquire into the willfulness of the defendant's ability to pay or determine that there was no alternative to imprisonment for punishment and deterrence. *Id.* at 671.

As this Court has previously said, “[t]he *Bearden* court merely held it unconstitutional to revoke automatically an indigent defendant's probation for failure to pay a fine, without evaluating whether the defendant had made bona fide efforts or what alternative punishments might exist,” and “*Bearden* involve[s] additional punishments imposed on individuals for failure to pay their fines.” *Madison v. State*, 161 Wn.2d 85, 101–05, 163 P.3d 757 (citing *Bearden*, 461 U.S. at 672, 674). The general rule in Washington has long been “the suspension or revocation of

a driver's license is not penal in nature and is not intended as punishment, but is designed solely for the protection of the public in the use of the highways.” *Scheffel*, 82 Wn.2d at 879 (citations omitted).

Unlike in *Bearden*, Johnson’s license suspension for failure to pay was not a punishment. Thus, the willfulness or existence of alternative measures inquiry required in *Bearden* does not apply to the license suspension. When the infraction court refers the infraction to the Department, that action is taken to ensure payment and prevent financially irresponsible drivers from driving, not to punish the defendant for his or her inability to pay.

Johnson also argues that *State v. Blank* requires an inquiry into ability to pay before the infraction court notifies the Department that a defendant has failed to pay. Pet’r’s Opening Br. at 39 (citing *State v. Blank*, 131 Wn.2d 230, 930 P.2d 1213 (1997)). *Blank* does not stand for such a broad proposition. In *Blank*, this Court held that a sentencing court was not required to inquire into ability to pay before requiring a repayment obligation in a defendant’s judgment and sentence. *Id.* at 241. The Court noted that fundamental fairness concerns are raised only when a defendant faces imprisonment because of an inability to pay a fine. *Id.* at 241 (citing *Bearden*).

In *State v. Curry*, 118 Wn.2d 911, 917, 829 P.2d 166 (1992), the defendants argued that imposition of a victim penalty assessment could result in imprisonment upon inability to pay. Similar to *Bearden*, this Court found that “nothing . . . precludes a judge from imposing on an indigent, as on any defendant, the maximum penalty prescribed by law [.]” *Curry*, 118 Wn.2d at 918, fn. 3. The Court further held that fundamental fairness is applicable “at the point of enforced collection . . . where an indigent may be faced with the alternatives of payment or imprisonment, and he “may assert a constitutional objection on the ground of his indigency.” *Curry*, 118 Wn.2d at 917–18 (quoting *State v. Curry*, 62 Wn. App. 676, 681–82, 814 P.2d 1252 (1991)). A show cause hearing prior to imprisonment provides sufficient safeguards to prevent imprisonment for innocent failure to pay. *Id.* at 918.

Both *Blank* and *Curry* are inapplicable to the actions taken by the Department and the infraction court because imprisonment is not at stake. Johnson suggests the infraction court’s original determination that a traffic fine was an appropriate penalty means that a license suspension and a sentence for driving while license suspended is an impermissible additional punishment that is automatically imposed. However, several adjudicative steps intervene between a notice of infraction and imprisonment after a conviction of driving while suspended. When a

driver fails to obtain a payment plan from an infraction court, is suspended by the Department after notice and then decides to drive, the sentencing court, at that point, is free to impose the sentence it believes appropriate to achieve Washington's interest in deterring suspended drivers, rich or poor, from driving. Even assuming that original incarceration for driving while license suspended was actually "additional punishment" at the "point of enforced collection," the defendant still has another opportunity to argue his inability to pay prior to sentencing.

V. CONCLUSION

For the foregoing reasons, the Department asks the Court to affirm Johnson's conviction.

RESPECTFULLY SUBMITTED this 15th day of February, 2013.

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EXHIBIT A

Final Senate Bill Report SHB 1741

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