
SENATE BILL 5719

State of Washington 55th Legislature 1997 Regular Session

By Senators Haugen, Wood, Newhouse and Winsley; by request of Department of Licensing

Read first time 02/10/97. Referred to Committee on Transportation.

1 AN ACT Relating to drivers' licenses; amending RCW 13.40.265,
2 46.20.118, 46.20.265, 46.20.285, 46.20.308, 46.20.355, 46.29.040,
3 46.61.503, and 46.61.5152; creating a new section; repealing RCW
4 46.61.5057; providing an effective date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** It is the intent and purpose of this act to
7 clarify procedural issues and make technical corrections to statutes
8 relating to drivers' licenses. This act should not be construed as
9 changing existing public policy.

10 **Sec. 2.** RCW 13.40.265 and 1994 sp.s. c 7 s 435 are each amended to
11 read as follows:

12 (1)(a) If a juvenile thirteen years of age or older is found by
13 juvenile court to have committed an offense while armed with a firearm
14 or an offense that is a violation of RCW 9.41.040(1)((+e)) (b)(iii) or
15 chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court shall notify the
16 department of licensing within twenty-four hours after entry of the
17 judgment.

1 (b) Except as otherwise provided in (c) of this subsection, upon
2 petition of a juvenile who has been found by the court to have
3 committed an offense that is a violation of chapter 66.44, 69.41,
4 69.50, or 69.52 RCW, the court may at any time the court deems
5 appropriate notify the department of licensing that the juvenile's
6 driving privileges should be reinstated.

7 (c) If the offense is the juvenile's first violation of chapter
8 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the
9 court for reinstatement of the juvenile's privilege to drive revoked
10 pursuant to RCW 46.20.265 until ninety days after the date the juvenile
11 turns sixteen or ninety days after the judgment was entered, whichever
12 is later. If the offense is the juvenile's second or subsequent
13 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile
14 may not petition the court for reinstatement of the juvenile's
15 privilege to drive revoked pursuant to RCW 46.20.265 until the date the
16 juvenile turns seventeen or one year after the date judgment was
17 entered, whichever is later.

18 (2)(a) If a juvenile enters into a diversion agreement with a
19 diversion unit pursuant to RCW 13.40.080 concerning an offense that is
20 a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the diversion
21 unit shall notify the department of licensing within twenty-four hours
22 after the diversion agreement is signed.

23 (b) If a diversion unit has notified the department pursuant to (a)
24 of this subsection, the diversion unit shall notify the department of
25 licensing when the juvenile has completed the agreement.

26 **Sec. 3.** RCW 46.20.118 and 1990 c 250 s 37 are each amended to read
27 as follows:

28 The department shall maintain a negative file. It shall contain
29 negatives of all pictures taken by the department of licensing as
30 authorized by RCW 46.20.070 through 46.20.119. Negatives in the file
31 shall not be available for public inspection and copying under chapter
32 42.17 RCW. The department may make the file available to (~~official~~
33 ~~governmental enforcement~~) government agencies to assist in (~~the~~
34 ~~investigation by the agencies of suspected criminal activity~~) civil or
35 criminal investigations, or as might be necessary for purposes of
36 security. The department may also provide a print to the driver's next
37 of kin in the event the driver is deceased.

1 **Sec. 4.** RCW 46.20.265 and 1994 sp.s. c 7 s 439 are each amended to
2 read as follows:

3 (1) In addition to any other authority to revoke driving privileges
4 under this chapter, the department shall revoke all driving privileges
5 of a juvenile when the department receives notice from a court pursuant
6 to RCW 9.41.040(5), 13.40.265, 66.44.365, 69.41.065, 69.50.420,
7 69.52.070, or a substantially similar municipal ordinance adopted by a
8 local legislative authority, or from a diversion unit pursuant to RCW
9 13.40.265. The revocation shall be imposed without hearing.

