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**SUBSTITUTE HOUSE BILL 2623**

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**State of Washington                      55th Legislature                      1998 Regular Session**

**By** House Committee on Law & Justice (originally sponsored by Representatives Sterk and McDonald)

Read first time 02/05/98. Referred to Committee on .

1            AN ACT Relating to operating or having actual physical control of  
2 a vessel while under the influence of intoxicating liquor or any drug;  
3 amending RCW 88.12.025 and 10.31.100; adding new sections to chapter  
4 88.12 RCW; prescribing penalties; and providing an effective date.

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

6            **Sec. 1.** RCW 88.12.025 and 1993 c 244 s 8 are each amended to read  
7 as follows:

8            (1) It shall be unlawful for any person to operate a vessel in a  
9 reckless manner.

10           (2) ~~((It shall be a violation for a person to operate a vessel~~  
11 ~~while under the influence of intoxicating liquor or any drug. A person~~  
12 ~~is considered to be under the influence of intoxicating liquor or any~~  
13 ~~drug if:~~

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

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

1       ~~(c) The person is under the influence of or affected by~~  
2 ~~intoxicating liquor or any drug; or~~

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

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

12       ~~(3))~~) A violation of this section is a misdemeanor, punishable as  
13 provided under RCW 9.92.030. In addition, the court may order the  
14 defendant to pay restitution for any damages or injuries resulting from  
15 the offense.

16       NEW SECTION. **Sec. 2.** (1) A person is guilty of operating a vessel  
17 while under the influence of intoxicating liquor or any drug if the  
18 person operates a vessel within this state:

19       (a) And the person has, within two hours after operating a vessel,  
20 an alcohol concentration at or above the amount specified in RCW  
21 46.61.502 as shown by analysis of the person's breath or blood made  
22 under section 8 of this act; or

23       (b) While the person is under the influence of or affected by  
24 intoxicating liquor or any drug; or

25       (c) While the person is under the combined influence of or affected  
26 by intoxicating liquor and any drug.

27       (2) The fact that a person charged with a violation of this section  
28 is or has been entitled to use a drug under the laws of this state  
29 shall not constitute a defense against a charge of violating this  
30 section.

31       (3) It is an affirmative defense to a violation of subsection  
32 (1)(a) of this section which the defendant must prove by a  
33 preponderance of the evidence that the defendant consumed a sufficient  
34 quantity of alcohol after the time of operating a vessel and before the  
35 administration of an analysis of the person's breath or blood to cause  
36 the defendant's alcohol concentration to be at or above the amount  
37 specified in RCW 46.61.502 within two hours after operating a vessel.  
38 The court shall not admit evidence of this defense unless the defendant

1 notifies the prosecution prior to the omnibus or pretrial hearing in  
2 the case of the defendant's intent to assert the affirmative defense.

3 (4) Analyses of blood or breath samples obtained more than two  
4 hours after the alleged operating a vessel may be used as evidence that  
5 within two hours of the alleged operating a vessel, a person had an  
6 alcohol concentration at or above the amount specified in RCW 46.61.502  
7 in violation of subsection (1)(a) of this section, and in any case in  
8 which the analysis shows an alcohol concentration above 0.00 may be  
9 used as evidence that a person was under the influence of or affected  
10 by intoxicating liquor or any drug in violation of subsection (1)(b) or  
11 (c) of this section.

12 (5) A violation of this section is a gross misdemeanor.

13 NEW SECTION. **Sec. 3.** (1) Notwithstanding any other provision of  
14 this title, a person is guilty of operating a vessel after consuming  
15 alcohol if the person operates a vessel within this state and the  
16 person:

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

18 (b) Has, within two hours after operating the vessel, an alcohol  
19 concentration of 0.02 or more, as shown by analysis of the person's  
20 breath or blood made under section 8 of this act.

