

---

**SUBSTITUTE SENATE BILL 5069**

---

**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Nelson, Rasmussen, Talmadge, Oke, Bailey, Craswell, Thorsness, McCaslin, Johnson, Roach, Metcalf, Vognild and Conner).

Read first time January 29, 1991.

1       AN ACT Relating to changing the blood and breath alcohol content  
2 standards for intoxication for those persons under the age of twenty-  
3 one; amending RCW 46.61.502, 46.61.504, 46.61.506, and 9.41.098; and  
4 reenacting and amending RCW 88.02.095.

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       (1) 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))~~ (a) The person has ~~((0.10 grams or more of alcohol per two~~  
12 ~~hundred ten liters of breath))~~ alcohol in his or her breath at or above  
13 the alcohol concentration standard defined in subsection (2) of this  
14 section, as shown by analysis of the person's breath made under RCW  
15 46.61.506; or

1       (~~(2)~~) (b) The person has (~~(0.10 percent or more by weight of~~  
2 ~~alcohol in the person's blood)~~) alcohol in his or her blood at or above  
3 the alcohol concentration standard defined in subsection (2) of this  
4 section as shown by analysis of the person's blood made under RCW  
5 46.61.506; or

6       (~~(3)~~) (c) The person is under the influence of or affected by  
7 intoxicating liquor or any drug; or

8       (~~(4)~~) (d) The person is under the combined influence of or  
9 affected by intoxicating liquor and any drug.

10       (2) "Alcohol concentration standard" means:

11       (a) For a person under the age of twenty-one years:

12       (i) Any amount more than 0.04 grams of alcohol per two hundred ten  
13 liters of breath; or

14       (ii) Any more than 0.04 percent by weight of alcohol in the blood;  
15 and

16       (b) For a person age twenty-one years or older:

17       (i) 0.08 grams of alcohol per two hundred ten liters of breath; or

18       (ii) 0.08 percent by weight of alcohol in the blood.

19       (3) The fact that any person charged with a violation of this  
20 section is or has been entitled to use (~~(such)~~) a drug under the laws  
21 of this state shall not constitute a defense against any charge of  
22 violating this section.

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

25       (1) A person is guilty of being in actual physical control of a  
26 motor vehicle while under the influence of intoxicating liquor or any  
27 drug if the person has actual physical control of a vehicle within this  
28 state while:

1       ~~((1))~~ (a) The person has ~~((0.10 grams or more of alcohol per two~~  
2 ~~hundred ten liters of breath))~~ alcohol in his or her breath at or above  
3 the alcohol concentration standard defined in RCW 46.61.502, as shown  
4 by analysis of the person's breath made under RCW 46.61.506; or

5       ~~((2))~~ (b) The person has ~~((0.10 percent or more by weight of~~  
6 ~~alcohol in the person's blood))~~ alcohol in his or her blood at or above  
7 the alcohol concentration standard defined in RCW 46.61.502, as shown  
8 by analysis of the person's blood made under RCW 46.61.506; or

9       ~~((3))~~ (c) The person is under the influence of or affected by  
10 intoxicating liquor or any drug; or

11       ~~((4))~~ (d) The person is under the combined influence of or  
12 affected by intoxicating liquor and any drug.

13       (2) The fact that any person charged with a violation of this  
14 section is or has been entitled to use such drug under the laws of this  
15 state shall not constitute a defense against any charge of violating  
16 this section. No person may be convicted under this section if, prior  
17 to being pursued by a law enforcement officer, the person has moved the  
18 vehicle safely off the roadway.

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

21       (1) Upon the trial of any civil or criminal action or proceeding  
22 arising out of acts alleged to have been committed by any person while  
23 driving or in actual physical control of a vehicle while under the  
24 influence of intoxicating liquor or any drug, if the amount of alcohol  
25 in the person's blood or breath at the time alleged as shown by  
26 analysis of his blood or breath is less than ~~((0.10 percent by weight~~  
27 ~~of alcohol in his blood or 0.10 grams of alcohol per two hundred ten~~  
28 ~~liters of the person's breath))~~ the alcohol concentration standard  
29 defined in RCW 46.61.502, it is evidence that may be considered with

1 other competent evidence in determining whether the person was under  
2 the influence of intoxicating liquor or any drug.

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

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

18 (4) When a blood test is administered under the provisions of RCW  
19 46.20.308, the withdrawal of blood for the purpose of determining its  
20 alcoholic content may be performed only by a physician, a registered  
21 nurse, or a qualified technician. This limitation shall not apply to  
22 the taking of breath specimens.

