
SENATE BILL 5340

State of Washington

53rd Legislature

1993 Regular Session

By Senators A. Smith, Quigley, McCaslin, Winsley, Talmadge, Fraser, von Reichbauer, M. Rasmussen, Roach and Oke

Read first time 01/25/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to persons under the influence of intoxicating
2 liquor or drugs; amending RCW 46.61.502, 46.61.504, 46.61.506,
3 46.61.515, and 9.41.098; reenacting and amending RCW 88.12.100; and
4 prescribing penalties.

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

6 **Sec. 1.** RCW 46.61.502 and 1987 c 373 s 2 are each amended to read
7 as follows:

8 A person is guilty of driving while under the influence of
9 intoxicating liquor or any drug if the person drives a vehicle within
10 this state while:

11 (1) The person has ~~((0.10))~~ 0.08 grams or more of alcohol per two
12 hundred ten liters of breath, as shown by analysis of the person's
13 breath made under RCW 46.61.506; or

14 (2) The person has ~~((0.10))~~ 0.08 percent or more by weight of
15 alcohol in the person's blood as shown by analysis of the person's
16 blood made under RCW 46.61.506; or

17 (3) The person is under the influence of or affected by
18 intoxicating liquor or any drug; or

1 (4) The person is under the combined influence of or affected by
2 intoxicating liquor and any drug.

3 The fact that any person charged with a violation of this section
4 is or has been entitled to use such drug under the laws of this state
5 shall not constitute a defense against any charge of violating this
6 section.

7 **Sec. 2.** RCW 46.61.504 and 1987 c 373 s 3 are each amended to read
8 as follows:

9 A person is guilty of being in actual physical control of a motor
10 vehicle while under the influence of intoxicating liquor or any drug if
11 the person has actual physical control of a vehicle within this state
12 while:

13 (1) The person has ~~((0.10))~~ 0.08 grams or more of alcohol per two
14 hundred ten liters of breath, as shown by analysis of the person's
15 breath made under RCW 46.61.506; or

16 (2) The person has ~~((0.10))~~ 0.08 percent or more by weight of
17 alcohol in the person's blood as shown by analysis of the person's
18 blood made under RCW 46.61.506; or

19 (3) The person is under the influence of or affected by
20 intoxicating liquor or any drug; or

21 (4) The person is under the combined influence of or affected by
22 intoxicating liquor and any drug.

23 The fact that any person charged with a violation of this section
24 is or has been entitled to use such drug under the laws of this state
25 shall not constitute a defense against any charge of violating this
26 section. No person may be convicted under this section if, prior to
27 being pursued by a law enforcement officer, the person has moved the
28 vehicle safely off the roadway.

29 **Sec. 3.** RCW 46.61.506 and 1987 c 373 s 4 are each amended to read
30 as follows:

31 (1) Upon the trial of any civil or criminal action or proceeding
32 arising out of acts alleged to have been committed by any person while
33 driving or in actual physical control of a vehicle while under the
34 influence of intoxicating liquor or any drug, if the amount of alcohol
35 in the person's blood or breath at the time alleged as shown by
36 analysis of his or her blood or breath is less than ~~((0.10))~~ 0.08
37 percent by weight of alcohol in his or her blood or ~~((0.10))~~ 0.08 grams

1 of alcohol per two hundred ten liters of the person's breath, it is
2 evidence that may be considered with other competent evidence in
3 determining whether the person was under the influence of intoxicating
4 liquor or any drug.

5 (2) The breath analysis shall be based upon grams of alcohol per
6 two hundred ten liters of breath. The foregoing provisions of this
7 section shall not be construed as limiting the introduction of any
8 other competent evidence bearing upon the question whether the person
9 was under the influence of intoxicating liquor or any drug.

10 (3) Analysis of the person's blood or breath to be considered valid
11 under the provisions of this section or RCW 46.61.502 or 46.61.504
12 shall have been performed according to methods approved by the state
13 toxicologist and by an individual possessing a valid permit issued by
14 the state toxicologist for this purpose. The state toxicologist is
15 directed to approve satisfactory techniques or methods, to supervise
16 the examination of individuals to ascertain their qualifications and
17 competence to conduct such analyses, and to issue permits which shall
18 be subject to termination or revocation at the discretion of the state
19 toxicologist.