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

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

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

1        NEW SECTION.    **Sec. 4.**    (1) A person is guilty of being in actual  
2 physical control of a vessel while under the influence of intoxicating  
3 liquor or any drug if the person has actual physical control of a  
4 vessel within this state:

5        (a) And the person has, within two hours after being in actual  
6 physical control of the vessel, an alcohol concentration at or above  
7 the amount specified in RCW 46.61.504 as shown by analysis of the  
8 person's breath or blood made under section 8 of this act; or

9        (b) While the person is under the influence of or affected by  
10 intoxicating liquor or any drug; or

11        (c) While the person is under the combined influence of or affected  
12 by intoxicating liquor and any drug.

13        (2) The fact that a person charged with a violation of this section  
14 is or has been entitled to use a drug under the laws of this state does  
15 not constitute a defense against any charge of violating this section.  
16 No person may be convicted under this section if he or she is on a  
17 vessel moored at a place of moorage that is owned, leased, or rented by  
18 the owner of the vessel.

19        (3) It is an affirmative defense to a violation of subsection  
20 (1)(a) of this section which the defendant must prove by a  
21 preponderance of the evidence that the defendant consumed a sufficient  
22 quantity of alcohol after the time of being in actual physical control  
23 of the vessel and before the administration of an analysis of the  
24 person's breath or blood to cause the defendant's alcohol concentration  
25 to be at or above the amount specified in RCW 46.61.504 within two  
26 hours after being in such control. The court shall not admit evidence  
27 of this defense unless the defendant notifies the prosecution prior to  
28 the omnibus or pretrial hearing in the case of the defendant's intent  
29 to assert the affirmative defense.

30        (4) Analyses of blood or breath samples obtained more than two  
31 hours after the alleged being in actual physical control of a vessel  
32 may be used as evidence that within two hours of the alleged being in  
33 such control, a person had an alcohol concentration at or above the  
34 amount specified in RCW 46.61.504 in violation of subsection (1)(a) of  
35 this section, and in any case in which the analysis shows an alcohol  
36 concentration above 0.00 may be used as evidence that a person was  
37 under the influence of or affected by intoxicating liquor or any drug  
38 in violation of subsection (1)(b) or (c) of this section.

39        (5) A violation of this section is a gross misdemeanor.

1        NEW SECTION. Sec. 5. (1)(a) In addition to penalties set forth in  
2 section 6 of this act, a one hundred twenty-five dollar fee shall be  
3 assessed to a person who is either convicted, sentenced to a lesser  
4 charge, or given deferred prosecution, as a result of an arrest for  
5 violating section 2 or 4 of this act. This fee is for the purpose of  
6 funding the Washington state toxicology laboratory and the Washington  
7 state parks and recreation commission for grants and activities to  
8 increase the conviction rate and decrease the incidence of persons  
9 operating vessels under the influence of alcohol or drugs.

10        (b) Upon a verified petition by the person assessed the fee, the  
11 court may suspend payment of all or part of the fee if it finds that  
12 the person does not have the ability to pay.

13        (c) When a minor has been adjudicated a juvenile offender for an  
14 offense which, if committed by an adult, would constitute a violation  
15 of section 2 or 4 of this act, the court shall assess the one hundred  
16 twenty-five dollar fee under (a) of this subsection. Upon a verified  
17 petition by a minor assessed the fee, the court may suspend payment of  
18 all or part of the fee if it finds that the minor does not have the  
19 ability to pay the fee.

20        (2) The fee assessed under subsection (1) of this section shall be  
21 collected by the clerk of the court and distributed as follows:

22        (a) Ninety percent shall be subject to distribution under RCW  
23 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

24        (b) The remainder of the fee shall be forwarded to the state  
25 treasurer for deposit in the death investigations account to be used  
26 solely for funding the state toxicology laboratory blood or breath  
27 testing programs.