10 (2) The driving privileges of the juvenile revoked under subsection
11 (1) of this section shall be revoked in the following manner:

12 (a) Upon receipt of the first notice, the department shall impose
13 a revocation for one year, or until the juvenile reaches seventeen
14 years of age, whichever is longer.

15 (b) Upon receipt of a second or subsequent notice, the department
16 shall impose a revocation for two years or until the juvenile reaches
17 eighteen years of age, whichever is longer.

18 (c) Each offense for which the department receives notice shall
19 result in a separate period of revocation. All periods of revocation
20 imposed under this section that could otherwise overlap shall run
21 consecutively and no period of revocation imposed under this section
22 shall begin before the expiration of all other periods of revocation
23 imposed under this section or other law.

24 (3) If the department receives notice from a court that the
25 juvenile's privilege to drive should be reinstated, the department
26 shall immediately reinstate any driving privileges that have been
27 revoked under this section if the minimum term of revocation as
28 specified in RCW 13.40.265(1)(c), 66.44.365(3), 69.41.065(3),
29 69.50.420(3), 69.52.070(3), or similar ordinance has expired, and
30 subject to subsection (2)(c) of this section.

31 (4)(a) If the department receives notice pursuant to RCW
32 13.40.265(2)(b) from a diversion unit that a juvenile has completed a
33 diversion agreement for which the juvenile's driving privileges were
34 revoked, the department shall reinstate any driving privileges revoked
35 under this section as provided in (b) of this subsection, subject to
36 subsection (2)(c) of this section.

37 (b) If the diversion agreement was for the juvenile's first
38 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department
39 shall not reinstate the juvenile's privilege to drive until the later

1 of ninety days after the date the juvenile turns sixteen or ninety days
2 after the juvenile entered into a diversion agreement for the offense.
3 If the diversion agreement was for the juvenile's second or subsequent
4 violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the department
5 shall not reinstate the juvenile's privilege to drive until the later
6 of the date the juvenile turns seventeen or one year after the juvenile
7 entered into the second or subsequent diversion agreement.

8 **Sec. 5.** RCW 46.20.285 and 1996 c 199 s 5 are each amended to read
9 as follows:

10 The department shall forthwith revoke the license of any driver for
11 the period of one calendar year unless otherwise provided in this
12 section, upon receiving a record of the driver's conviction of any of
13 the following offenses, when the conviction has become final:

14 (1) For vehicular homicide the period of revocation shall be two
15 years. The revocation period shall be tolled during any period of
16 total confinement for the offense;

17 (2) Vehicular assault. The revocation period shall be tolled
18 during any period of total confinement for the offense;

19 (3) Driving a motor vehicle while under the influence of
20 intoxicating liquor or a narcotic drug, or under the influence of any
21 other drug to a degree which renders the driver incapable of safely
22 driving a motor vehicle, upon a showing by the department's records
23 that the conviction is the second or subsequent such conviction for the
24 driver within a period of five years. (~~Upon a showing that the~~
25 ~~conviction is the third such conviction for the driver within a period~~
26 ~~of five years, the period of revocation shall be two years)) The
27 revocation period shall be as provided in RCW 46.61.5055;~~

28 (4) Any felony in the commission of which a motor vehicle is used;

29 (5) Failure to stop and give information or render aid as required
30 under the laws of this state in the event of a motor vehicle accident
31 resulting in the death or personal injury of another or resulting in
32 damage to a vehicle that is driven or attended by another;

33 (6) Perjury or the making of a false affidavit or statement under
34 oath to the department under Title 46 RCW or under any other law
35 relating to the ownership or operation of motor vehicles;

36 (7) Reckless driving upon a showing by the department's records
37 that the conviction is the third such conviction for the driver within
38 a period of two years.