20 (4) When a blood test is administered under the provisions of RCW
21 46.20.308, the withdrawal of blood for the purpose of determining its
22 alcoholic content may be performed only by a physician, a registered
23 nurse, or a qualified technician. This limitation shall not apply to
24 the taking of breath specimens.

25 (5) The person tested may have a physician, or a qualified
26 technician, chemist, registered nurse, or other qualified person of his
27 or her own choosing administer one or more tests in addition to any
28 administered at the direction of a law enforcement officer. The
29 failure or inability to obtain an additional test by a person shall not
30 preclude the admission of evidence relating to the test or tests taken
31 at the direction of a law enforcement officer.

32 (6) Upon the request of the person who shall submit to a test or
33 tests at the request of a law enforcement officer, full information
34 concerning the test or tests shall be made available to ((him)) the
35 person or his or her attorney.

36 **Sec. 4.** RCW 46.61.515 and 1985 c 352 s 1 are each amended to read
37 as follows:

1 (1) Every person who is convicted of a violation of RCW 46.61.502
2 or 46.61.504 shall be punished: (a) If the amount of alcohol in the
3 person's blood or breath at the time of the offense as shown by
4 analysis of his or her blood or breath is less than 0.18 percent by
5 weight of alcohol in his or her blood or 0.18 grams of alcohol per two
6 hundred ten liters of the person's breath, by imprisonment for not less
7 than twenty-four consecutive hours nor more than one year, and by a
8 fine of not less than two hundred fifty dollars and not more than one
9 thousand dollars. Unless the judge finds the person to be indigent,
10 two hundred fifty dollars of the fine shall not be suspended or
11 deferred. Twenty-four consecutive hours of the jail sentence shall not
12 be suspended or deferred unless the judge finds that the imposition of
13 the jail sentence will pose a risk to the defendant's physical or
14 mental well-being; or (b) if the amount of alcohol in the person's
15 blood or breath at the time of the offense as shown by analysis of his
16 or her blood or breath is 0.18 percent or more by weight of alcohol in
17 his or her blood or 0.18 grams or more of alcohol per two hundred ten
18 liters of the person's breath, by imprisonment for not less than
19 twenty-four consecutive hours nor more than one year, and by a fine of
20 not less than five hundred dollars and not more than two thousand
21 dollars. Unless the judge finds the person to be indigent, five
22 hundred dollars of the fine shall not be suspended or deferred.
23 Twenty-four consecutive hours of the jail sentence shall not be
24 suspended or deferred unless the judge finds that the imposition of the
25 jail sentence will pose a risk to the defendant's physical or mental
26 well-being. Whenever the mandatory jail sentence is suspended or
27 deferred, the judge must state, in writing, the reason for granting the
28 suspension or deferral and the facts upon which the suspension or
29 deferral is based. The court may impose conditions of probation that
30 may include nonrepetition, alcohol or drug treatment, supervised
31 probation, or other conditions that may be appropriate. The convicted
32 person shall, in addition, be required to complete a course in an
33 alcohol information school approved by the department of social and
34 health services or more intensive treatment in a program approved by
35 the department of social and health services, as determined by the
36 court. A diagnostic evaluation and treatment recommendation shall be
37 prepared under the direction of the court by an alcoholism agency
38 approved by the department of social and health services or a qualified
39 probation department approved by the department of social and health

1 services. A copy of the report shall be forwarded to the department of
2 licensing. Based on the diagnostic evaluation, the court shall
3 determine whether the convicted person shall be required to complete a
4 course in an alcohol information school approved by the department of
5 social and health services or more intensive treatment in a program
6 approved by the department of social and health services. Standards
7 for approval for alcohol treatment programs shall be prescribed by rule
8 under the administrative procedure act, chapter 34.05 RCW. The courts
9 shall periodically review the costs of alcohol information schools and
10 treatment programs within their jurisdictions.

