
HOUSE BILL 1240

State of Washington

53rd Legislature

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By Representatives Foreman, Carlson, Stevens, Ballasiotes, Forner, Chandler, Mastin, Padden, Ballard, Brough, Morton, Fuhrman, Brumsickle, Long, Flemming, Horn and Vance

Read first time 01/20/93. Referred to Committee on Judiciary.

1 AN ACT Relating to changing the blood and breath alcohol standards
2 for intoxication; amending RCW 46.61.502, 46.61.504, 46.61.506, and
3 9.41.098; and reenacting and amending RCW 88.12.100.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 be considered with other competent evidence in determining whether the
2 person was under 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.

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

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

36 (1) It shall be unlawful for any person to operate a vessel in a
37 negligent manner. For the purpose of this section, to "operate in a
38 negligent manner" shall be construed to mean the operation of a vessel

1 in such manner as to endanger or be likely to endanger any persons or
2 property or to operate at a rate of speed greater than will permit the
3 operator in the exercise of reasonable care to bring the vessel to a
4 safe stop.

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

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

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

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

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

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

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

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

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

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

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

1 (a) Found concealed on a person not authorized by RCW 9.41.060 or
2 9.41.070 to carry a concealed pistol: PROVIDED, That it is an absolute
3 defense to forfeiture if the person possessed a valid Washington
4 concealed pistol license within the preceding two years and has not
5 become ineligible for a concealed pistol license in the interim.
6 Before the firearm may be returned, the person must pay the past due
7 renewal fee and the current renewal fee;

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

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

15 (d) Found concealed on a person who is in any place in which a
16 concealed pistol license is required, and who is under the influence of
17 any drug or under the influence of intoxicating liquor, having ((0.10))
18 0.08 grams or more of alcohol per two hundred ten liters of breath or
19 ((0.10)) 0.08 percent or more by weight of alcohol in the person's
20 blood, as shown by analysis of the person's breath, blood, or other
21 bodily substance;

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

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

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

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

35 (i) Known to have been used in the commission of a crime of
36 violence or a crime in which a firearm was used or displayed or a
37 felony violation of the uniformed controlled substances act, chapter
38 69.50 RCW.

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

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

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

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

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

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