28        NEW SECTION. Sec. 6. (1) A person who is convicted of a violation  
29 of section 2 or 4 of this act and who has no prior offense within five  
30 years shall be punished as follows:

31        (a) In the case of a person whose alcohol concentration was less  
32 than 0.15, or for whom for reasons other than the person's refusal to  
33 take a test offered pursuant to section 11 of this act there is no test  
34 result indicating the person's alcohol concentration:

35        (i) By imprisonment for not less than one day nor more than one  
36 year. Twenty-four consecutive hours of the imprisonment may not be  
37 suspended or deferred unless the court finds that the imposition of  
38 this mandatory minimum sentence would impose a substantial risk to the

1 offender's physical or mental well-being. Whenever the mandatory  
2 minimum sentence is suspended or deferred, the court shall state in  
3 writing the reason for granting the suspension or deferral and the  
4 facts upon which the suspension or deferral is based; and

5 (ii) By a fine of not less than three hundred fifty dollars nor  
6 more than five thousand dollars. Three hundred fifty dollars of the  
7 fine may not be suspended or deferred unless the court finds the  
8 offender to be indigent.

9 (b) In the case of a person whose alcohol concentration was at  
10 least 0.15, or for whom by reason of the person's refusal to take a  
11 test offered pursuant to section 11 of this act there is no test result  
12 indicating the person's alcohol concentration:

13 (i) By imprisonment for not less than two days nor more than one  
14 year. Two consecutive days of the imprisonment may not be suspended or  
15 deferred unless the court finds that the imposition of this mandatory  
16 minimum sentence would impose a substantial risk to the offender's  
17 physical or mental well-being. Whenever the mandatory minimum sentence  
18 is suspended or deferred, the court shall state in writing the reason  
19 for granting the suspension or deferral and the facts upon which the  
20 suspension or deferral is based; and

21 (ii) By a fine of not less than five hundred dollars nor more than  
22 five thousand dollars. Five hundred dollars of the fine may not be  
23 suspended or deferred unless the court finds the offender to be  
24 indigent.

25 (2) A person who is convicted of a violation of section 2 or 4 of  
26 this act and who has one prior offense within five years shall be  
27 punished as follows:

28 (a) In the case of a person whose alcohol concentration was less  
29 than 0.15, or for whom for reasons other than the person's refusal to  
30 take a test offered pursuant to section 11 of this act there is no test  
31 result indicating the person's alcohol concentration:

32 (i) By imprisonment for not less than thirty days nor more than one  
33 year. Thirty days of the imprisonment may not be suspended or deferred  
34 unless the court finds that the imposition of this mandatory minimum  
35 sentence would impose a substantial risk to the offender's physical or  
36 mental well-being. Whenever the mandatory minimum sentence is  
37 suspended or deferred, the court shall state in writing the reason for  
38 granting the suspension or deferral and the facts upon which the  
39 suspension or deferral is based; and

1 (ii) By a fine of not less than five hundred dollars nor more than  
2 five thousand dollars. Five hundred dollars of the fine may not be  
3 suspended or deferred unless the court finds the offender to be  
4 indigent.

5 (b) In the case of a person whose alcohol concentration was at  
6 least 0.15, or for whom by reason of the person's refusal to take a  
7 test offered pursuant to section 11 of this act there is no test result  
8 indicating the person's alcohol concentration:

9 (i) By imprisonment for not less than forty-five days nor more than  
10 one year. Forty-five days of the imprisonment may not be suspended or  
11 deferred unless the court finds that the imposition of this mandatory  
12 minimum sentence would impose a substantial risk to the offender's  
13 physical or mental well-being. Whenever the mandatory minimum sentence  
14 is suspended or deferred, the court shall state in writing the reason  
15 for granting the suspension or deferral and the facts upon which the  
16 suspension or deferral is based; and

17 (ii) By a fine of not less than seven hundred fifty dollars nor  
18 more than five thousand dollars. Seven hundred fifty dollars of the  
19 fine may not be suspended or deferred unless the court finds the  
20 offender to be indigent.