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

1 (6) Upon the request of the person who shall submit to a test or  
2 tests at the request of a law enforcement officer, full information  
3 concerning the test or tests shall be made available to him or his  
4 attorney.

5 **Sec. 4.** RCW 9.41.098 and 1989 c 222 s 8 are each amended to read  
6 as follows:

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

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

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

18 (c) Found in the possession or under the control of a person at the  
19 time the person committed or was arrested for committing a crime of  
20 violence or a crime in which a firearm was used or displayed or a  
21 felony violation of the uniform controlled substances act, chapter  
22 69.50 RCW;

23 (d) Found concealed on a person who is in any place in which a  
24 concealed pistol license is required, and who is under the influence of  
25 any drug or under the influence of intoxicating liquor, having ~~((0.10~~  
26 ~~grams or more of alcohol per two hundred ten liters of breath or 0.10~~  
27 ~~percent or more by weight of alcohol in the person's blood)) alcohol in~~  
28 his or her breath or blood at or above the alcohol concentration

1 standard defined in RCW 46.61.502, as shown by analysis of the person's  
2 breath, blood, or other bodily substance;

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

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

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

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

16 (i) Known to have been used in the commission of a crime of  
17 violence or a crime in which a firearm was used or displayed or a  
18 felony violation of the uniformed controlled substances act, chapter  
19 69.50 RCW.

20 (2) Upon order of forfeiture, the court in its discretion shall  
21 order destruction of any firearm that is illegal for any person to  
22 possess. All firearms legal for citizen possession that are judicially  
23 forfeited or forfeited due to failure to make a claim under RCW  
24 63.32.010, 63.40.010, or 63.35.020 shall be submitted for auction to  
25 commercial sellers once a year if the submitting agency has accumulated  
26 at least ten firearms authorized for sale. Law enforcement agencies  
27 may conduct joint auctions for the purpose of maximizing efficiency.  
28 A maximum of ten percent of such firearms may be retained for use by  
29 local law enforcement agencies and the Washington state patrol. Before  
30 submission for auction, a court may temporarily retain forfeited

1 firearms if needed for evidence. The proceeds from any sale shall be  
2 divided as follows: The local jurisdiction and the Washington state  
3 patrol shall retain its costs, including actual costs of storage and  
4 sale, and shall forward the remainder to the state department of  
5 wildlife for use in its firearms training program pursuant to RCW  
6 77.32.155.

7 If a firearm is delivered to a law enforcement agency and the  
8 agency no longer requires use of the firearm, the agency shall dispose  
9 of the firearm by auction as provided by this subsection. The public  
10 auctioning agency shall, as a minimum, maintain a record of all  
11 forfeited firearms by manufacturer, model, caliber, serial number, date  
12 and circumstances of forfeiture, and final disposition. The records  
13 shall be open to public inspection and copying.

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

19 (4) A law enforcement officer of the state or of any county or  
20 municipality may confiscate a firearm found to be in the possession of  
21 a person under circumstances specified in subsection (1) of this  
22 section. After confiscation, the firearm shall not be surrendered  
23 except: (a) To the prosecuting attorney for use in subsequent legal  
24 proceedings; (b) for disposition according to an order of a court  
25 having jurisdiction as provided in subsection (1) of this section; or  
26 (c) to the owner if the proceedings are dismissed or as directed in  
27 subsection (3) of this section.

28 **Sec. 5.** RCW 88.02.095 and 1990 c 231 s 3 & 1990 c 31 s 1 are each  
29 reenacted and amended to read as follows:

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

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

11 (a) The person has (~~(0.10 grams or more of alcohol per two hundred~~  
12 ~~ten liters of breath)) alcohol in his or her breath at or above the  
13 alcohol concentration standard defined in RCW 46.61.502, as shown by  
14 analysis of the person's breath made under RCW 46.61.506; or~~

15 (b) The person has (~~(0.10 percent or more by weight of alcohol in~~  
16 ~~the person's blood)) alcohol in his or her blood at or above the  
17 alcohol concentration standard defined in RCW 46.61.502, as shown by  
18 analysis of the person's blood made under RCW 46.61.506; or~~

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

21 (d) 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. A person cited under this subsection may upon request be  
27 given a breath test for breath alcohol or may request to have a blood  
28 sample taken for blood alcohol analysis. An arresting officer shall  
29 administer field sobriety tests when circumstances permit.



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

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

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