1 **Sec. 6.** RCW 46.20.308 and 1995 c 332 s 1 are each amended to read
2 as follows:

3 (1) Any person who operates a motor vehicle within this state is
4 deemed to have given consent, subject to the provisions of RCW
5 46.61.506, to a test or tests of his or her breath or blood for the
6 purpose of determining the alcohol concentration or presence of any
7 drug in his or her breath or blood if arrested for any offense where,
8 at the time of the arrest, the arresting officer has reasonable grounds
9 to believe the person had been driving or was in actual physical
10 control of a motor vehicle while under the influence of intoxicating
11 liquor or any drug or was in violation of RCW 46.61.503.

12 (2) The test or tests of breath shall be administered at the
13 direction of a law enforcement officer having reasonable grounds to
14 believe the person to have been driving or in actual physical control
15 of a motor vehicle within this state while under the influence of
16 intoxicating liquor or any drug or the person to have been driving or
17 in actual physical control of a motor vehicle while having alcohol in
18 a concentration of 0.02 or more in his or her system and being under
19 the age of twenty-one. However, in those instances where the person is
20 incapable due to physical injury, physical incapacity, or other
21 physical limitation, of providing a breath sample or where the person
22 is being treated in a hospital, clinic, doctor's office, emergency
23 medical vehicle, ambulance, or other similar facility in which a breath
24 testing instrument is not present or where the officer has reasonable
25 grounds to believe that the person is under the influence of a drug, a
26 blood test shall be administered by a qualified person as provided in
27 RCW 46.61.506(4). The officer shall inform the person of his or her
28 right to refuse the breath or blood test, and of his or her right to
29 have additional tests administered by any qualified person of his or
30 her choosing as provided in RCW 46.61.506. The officer shall warn the
31 driver that:

32 (a) His or her license, permit, or privilege to drive will be
33 revoked or denied if he or she refuses to submit to the test;

34 (b) His or her license, permit, or privilege to drive will be
35 suspended, revoked, denied, or placed in probationary status if the
36 test is administered and the test indicates the alcohol concentration
37 of the person's breath or blood is 0.10 or more, in the case of a
38 person age twenty-one or over, or 0.02 or more in the case of a person
39 under age twenty-one; and

1 (c) His or her refusal to take the test may be used in a criminal
2 trial.

3 (3) Except as provided in this section, the test administered shall
4 be of the breath only. If an individual is unconscious or is under
5 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
6 or vehicular assault as provided in RCW 46.61.522, or if an individual
7 is under arrest for the crime of driving while under the influence of
8 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
9 results from an accident in which there has been serious bodily injury
10 to another person, a breath or blood test may be administered without
11 the consent of the individual so arrested.

12 (4) Any person who is dead, unconscious, or who is otherwise in a
13 condition rendering him or her incapable of refusal, shall be deemed
14 not to have withdrawn the consent provided by subsection (1) of this
15 section and the test or tests may be administered, subject to the
16 provisions of RCW 46.61.506, and the person shall be deemed to have
17 received the warnings required under subsection (2) of this section.

18 (5) If, following his or her arrest and receipt of warnings under
19 subsection (2) of this section, the person arrested refuses upon the
20 request of a law enforcement officer to submit to a test or tests of
21 his or her breath or blood, no test shall be given except as authorized
22 under subsection (3) or (4) of this section.

23 (6) If, after arrest and after the other applicable conditions and
24 requirements of this section have been satisfied, a test or tests of
25 the person's blood or breath is administered and the test results
26 indicate that the alcohol concentration of the person's breath or blood
27 is 0.10 or more if the person is age twenty-one or over, or is 0.02 or
28 more if the person is under the age of twenty-one, or the person
29 refuses to submit to a test, the arresting officer or other law
30 enforcement officer at whose direction any test has been given, or the
31 department, where applicable, if the arrest results in a test of the
32 person's blood, shall:

33 (a) Serve notice in writing on the person on behalf of the
34 department of its intention to suspend, revoke, deny, or place in
35 probationary status the person's license, permit, or privilege to drive
36 as required by subsection (7) of this section;

37 (b) Serve notice in writing on the person on behalf of the
38 department of his or her right to a hearing, specifying the steps he or

1 she must take to obtain a hearing as provided by subsection (8) of this
2 section;