21 (3) A person who is convicted of a violation of section 2 or 4 of  
22 this act and who has two or more prior offenses within five years shall  
23 be punished as follows:

24 (a) In the case of a person whose alcohol concentration was less  
25 than 0.15, or for whom for reasons other than the person's refusal to  
26 take a test offered pursuant to section 11 of this act there is no test  
27 result indicating the person's alcohol concentration:

28 (i) By imprisonment for not less than ninety days nor more than one  
29 year. Ninety days of the imprisonment may not be suspended or deferred  
30 unless the court finds that the imposition of this mandatory minimum  
31 sentence would impose a substantial risk to the offender's physical or  
32 mental well-being. Whenever the mandatory minimum sentence is  
33 suspended or deferred, the court shall state in writing the reason for  
34 granting the suspension or deferral and the facts upon which the  
35 suspension or deferral is based; and

36 (ii) By a fine of not less than one thousand dollars nor more than  
37 five thousand dollars. One thousand dollars of the fine may not be  
38 suspended or deferred unless the court finds the offender to be  
39 indigent.

1 (b) In the case of a person whose alcohol concentration was at  
2 least 0.15, or for whom by reason of the person's refusal to take a  
3 test offered pursuant to section 11 of this act there is no test result  
4 indicating the person's alcohol concentration:

5 (i) By imprisonment for not less than one hundred twenty days nor  
6 more than one year. One hundred twenty days of the imprisonment may  
7 not be suspended or deferred unless the court finds that the imposition  
8 of this mandatory minimum sentence would impose a substantial risk to  
9 the offender's physical or mental well-being. Whenever the mandatory  
10 minimum sentence is suspended or deferred, the court shall state in  
11 writing the reason for granting the suspension or deferral and the  
12 facts upon which the suspension or deferral is based; and

13 (ii) By a fine of not less than one thousand five hundred dollars  
14 nor more than five thousand dollars. One thousand five hundred dollars  
15 of the fine may not be suspended or deferred unless the court finds the  
16 offender to be indigent.

17 (4) In exercising its discretion in setting penalties within the  
18 limits allowed by this section, the court shall particularly consider  
19 whether the person's vessel operation at the time of the offense was  
20 responsible for injury or damage to another or another's property.

21 (5) An offender punishable under this section is subject to the  
22 alcohol assessment and treatment provisions of RCW 46.61.5056.

23 (6) An offender punishable under subsection (2) or (3) of this  
24 section shall be required by the court to complete a course in boating  
25 safety approved by the commission pursuant to section 7 of this act.

26 (7)(a) In addition to any nonsuspendable and nondeferrable jail  
27 sentence required by this section, whenever the court imposes less than  
28 one year in jail, the court shall also suspend but shall not defer a  
29 period of confinement for a period not exceeding two years. The court  
30 shall impose conditions of probation that include: (i) Not operating  
31 a vessel within this state while having an alcohol concentration of  
32 0.08 or more within two hours after operating a vessel; and (ii) not  
33 refusing to submit to a test of his or her breath or blood to determine  
34 alcohol concentration upon request of a law enforcement officer who has  
35 reasonable grounds to believe the person was operating or was in actual  
36 physical control of a vessel within this state while under the  
37 influence of intoxicating liquor. The court may impose conditions of  
38 probation that include nonrepetition, alcohol or drug treatment,  
39 supervised probation, or other conditions that may be appropriate. The



1 sentence may be imposed in whole or in part upon violation of a  
2 condition of probation during the suspension period.

3 (b) For each violation of mandatory conditions of probation under  
4 (a)(i) and (ii) of this subsection, the court shall order the convicted  
5 person to be confined for thirty days, which shall not be suspended or  
6 deferred.