11 (2) On a second or subsequent conviction for driving or being in
12 physical control of a motor vehicle while under the influence of
13 intoxicating liquor or drugs within a five-year period a person shall
14 be punished: (a) If the amount of alcohol in the person's blood or
15 breath at the time of the offense as shown by analysis of his or her
16 blood or breath is less than 0.18 percent by weight of alcohol in his
17 or her blood or 0.18 grams of alcohol per two hundred ten liters of the
18 person's breath, by imprisonment for not less than seven days nor more
19 than one year and by a fine of not less than five hundred dollars and
20 not more than two thousand dollars. District courts and courts
21 organized under chapter 35.20 RCW are authorized to impose such fine.
22 Unless the judge finds the person to be indigent, five hundred dollars
23 of the fine shall not be suspended or deferred; or (b) if the amount of
24 alcohol in the person's blood or breath at the time of the offense as
25 shown by analysis of his or her blood or breath is 0.18 percent or more
26 by weight of alcohol in his or her blood or 0.18 grams or more of
27 alcohol per two hundred ten liters of the person's breath, by
28 imprisonment for not less than seven days nor more than one year and by
29 a fine of not less than one thousand dollars and not more than four
30 thousand dollars. District courts and courts organized under chapter
31 35.20 RCW are authorized to impose such fine. Unless the judge finds
32 the person to be indigent, one thousand dollars of the fine shall not
33 be suspended or deferred. The jail sentence shall not be suspended or
34 deferred unless the judge finds that the imposition of the jail
35 sentence will pose a risk to the defendant's physical or mental well-
36 being. Whenever the mandatory jail sentence is suspended or deferred,
37 the judge must state, in writing, the reason for granting the
38 suspension or deferral and the facts upon which the suspension or
39 deferral is based. If, at the time of a second or subsequent

1 conviction, the driver is without a license or permit because of a
2 previous suspension or revocation, the minimum mandatory sentence shall
3 be ninety days in jail and a two hundred dollar fine. The penalty so
4 imposed shall not be suspended or deferred. The person shall, in
5 addition, be required to complete a diagnostic evaluation by an
6 alcoholism agency approved by the department of social and health
7 services or a qualified probation department approved by the department
8 of social and health services. The report shall be forwarded to the
9 department of licensing. If the person is found to have an alcohol or
10 drug problem requiring treatment, the person shall complete treatment
11 at an approved alcoholism treatment ((faeility)) program or approved
12 drug treatment center.

13 In addition to any nonsuspendable and nondeferrable jail sentence
14 required by this subsection, the court shall sentence a person to a
15 term of imprisonment not exceeding one hundred eighty days and shall
16 suspend but shall not defer the sentence for a period not exceeding two
17 years. The suspension of the sentence may be conditioned upon
18 nonrepetition, alcohol or drug treatment, supervised probation, or
19 other conditions that may be appropriate. The sentence may be imposed
20 in whole or in part upon violation of a condition of suspension during
21 the suspension period.

22 (3) The license or permit to drive or any nonresident privilege of
23 any person convicted of driving or being in physical control of a motor
24 vehicle while under the influence of intoxicating liquor or drugs
25 shall:

26 (a) On the first conviction under either offense if the amount of
27 alcohol in the person's blood or breath at the time of the offense as
28 shown by analysis of his or her blood or breath is less than 0.18
29 percent by weight of alcohol in his or her blood or 0.18 grams of
30 alcohol per two hundred ten liters of the person's breath, be suspended
31 by the department until the person reaches age nineteen or for ninety
32 days, whichever is longer; or if the amount of alcohol in the person's
33 blood or breath at the time of the offense as shown by analysis of his
34 or her blood or breath is 0.18 percent or more by weight of alcohol in
35 his or her blood or 0.18 grams or more of alcohol per two hundred ten
36 liters of the person's breath, be suspended by the department until the
37 person reaches age twenty or for one hundred eighty days, whichever is
38 longer. The department of licensing shall determine the person's
39 eligibility for licensing based upon the reports provided by the

1 designated alcoholism agency or probation department and shall deny
2 reinstatement until enrollment and participation in an approved program
3 has been established and the person is otherwise qualified;