3 (c) Mark the person's Washington state driver's license or permit
4 to drive, if any, in a manner authorized by the department;

5 (d) Serve notice in writing that the marked license or permit, if
6 any, is a temporary license that is valid for sixty days from the date
7 of arrest or from the date notice has been given in the event notice is
8 given by the department following a blood test, or until the
9 suspension, revocation, or denial of the person's license, permit, or
10 privilege to drive is sustained at a hearing pursuant to subsection (8)
11 of this section, whichever occurs first. No temporary license is valid
12 to any greater degree than the license or permit that it replaces; and

13 (e) Immediately notify the department of the arrest and transmit to
14 the department within seventy-two hours, except as delayed as the
15 result of a blood test, a sworn report or report under a declaration
16 authorized by RCW 9A.72.085 that states:

17 (i) That the officer had reasonable grounds to believe the arrested
18 person had been driving or was in actual physical control of a motor
19 vehicle within this state while under the influence of intoxicating
20 liquor or drugs, or both, or was under the age of twenty-one years and
21 had been driving or was in actual physical control of a motor vehicle
22 while having an alcohol concentration of 0.02 or more;

23 (ii) That after receipt of the warnings required by subsection (2)
24 of this section the person refused to submit to a test of his or her
25 blood or breath, or a test was administered and the results indicated
26 that the alcohol concentration of the person's breath or blood was 0.10
27 or more if the person is age twenty-one or over, or was 0.02 or more if
28 the person is under the age of twenty-one; and

29 (iii) Any other information that the director may require by rule.

30 (7) The department of licensing, upon the receipt of a sworn report
31 or report under a declaration authorized by RCW 9A.72.085 under
32 subsection (6)(e) of this section, shall suspend, revoke, deny, or
33 place in probationary status the person's license, permit, or privilege
34 to drive or any nonresident operating privilege, as provided in RCW
35 46.20.3101, such suspension, revocation, denial, or placement in
36 probationary status to be effective beginning sixty days from the date
37 of arrest or from the date notice has been given in the event notice is
38 given by the department following a blood test, or when sustained at a

1 hearing pursuant to subsection (8) of this section, whichever occurs
2 first.

3 (8) A person receiving notification under subsection (6)(b) of this
4 section may, within thirty days after the notice has been given,
5 request in writing a formal hearing before the department. The person
6 shall pay a fee of one hundred dollars as part of the request. If the
7 request is mailed, it must be postmarked within thirty days after
8 receipt of the notification. Upon timely receipt of such a request for
9 a formal hearing, including receipt of the required one hundred dollar
10 fee, the department shall afford the person an opportunity for a
11 hearing. Except as otherwise provided in this section, the hearing is
12 subject to and shall be scheduled and conducted in accordance with RCW
13 46.20.329 and 46.20.332. The hearing shall be conducted in the county
14 of the arrest, except that all or part of the hearing may, at the
15 discretion of the department, be conducted by telephone or other
16 electronic means. The hearing shall be held within sixty days
17 following the arrest or following the date notice has been given in the
18 event notice is given by the department following a blood test, unless
19 otherwise agreed to by the department and the person, in which case the
20 action by the department shall be stayed, and any valid temporary
21 license marked under subsection (6)(c) of this section extended, if the
22 person is otherwise eligible for licensing. For the purposes of this
23 section, the scope of the hearing shall cover the issues of whether a
24 law enforcement officer had reasonable grounds to believe the person
25 had been driving or was in actual physical control of a motor vehicle
26 within this state while under the influence of intoxicating liquor or
27 any drug or had been driving or was in actual physical control of a
28 motor vehicle within this state while having alcohol in his or her
29 system in a concentration of 0.02 or more and was under the age of
30 twenty-one, whether the person was placed under arrest, and (a) whether
31 the person refused to submit to the test or tests upon request of the
32 officer after having been informed that such refusal would result in
33 the revocation of the person's license, permit, or privilege to drive,
34 or (b) if a test or tests were administered, whether the applicable
35 requirements of this section were satisfied before the administration
36 of the test or tests, whether the person submitted to the test or
37 tests, or whether a test was administered without express consent as
38 permitted under this section, and whether the test or tests indicated
39 that the alcohol concentration of the person's breath or blood was 0.10