7 (8)(a) A "prior offense" means any of the following:

8 (i) A conviction for a violation of section 2 of this act or an  
9 equivalent local ordinance;

10 (ii) A conviction for a violation of section 4 of this act or an  
11 equivalent local ordinance;

12 (iii) An out-of-state conviction for a violation that would have  
13 been a violation of (a)(i) or (ii) of this subsection if committed in  
14 this state; or

15 (iv) A deferred prosecution under chapter 10.05 RCW granted in a  
16 prosecution for a violation of section 2 or 4 of this act, or an  
17 equivalent local ordinance.

18 (b) "Within five years" means that the arrest for a prior offense  
19 occurred within five years of the arrest for the current offense.

20 NEW SECTION. **Sec. 7.** The commission shall prescribe standards for  
21 approval of boating safety courses qualifying for referral of offenders  
22 pursuant to section 6 of this act. The commission shall adopt such  
23 rules as are necessary to carry out this section.

24 NEW SECTION. **Sec. 8.** (1) Upon the trial of any civil or criminal  
25 action or proceeding arising out of acts alleged to have been committed  
26 by any person while operating or in actual physical control of a vessel  
27 while under the influence of intoxicating liquor or any drug, if the  
28 person's alcohol concentration is less than the amount specified in RCW  
29 46.61.502, it is evidence that may be considered with other competent  
30 evidence in determining whether the person was under the influence of  
31 intoxicating liquor or any drug.

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

1 (3) Analysis of the person's blood or breath to be considered valid  
2 under the provisions of this section or section 2 or 4 of this act  
3 shall have been performed according to methods approved by the state  
4 toxicologist and by an individual possessing a valid permit issued by  
5 the state toxicologist for this purpose pursuant to RCW 46.61.506.

6 (4) When a blood test is administered under the provisions of  
7 section 11 of this act, the withdrawal of blood for the purpose of  
8 determining its alcoholic or drug content may be performed only by a  
9 physician, a registered nurse, or a qualified technician. This  
10 limitation shall not apply to the taking of breath specimens.

11 (5) The person tested may have a physician, or a qualified  
12 technician, chemist, registered nurse, or other qualified person of his  
13 or her own choosing administer one or more tests in addition to any  
14 administered at the direction of a law enforcement officer. The  
15 failure or inability to obtain an additional test by a person shall not  
16 preclude the admission of evidence relating to the test or tests taken  
17 at the direction of a law enforcement officer.

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

22 NEW SECTION. **Sec. 9.** A sentencing court may allow persons  
23 convicted of violating section 2 or 4 of this act to fulfill the terms  
24 of the sentence provided in section 6 of this act in nonconsecutive or  
25 intermittent time periods. However, any mandatory minimum sentence  
26 under section 6 of this act shall be served consecutively unless  
27 suspended or deferred as otherwise provided by law.

28 NEW SECTION. **Sec. 10.** The refusal of a person to submit to a test  
29 of the alcoholic content of the person's blood or breath under section  
30 11 of this act is admissible into evidence at a subsequent criminal  
31 trial.

32 NEW SECTION. **Sec. 11.** (1) Any person who operates a vessel within  
33 this state is deemed to have given consent, subject to the provisions  
34 of section 8 of this act, to a test or tests of his or her breath or  
35 blood for the purpose of determining the alcohol concentration or  
36 presence of any drug in his or her breath or blood if arrested for any

1 offense where, at the time of the arrest, the arresting officer has  
2 reasonable grounds to believe the person had been operating or was in  
3 actual physical control of a vessel while under the influence of  
4 intoxicating liquor or any drug or was in violation of section 3 of  
5 this act.

