
HOUSE BILL 2623

State of Washington

55th Legislature

1998 Regular Session

By Representatives Sterk and McDonald

Read first time 01/16/98. Referred to Committee on Law & Justice.

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 of 0.10 or higher as shown by analysis of the
21 person's breath or blood made under section 8 of this act; or

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

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

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

30 (3) It is an affirmative defense to a violation of subsection
31 (1)(a) of this section which the defendant must prove by a
32 preponderance of the evidence that the defendant consumed a sufficient
33 quantity of alcohol after the time of operating a vessel and before the
34 administration of an analysis of the person's breath or blood to cause
35 the defendant's alcohol concentration to be 0.10 or more within two
36 hours after operating a vessel. The court shall not admit evidence of
37 this defense unless the defendant notifies the prosecution prior to the

1 omnibus or pretrial hearing in the case of the defendant's intent to
2 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 of 0.10 or more in violation of subsection (1)(a)
7 of this section, and in any case in which the analysis shows an alcohol
8 concentration above 0.00 may be used as evidence that a person was
9 under the influence of or affected by intoxicating liquor or any drug
10 in violation of subsection (1)(b) or (c) of this section.

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

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

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

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

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

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

36 (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 of 0.10 or
7 higher as shown by analysis of the person's breath or blood made under
8 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 permanent place of moorage that is owned, leased, or
18 rented by 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 0.10 or more within two hours after being in such control. The
26 court shall not admit evidence of this defense unless the defendant
27 notifies the prosecution prior to the omnibus or pretrial hearing in
28 the case of the defendant's intent to assert the affirmative defense.

29 (4) Analyses of blood or breath samples obtained more than two
30 hours after the alleged being in actual physical control of a vessel
31 may be used as evidence that within two hours of the alleged being in
32 such control, a person had an alcohol concentration of 0.10 or more in
33 violation of subsection (1)(a) of this section, and in any case in
34 which the analysis shows an alcohol concentration above 0.00 may be
35 used as evidence that a person was under the influence of or affected
36 by intoxicating liquor or any drug in violation of subsection (1)(b) or
37 (c) of this section.

38 (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) Forty 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 who shall deposit fifteen percent in the death
26 investigations' account to be used solely for funding the state
27 toxicology laboratory blood or breath testing programs; and eighty-five
28 percent in the state parks and recreation commission account to be used
29 solely for funding activities to increase the conviction rate and
30 decrease the incidence of persons operating vessels under the influence
31 of alcohol or drugs.

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

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

1 (i) By imprisonment for not less than one day nor more than one
2 year. Twenty-four consecutive hours of the imprisonment may not be
3 suspended or deferred unless the court finds that the imposition of
4 this mandatory minimum sentence would impose a substantial risk to the
5 offender's physical or mental well-being. Whenever the mandatory
6 minimum sentence is suspended or deferred, the court shall state in
7 writing the reason for granting the suspension or deferral and the
8 facts upon which the suspension or deferral is based; and

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

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

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

25 (ii) By a fine of not less than five hundred dollars nor more than
26 five thousand dollars. Five hundred dollars of the fine may not be
27 suspended or deferred unless the court finds the offender to be
28 indigent.

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

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

36 (i) By imprisonment for not less than thirty days nor more than one
37 year. Thirty days of the imprisonment may not be suspended or deferred
38 unless the court finds that the imposition of this mandatory minimum
39 sentence would impose a substantial risk to the offender's physical or

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

5 (ii) By a fine of not less than five hundred dollars nor more than
6 five thousand dollars. Five hundred dollars of the fine may not be
7 suspended or deferred unless the court finds the offender to be
8 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 forty-five days nor more than
14 one year. Forty-five 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 seven hundred fifty dollars nor
22 more than five thousand dollars. Seven hundred fifty dollars of the
23 fine may not be suspended or deferred unless the court finds the
24 offender to be indigent.