1 or more if the person was age twenty-one or over at the time of the
2 arrest, or was 0.02 or more if the person was under the age of twenty-
3 one at the time of the arrest. The sworn report or report under a
4 declaration authorized by RCW 9A.72.085 submitted by a law enforcement
5 officer is prima facie evidence that the officer had reasonable grounds
6 to believe the person had been driving or was in actual physical
7 control of a motor vehicle within this state while under the influence
8 of intoxicating liquor or drugs, or both, or the person had been
9 driving or was in actual physical control of a motor vehicle within
10 this state while having alcohol in his or her system in a concentration
11 of 0.02 or more and was under the age of twenty-one and that the
12 officer complied with the requirements of this section.

13 A hearing officer shall conduct the hearing, may issue subpoenas
14 for the attendance of witnesses and the production of documents, and
15 shall administer oaths to witnesses. The hearing officer shall not
16 issue a subpoena for the attendance of a witness at the request of the
17 person unless the request is accompanied by the fee required by RCW
18 5.56.010 for a witness in district court. The sworn report or report
19 under a declaration authorized by RCW 9A.72.085 of the law enforcement
20 officer and any other evidence accompanying the report shall be
21 admissible without further evidentiary foundation and the
22 certifications authorized by the criminal rules for courts of limited
23 jurisdiction shall be admissible without further evidentiary
24 foundation. The person may be represented by counsel, may question
25 witnesses, may present evidence, and may testify. The department shall
26 order that the suspension, revocation, denial, or placement in
27 probationary status either be rescinded or sustained.

28 (9) If the suspension, revocation, denial, or placement in
29 probationary status is sustained after such a hearing, the person whose
30 license, privilege, or permit is suspended, revoked, denied, or placed
31 in probationary status has the right to file a petition in the superior
32 court of the county of arrest to review the final order of revocation
33 by the department in the same manner as an appeal from a decision of a
34 court of limited jurisdiction. Notice of appeal must be filed within
35 thirty days after the date the final order is served or the right to
36 appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other
37 statutes or rules referencing de novo review, the appeal shall be
38 limited to a review of the record of the administrative hearing. The
39 appellant must pay the costs associated with obtaining the record of

1 the hearing before the hearing officer. The filing of the appeal does
2 not stay the effective date of the suspension, revocation, denial, or
3 placement in probationary status. A petition filed under this
4 subsection must include the petitioner's grounds for requesting review.
5 Upon granting petitioner's request for review, the court shall review
6 the department's final order of suspension, revocation, denial, or
7 placement in probationary status as expeditiously as possible. The
8 review must be limited to a determination of whether the department has
9 committed any errors of law. The superior court shall accept those
10 factual determinations supported by substantial evidence in the record:
11 (a) That were expressly made by the department; or (b) that may
12 reasonably be inferred from the final order of the department. The
13 superior court may reverse, affirm, or modify the decision of the
14 department or remand the case back to the department for further
15 proceedings. The decision of the superior court must be in writing and
16 filed in the clerk's office with the other papers in the case. The
17 court shall state the reasons for the decision. If judicial relief is
18 sought for a stay or other temporary remedy from the department's
19 action, the court shall not grant such relief unless the court finds
20 that the appellant is likely to prevail in the appeal and that without
21 a stay the appellant will suffer irreparable injury. If the court
22 stays the suspension, revocation, denial, or placement in probationary
23 status it may impose conditions on such stay.