6 (2) The test or tests of breath shall be administered at the  
7 direction of a law enforcement officer having reasonable grounds to  
8 believe the person to have been operating or in actual physical control  
9 of a vessel within this state while under the influence of intoxicating  
10 liquor or the person to have been operating or in actual physical  
11 control of a vessel while having alcohol in a concentration of 0.02 or  
12 more in his or her system and being under the age of twenty-one.  
13 However, in those instances where the person is incapable due to  
14 physical injury, physical incapacity, or other physical limitation, of  
15 providing a breath sample or where the person is being treated in a  
16 hospital, clinic, doctor's office, emergency medical vehicle,  
17 ambulance, or other similar facility in which a breath testing  
18 instrument is not present or where the officer has reasonable grounds  
19 to believe that the person is under the influence of a drug, a blood  
20 test shall be administered by a qualified person as provided in section  
21 8 of this act. The officer shall inform the person of his or her right  
22 to refuse the breath or blood test, and of his or her right to have  
23 additional tests administered by any qualified person of his or her  
24 choosing as provided in section 8 of this act. The officer shall warn  
25 the operator that:

26 (a) The operator's refusal to take the test may subject him or her  
27 to civil penalty; and

28 (b) His or her refusal to take the test may be used in a criminal  
29 trial.

30 (3) Except as provided in this section, the test administered shall  
31 be of the breath only. If an individual is unconscious or is under  
32 arrest for the crime of operating a vessel while under the influence of  
33 intoxicating liquor or drugs as provided in section 2 of this act,  
34 which arrest results from an accident in which there has been serious  
35 bodily injury to another person, a breath or blood test may be  
36 administered without the consent of the individual so arrested.

37 (4) Any person who is dead, unconscious, or who is otherwise in a  
38 condition rendering him or her incapable of refusal, shall be deemed  
39 not to have withdrawn the consent provided by subsection (1) of this

1 section and the test or tests may be administered, subject to the  
2 provisions of section 8 of this act, and the person shall be deemed to  
3 have received the warnings required under subsection (2) of this  
4 section.

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

10 (6) A person's refusal to submit to a test or tests pursuant to  
11 subsection (5) of this section shall constitute a class 1 civil  
12 infraction, pursuant to RCW 7.80.120.

13 **Sec. 12.** RCW 10.31.100 and 1997 c 66 s 10 are each amended to read  
14 as follows:

15 A police officer having probable cause to believe that a person has  
16 committed or is committing a felony shall have the authority to arrest  
17 the person without a warrant. A police officer may arrest a person  
18 without a warrant for committing a misdemeanor or gross misdemeanor  
19 only when the offense is committed in the presence of the officer,  
20 except as provided in subsections (1) through (10) of this section.

21 (1) Any police officer having probable cause to believe that a  
22 person has committed or is committing a misdemeanor or gross  
23 misdemeanor, involving physical harm or threats of harm to any person  
24 or property or the unlawful taking of property or involving the use or  
25 possession of cannabis, or involving the acquisition, possession, or  
26 consumption of alcohol by a person under the age of twenty-one years  
27 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070  
28 or 9A.52.080, shall have the authority to arrest the person.

29 (2) A police officer shall arrest and take into custody, pending  
30 release on bail, personal recognizance, or court order, a person  
31 without a warrant when the officer has probable cause to believe that:

32 (a) An order has been issued of which the person has knowledge  
33 under RCW 10.99.040(2), 10.99.050, 26.09.050, 26.09.060, 26.10.040,  
34 26.10.115, 26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW  
35 restraining the person and the person has violated the terms of the  
36 order restraining the person from acts or threats of violence or  
37 restraining the person from going onto the grounds of or entering a  
38 residence, workplace, school, or day care or, in the case of an order

1 issued under RCW 26.44.063, imposing any other restrictions or  
2 conditions upon the person; or