4 (b) On a second conviction under either offense within a five-year
5 period if the amount of alcohol in the person's blood or breath at the
6 time of the offense as shown by analysis of his or her blood or breath
7 is less than 0.18 percent by weight of alcohol in his or her blood or
8 0.18 grams of alcohol per two hundred ten liters of the person's
9 breath, be revoked by the department for one year; or if the amount of
10 alcohol in the person's blood or breath at the time of the offense as
11 shown by analysis of his or her blood or breath is 0.18 percent or more
12 by weight of alcohol in his or her blood or 0.18 grams or more of
13 alcohol per two hundred ten liters of the person's breath, be revoked
14 by the department for two years. The department of licensing shall
15 determine the person's eligibility for licensing based upon the reports
16 provided by the designated alcoholism agency or probation department
17 and shall deny reinstatement until satisfactory progress in an approved
18 program has been established and the person is otherwise qualified;

19 (c) On a third or subsequent conviction of driving or being in
20 physical control of a motor vehicle while under the influence of
21 intoxicating liquor or drugs, vehicular homicide, or vehicular assault,
22 or any combination thereof within a five-year period if the amount of
23 alcohol in the person's blood or breath at the time of the offense as
24 shown by analysis of his or her blood or breath is less than 0.18
25 percent by weight of alcohol in his or her blood or 0.18 grams of
26 alcohol per two hundred ten liters of the person's breath, be revoked
27 by the department for two years; or if the amount of alcohol in the
28 person's blood or breath at the time of the offense as shown by
29 analysis of his or her blood or breath is 0.18 percent or more by
30 weight of alcohol in his or her blood or 0.18 grams or more of alcohol
31 per two hundred ten liters of the person's breath, be revoked by the
32 department for four years.

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

1 **Sec. 5.** RCW 9.41.098 and 1989 c 222 s 8 are each amended to read
2 as follows:

3 (1) The superior courts and the courts of limited jurisdiction of
4 the state may order forfeiture of a firearm which is proven to be:

5 (a) Found concealed on a person not authorized by RCW 9.41.060 or
6 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute
7 defense to forfeiture if the person possessed a valid Washington
8 concealed pistol license within the preceding two years and has not
9 become ineligible for a concealed pistol license in the interim.
10 Before the firearm may be returned, the person must pay the past due
11 renewal fee and the current renewal fee;

12 (b) Commercially sold to any person without an application as
13 required by RCW 9.41.090;

14 (c) Found in the possession or under the control of a person at the
15 time the person committed or was arrested for committing a crime of
16 violence or a crime in which a firearm was used or displayed or a
17 felony violation of the uniform controlled substances act, chapter
18 69.50 RCW;

19 (d) Found concealed on a person who is in any place in which a
20 concealed pistol license is required, and who is under the influence of
21 any drug or under the influence of intoxicating liquor, having ((0.10))
22 0.08 grams or more of alcohol per two hundred ten liters of breath or
23 ((0.10)) 0.08 percent or more by weight of alcohol in the person's
24 blood, as shown by analysis of the person's breath, blood, or other
25 bodily substance;

26 (e) Found in the possession of a person prohibited from possessing
27 the firearm under RCW 9.41.040;

28 (f) Found in the possession of a person free on bail or personal
29 recognizance pending trial, appeal, or sentencing for a crime of
30 violence or a crime in which a firearm was used or displayed, except
31 that violations of Title 77 RCW shall not result in forfeiture under
32 this section;

33 (g) Found in the possession of a person found to have been mentally
34 incompetent while in possession of a firearm when apprehended or who is
35 thereafter committed pursuant to chapter 10.77 or 71.05 RCW;

36 (h) Known to have been used or displayed by a person in the
37 violation of a proper written order of a court of general jurisdiction;
38 or

1 (i) Known to have been used in the commission of a crime of
2 violence or a crime in which a firearm was used or displayed or a
3 felony violation of the uniformed controlled substances act, chapter
4 69.50 RCW.