24 (10) If a person whose driver's license, permit, or privilege to
25 drive has been or will be suspended, revoked, denied, or placed in
26 probationary status under subsection (7) of this section, other than as
27 a result of a breath or blood test refusal, and who has not committed
28 an offense within the last five years for which he or she was granted
29 a deferred prosecution under chapter 10.05 RCW, petitions a court for
30 a deferred prosecution on criminal charges arising out of the arrest
31 for which action has been or will be taken under subsection (7) of this
32 section, the court may direct the department to stay any actual or
33 proposed suspension, revocation, denial, or placement in probationary
34 status for at least forty-five days but not more than ninety days. If
35 the court stays the suspension, revocation, denial, or placement in
36 probationary status, it may impose conditions on such stay. If the
37 person is otherwise eligible for licensing, the department shall issue
38 a temporary license, or extend any valid temporary license marked under
39 subsection (6) of this section, for the period of the stay. If a

1 deferred prosecution treatment plan is not recommended in the report
2 made under RCW 10.05.050, or if treatment is rejected by the court, or
3 if the person declines to accept an offered treatment plan, or if the
4 person violates any condition imposed by the court, then the court
5 shall immediately direct the department to cancel the stay and any
6 temporary marked license or extension of a temporary license issued
7 under this subsection.

8 A suspension, revocation, or denial imposed under this section,
9 other than as a result of a breath or blood test refusal, shall be
10 stayed if the person is accepted for deferred prosecution as provided
11 in chapter 10.05 RCW for the incident upon which the suspension,
12 revocation, or denial is based. If the deferred prosecution is
13 terminated, the stay shall be lifted and the suspension, revocation, or
14 denial reinstated. If the deferred prosecution is completed, the stay
15 shall be lifted and the suspension, revocation, or denial canceled.

16 (11) When it has been finally determined under the procedures of
17 this section that a nonresident's privilege to operate a motor vehicle
18 in this state has been suspended, revoked, or denied, the department
19 shall give information in writing of the action taken to the motor
20 vehicle administrator of the state of the person's residence and of any
21 state in which he or she has a license.

22 **Sec. 7.** RCW 46.20.355 and 1995 1st sp.s. c 17 s 1 are each amended
23 to read as follows:

24 (1) Upon placing a license, permit, or privilege to drive in
25 probationary status under RCW 46.20.3101(2)(a), or upon receipt of an
26 abstract indicating a deferred prosecution has been granted under RCW
27 10.05.060, or upon receipt of a notice of conviction of RCW 46.61.502
28 or 46.61.504, the department of licensing shall order the person to
29 surrender any nonprobationary Washington state driver's license that
30 may be in his or her possession. The department shall revoke the
31 license, permit, or privilege to drive of any person who fails to
32 surrender it as required by this section for one year, unless the
33 license has been previously surrendered to the department, a law
34 enforcement officer, or a court, or the person has completed an
35 affidavit of lost, stolen, destroyed, or previously surrendered
36 license, such revocation to take effect thirty days after notice is
37 given of the requirement for license surrender.

1 (2) The department shall place a person's driving privilege in
2 probationary status as required by RCW 10.05.060, 46.20.308, or
3 46.61.5055 for a period of five years from the date the probationary
4 status is required to go into effect.

5 (3) Following receipt of an abstract indicating a deferred
6 prosecution has been granted under RCW 10.05.060, or following receipt
7 of a sworn report under RCW 46.20.308 that requires immediate placement
8 in probationary status under RCW 46.20.3101(2)(a), or upon
9 reinstatement or reissuance of a driver's license suspended or revoked
10 as the result of a conviction of RCW 46.61.502 or 46.61.504, the
11 department shall require the person to obtain a probationary license in
12 order to operate a motor vehicle in the state of Washington, except as
13 otherwise exempt under RCW 46.20.025. The department shall not issue
14 the probationary license unless the person is otherwise qualified for
15 licensing, and the person must renew the probationary license on the
16 same cycle as the person's regular license would have been renewed
17 until the expiration of the five-year probationary status period
18 imposed under subsection (2) of this section.