25 (3) A person who is convicted of a violation of section 2 or 4 of
26 this act and who has two or more prior offenses within five years shall
27 be 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 ninety days nor more than one
33 year. Ninety 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 one thousand dollars nor more than
2 five thousand dollars. One thousand 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 one hundred twenty days nor
10 more than one year. One hundred twenty days of the imprisonment may
11 not be suspended or deferred unless the court finds that the imposition
12 of this mandatory minimum sentence would impose a substantial risk to
13 the offender's physical or mental well-being. Whenever the mandatory
14 minimum sentence is suspended or deferred, the court shall state in
15 writing the reason for granting the suspension or deferral and the
16 facts upon which the suspension or deferral is based; and

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

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

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

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

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

1 physical control of a vessel within this state while under the
2 influence of intoxicating liquor. The court may impose conditions of
3 probation that include nonrepetition, alcohol or drug treatment,
4 supervised probation, or other conditions that may be appropriate. The
5 sentence may be imposed in whole or in part upon violation of a
6 condition of probation during the suspension period.

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

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

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

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

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

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

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

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

28 NEW SECTION. **Sec. 8.** (1) Upon the trial of any civil or criminal
29 action or proceeding arising out of acts alleged to have been committed
30 by any person while operating or in actual physical control of a vessel
31 while under the influence of intoxicating liquor or any drug, if the
32 person's alcohol concentration is less than 0.10, it is evidence that
33 may be considered with other competent evidence in determining whether
34 the person was under the influence of intoxicating liquor or any drug.

35 (2) The breath analysis shall be based upon grams of alcohol per
36 two hundred ten liters of breath. The foregoing provisions of this
37 section shall not be construed as limiting the introduction of any

1 other competent evidence bearing upon the question whether the person
2 was under the influence of intoxicating liquor or any drug.

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

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

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

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

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

30 NEW SECTION. **Sec. 10.** The refusal of a person to submit to a test
31 of the alcoholic content of the person's blood or breath under section
32 11 of this act is admissible into evidence at a subsequent criminal
33 trial.

34 NEW SECTION. **Sec. 11.** (1) Any person who operates a vessel within
35 this state is deemed to have given consent, subject to the provisions
36 of section 8 of this act, to a test or tests of his or her breath or

1 blood for the purpose of determining the alcohol concentration or
2 presence of any drug in his or her breath or blood if arrested for any
3 offense where, at the time of the arrest, the arresting officer has
4 reasonable grounds to believe the person had been operating or was in
5 actual physical control of a vessel while under the influence of
6 intoxicating liquor or any drug or was in violation of section 3 of
7 this act.

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

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

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

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

1 (4) Any person who is dead, unconscious, or who is otherwise in a
2 condition rendering him or her incapable of refusal, shall be deemed
3 not to have withdrawn the consent provided by subsection (1) of this
4 section and the test or tests may be administered, subject to the
5 provisions of section 8 of this act, and the person shall be deemed to
6 have received the warnings required under subsection (2) of this
7 section.

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

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

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

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

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

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

35 (a) An order has been issued of which the person has knowledge
36 under RCW 10.99.040(2), 10.99.050, 26.09.050, 26.09.060, 26.10.040,
37 26.10.115, 26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW
38 restraining the person and the person has violated the terms of the

1 order restraining the person from acts or threats of violence or
2 restraining the person from going onto the grounds of or entering a
3 residence, workplace, school, or day care or, in the case of an order
4 issued under RCW 26.44.063, imposing any other restrictions or
5 conditions upon the person; or

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

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

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

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

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

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

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

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

1 (4) A law enforcement officer investigating at the scene of a motor
2 vehicle accident may arrest the driver of a motor vehicle involved in
3 the accident if the officer has probable cause to believe that the
4 driver has committed in connection with the accident a violation of any
5 traffic law or regulation.

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

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

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

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

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

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

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

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

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

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

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

--- **END** ---