5 (2) Upon order of forfeiture, the court in its discretion shall
6 order destruction of any firearm that is illegal for any person to
7 possess. All firearms legal for citizen possession that are judicially
8 forfeited or forfeited due to failure to make a claim under RCW
9 63.32.010, 63.40.010, or 63.35.020 shall be submitted for auction to
10 commercial sellers once a year if the submitting agency has accumulated
11 at least ten firearms authorized for sale. Law enforcement agencies
12 may conduct joint auctions for the purpose of maximizing efficiency.
13 A maximum of ten percent of such firearms may be retained for use by
14 local law enforcement agencies and the Washington state patrol. Before
15 submission for auction, a court may temporarily retain forfeited
16 firearms if needed for evidence. The proceeds from any sale shall be
17 divided as follows: The local jurisdiction and the Washington state
18 patrol shall retain its costs, including actual costs of storage and
19 sale, and shall forward the remainder to the state department of
20 wildlife for use in its firearms training program pursuant to RCW
21 77.32.155.

22 If a firearm is delivered to a law enforcement agency and the
23 agency no longer requires use of the firearm, the agency shall dispose
24 of the firearm by auction as provided by this subsection. The public
25 auctioning agency shall, as a minimum, maintain a record of all
26 forfeited firearms by manufacturer, model, caliber, serial number, date
27 and circumstances of forfeiture, and final disposition. The records
28 shall be open to public inspection and copying.

29 (3) The court shall order the firearm returned to the owner upon a
30 showing that there is no probable cause to believe a violation of
31 subsection (1) of this section existed or the firearm was stolen from
32 the owner or the owner neither had knowledge of nor consented to the
33 act or omission involving the firearm which resulted in its forfeiture.

34 (4) A law enforcement officer of the state or of any county or
35 municipality may confiscate a firearm found to be in the possession of
36 a person under circumstances specified in subsection (1) of this
37 section. After confiscation, the firearm shall not be surrendered
38 except: (a) To the prosecuting attorney for use in subsequent legal
39 proceedings; (b) for disposition according to an order of a court

1 having jurisdiction as provided in subsection (1) of this section; or
2 (c) to the owner if the proceedings are dismissed or as directed in
3 subsection (3) of this section.

4 **Sec. 6.** RCW 88.12.100 and 1990 c 231 s 3 and 1990 c 31 s 1 are
5 each reenacted and amended to read as follows:

6 (1) It shall be unlawful for any person to operate a vessel in a
7 negligent manner. For the purpose of this section, to "operate in a
8 negligent manner" shall be construed to mean the operation of a vessel
9 in such manner as to endanger or be likely to endanger any persons or
10 property or to operate at a rate of speed greater than will permit the
11 operator in the exercise of reasonable care to bring the vessel to a
12 safe stop.

13 (2) A person is guilty of operating a vessel while under the
14 influence of intoxicating liquor or any drug if the person operates a
15 vessel within this state while:

16 (a) The person has ((0.10)) 0.08 grams or more of alcohol per two
17 hundred ten liters of breath, as shown by analysis of the person's
18 breath made under RCW 46.61.506; or

19 (b) The person has ((0.10)) 0.08 percent or more by weight of
20 alcohol in the person's blood, as shown by analysis of the person's
21 blood made under RCW 46.61.506; or

22 (c) The person is under the influence of or affected by
23 intoxicating liquor or any drug; or

24 (d) The person is under the combined influence of or affected by
25 intoxicating liquor and any drug.

26 The fact that any person charged with a violation of this section
27 is or has been entitled to use such drug under the laws of this state
28 shall not constitute a defense against any charge of violating this
29 section. A person cited under this subsection may upon request be
30 given a breath test for breath alcohol or may request to have a blood
31 sample taken for blood alcohol analysis. An arresting officer shall
32 administer field sobriety tests when circumstances permit.

33 (3) For the purposes of this section, "vessel" means any watercraft
34 used or capable of being used as a means of transportation on the
35 water, other than a seaplane.

36 (4) For the purpose of this section, "vessel operator" means a
37 person who is in actual physical control of a vessel.

1 (5) A violation of this section is a misdemeanor, punishable by up
2 to ninety days in jail and by a fine of not more than one thousand
3 dollars. In addition, the court may order the defendant to pay
4 restitution for any damages or injuries resulting from the offense.

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