3 (b) The person is sixteen years or older and within the preceding  
4 four hours has assaulted a family or household member as defined in RCW  
5 10.99.020 and the officer believes: (i) A felonious assault has  
6 occurred; (ii) an assault has occurred which has resulted in bodily  
7 injury to the victim, whether the injury is observable by the  
8 responding officer or not; or (iii) that any physical action has  
9 occurred which was intended to cause another person reasonably to fear  
10 imminent serious bodily injury or death. Bodily injury means physical  
11 pain, illness, or an impairment of physical condition. When the  
12 officer has probable cause to believe that family or household members  
13 have assaulted each other, the officer is not required to arrest both  
14 persons. The officer shall arrest the person whom the officer believes  
15 to be the primary physical aggressor. In making this determination,  
16 the officer shall make every reasonable effort to consider: (i) The  
17 intent to protect victims of domestic violence under RCW 10.99.010;  
18 (ii) the comparative extent of injuries inflicted or serious threats  
19 creating fear of physical injury; and (iii) the history of domestic  
20 violence between the persons involved.

21 (3) Any police officer having probable cause to believe that a  
22 person has committed or is committing a violation of any of the  
23 following traffic laws shall have the authority to arrest the person:

24 (a) RCW 46.52.010, relating to duty on striking an unattended car  
25 or other property;

26 (b) RCW 46.52.020, relating to duty in case of injury to or death  
27 of a person or damage to an attended vehicle;

28 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or  
29 racing of vehicles;

30 (d) RCW 46.61.502 or 46.61.504, relating to persons under the  
31 influence of intoxicating liquor or drugs;

32 (e) RCW 46.20.342, relating to driving a motor vehicle while  
33 operator's license is suspended or revoked;

34 (f) RCW 46.61.5249, relating to operating a motor vehicle in a  
35 negligent manner.

36 (4) A law enforcement officer investigating at the scene of a motor  
37 vehicle accident may arrest the driver of a motor vehicle involved in  
38 the accident if the officer has probable cause to believe that the

1 driver has committed in connection with the accident a violation of any  
2 traffic law or regulation.

3 (5) Any police officer having probable cause to believe that a  
4 person has committed or is committing a violation of RCW 88.12.025 or  
5 section 2, 3, or 4 of this act shall have the authority to arrest the  
6 person.

7 (6) An officer may act upon the request of a law enforcement  
8 officer in whose presence a traffic infraction was committed, to stop,  
9 detain, arrest, or issue a notice of traffic infraction to the driver  
10 who is believed to have committed the infraction. The request by the  
11 witnessing officer shall give an officer the authority to take  
12 appropriate action under the laws of the state of Washington.

13 (7) Any police officer having probable cause to believe that a  
14 person has committed or is committing any act of indecent exposure, as  
15 defined in RCW 9A.88.010, may arrest the person.

16 (8) A police officer may arrest and take into custody, pending  
17 release on bail, personal recognizance, or court order, a person  
18 without a warrant when the officer has probable cause to believe that  
19 an order has been issued of which the person has knowledge under  
20 chapter 10.14 RCW and the person has violated the terms of that order.

21 (9) Any police officer having probable cause to believe that a  
22 person has, within twenty-four hours of the alleged violation,  
23 committed a violation of RCW 9A.50.020 may arrest such person.

24 (10) A police officer having probable cause to believe that a  
25 person illegally possesses or illegally has possessed a firearm or  
26 other dangerous weapon on private or public elementary or secondary  
27 school premises shall have the authority to arrest the person.

28 For purposes of this subsection, the term "firearm" has the meaning  
29 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning  
30 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

31 (11) Except as specifically provided in subsections (2), (3), (4),  
32 and (6) of this section, nothing in this section extends or otherwise  
33 affects the powers of arrest prescribed in Title 46 RCW.

34 (12) No police officer may be held criminally or civilly liable for  
35 making an arrest pursuant to RCW 10.31.100 (2) or (8) if the police  
36 officer acts in good faith and without malice.

37 NEW SECTION. **Sec. 13.** Sections 2 through 11 of this act are each  
38 added to chapter 88.12 RCW.

1      NEW SECTION.    **Sec. 14.**    This act takes effect July 1, 1998.

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