19 (4) For each original issue or renewal of a probationary license
20 under this section, the department shall charge a fee of fifty dollars
21 in addition to any other licensing fees required. Except for when
22 renewing a probationary license, the department shall waive the
23 requirement to obtain an additional probationary license and the fifty-
24 dollar fee if the person has a probationary license in his or her
25 possession at the time a new probationary license is required.

26 (5) A probationary license shall enable the department and law
27 enforcement personnel to determine that the person is on probationary
28 status. The fact that a person's driving privilege is in probationary
29 status or that the person has been issued a probationary license shall
30 not be a part of the person's record that is available to insurance
31 companies.

32 **Sec. 8.** RCW 46.29.040 and 1963 c 169 s 4 are each amended to read
33 as follows:

34 Any order of the director under the provisions of this chapter
35 shall be subject to review, at the instance of any party in interest,
36 by appeal to the superior court of Thurston county, or at his option to
37 the superior court of the county of his residence. The scope of such
38 review shall be limited to that prescribed by RCW 7.16.120 governing

1 review by certiorari. Notice of appeal must be filed within (~~ten~~)
2 thirty days after (~~receipt~~) service of the notice of such order. The
3 court shall determine whether the filing of the appeal shall operate as
4 a stay of any such order of the director. Upon the filing the notice
5 of appeal the court shall issue an order to the director to show cause
6 why the order should not be reversed or modified. The order to show
7 cause shall be returnable not less than ten nor more than thirty days
8 after the date of service thereof upon the director. The court after
9 hearing the matter may modify, affirm or reverse the order of the
10 director in whole or in part.

11 **Sec. 9.** RCW 46.61.503 and 1995 c 332 s 2 are each amended to read
12 as follows:

13 (1) Notwithstanding any other provision of this title, a person is
14 guilty of driving or being in physical control of a motor vehicle after
15 consuming alcohol if the person operates or is in physical control of
16 a motor vehicle within this state and the person:

17 (a) Is under the age of twenty-one;

18 (b) Has, within two hours after operating or being in physical
19 control of the motor vehicle, an alcohol concentration of 0.02 or more,
20 as shown by analysis of the person's breath or blood made under RCW
21 46.61.506.

22 (2) It is an affirmative defense to a violation of subsection (1)
23 of this section which the defendant must prove by a preponderance of
24 the evidence that the defendant consumed a sufficient quantity of
25 alcohol after the time of driving or being in physical control and
26 before the administration of an analysis of the person's breath or
27 blood to cause the defendant's alcohol concentration to be 0.02 or more
28 within two hours after driving or being in physical control. The court
29 shall not admit evidence of this defense unless the defendant notifies
30 the prosecution prior to the earlier of: (a) Seven days prior to
31 trial; or (b) the omnibus or pretrial hearing in the case of the
32 defendant's intent to assert the affirmative defense.

33 (3) Analyses of blood or breath samples obtained more than two
34 hours after the alleged driving or being in physical control may be
35 used as evidence that within two hours of the alleged driving or being
36 in physical control, a person had an alcohol concentration of 0.02 or
37 more in violation of subsection (1) of this section.

38 (4) A violation of this section is a misdemeanor.

1 **Sec. 10.** RCW 46.61.5152 and 1994 c 275 s 40 are each amended to
2 read as follows:

3 In addition to penalties that may be imposed under RCW
4 (~~46.61.5051, 46.61.5052, or 46.61.5053~~) 46.61.5055, the court may
5 require a person who is convicted of a violation of RCW 46.61.502 or
6 46.61.504 or who enters a deferred prosecution program under RCW
7 10.05.020 based on a violation of RCW 46.61.502 or 46.61.504, to attend
8 an educational program focusing on the emotional, physical, and
9 financial suffering of victims who were injured by persons convicted of
10 driving while under the influence of intoxicants.

11 NEW SECTION. **Sec. 11.** RCW 46.61.5057 and 1994 c 275 s 11 are each
12 repealed.

13 NEW SECTION. **Sec. 12.** This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and takes effect
16 July 1, 1997.

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