
SENATE BILL 5493

State of Washington

56th Legislature

1999 Regular Session

By Senator McCaslin

Read first time 01/25/1999. Referred to Committee on Judiciary.

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; providing an effective date; and
5 declaring an emergency.

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

7 **Sec. 1.** RCW 88.12.025 and 1998 c 213 s 7 are each amended to read
8 as follows:

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

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

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

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

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

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

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

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

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

22 (a) And the person has, within two hours after operating a vessel,
23 an alcohol concentration at or above the amount specified in RCW
24 46.61.502 as shown by analysis of the person's breath or blood made
25 under section 8 of this act; or

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

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

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

34 (3) It is an affirmative defense to a violation of subsection
35 (1)(a) of this section which the defendant must prove by a
36 preponderance of the evidence that the defendant consumed a sufficient
37 quantity of alcohol after the time of operating a vessel and before the
38 administration of an analysis of the person's breath or blood to cause

1 the defendant's alcohol concentration to be at or above the amount
2 specified in RCW 46.61.502 within two hours after operating a vessel.
3 The court shall not admit evidence of this defense unless the defendant
4 notifies the prosecution prior to the omnibus or pretrial hearing in
5 the case of the defendant's intent to assert the affirmative defense.

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

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

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

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

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

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

35 (3) Analyses of blood or breath samples obtained more than two
36 hours after the alleged operating a vessel may be used as evidence that
37 within two hours of the alleged operating a vessel, a person had an

1 alcohol concentration of 0.02 or more in violation of subsection (1) of
2 this section.

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

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

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

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

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

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

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

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

1 concentration above 0.00 may be used as evidence that a person was
2 under the influence of or affected by intoxicating liquor or any drug
3 in violation of subsection (1)(b) or (c) of this section.

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

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

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

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

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

26 (a) Ninety percent shall be subject to distribution under RCW
27 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

28 (b) The remainder of the fee shall be forwarded to the state
29 treasurer for deposit in the death investigations account to be used
30 solely for funding the state toxicology laboratory blood or breath
31 testing programs.

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

1 take a test offered pursuant to section 11 of this act there is no test
2 result indicating the person's alcohol concentration:

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

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

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

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

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

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

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

38 (i) By imprisonment for not less than thirty days nor more than one
39 year. Thirty days of the imprisonment may not be suspended or deferred

1 unless the court finds that the imposition of this mandatory minimum
2 sentence would impose a substantial risk to the offender's physical or
3 mental well-being. Whenever the mandatory minimum sentence is
4 suspended or deferred, the court shall state in writing the reason for
5 granting the suspension or deferral and the facts upon which the
6 suspension or deferral is based; and

7 (ii) By a fine of not less than five hundred dollars nor more than
8 five thousand dollars. Five hundred dollars of the fine may not be
9 suspended or deferred unless the court finds the offender to be
10 indigent.

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

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

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

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

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

34 (i) By imprisonment for not less than ninety days nor more than one
35 year. Ninety days of the imprisonment may not be suspended or deferred
36 unless the court finds that the imposition of this mandatory minimum
37 sentence would impose a substantial risk to the offender's physical or
38 mental well-being. Whenever the mandatory minimum sentence is
39 suspended or deferred, the court shall state in writing the reason for

1 granting the suspension or deferral and the facts upon which the
2 suspension or deferral is based; and

3 (ii) By a fine of not less than one thousand dollars nor more than
4 five thousand dollars. One thousand dollars of the fine may not be
5 suspended or deferred unless the court finds the offender to be
6 indigent.

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

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

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

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

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

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

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

1 alcohol concentration upon request of a law enforcement officer who has
2 reasonable grounds to believe the person was operating or was in actual
3 physical control of a vessel within this state while under the
4 influence of intoxicating liquor. The court may impose conditions of
5 probation that include nonrepetition, alcohol or drug treatment,
6 supervised probation, or other conditions that may be appropriate. The
7 sentence may be imposed in whole or in part upon violation of a
8 condition of probation during the suspension period.

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

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

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

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

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

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

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

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

30 NEW SECTION. **Sec. 8.** (1) Upon the trial of any civil or criminal
31 action or proceeding arising out of acts alleged to have been committed
32 by any person while operating or in actual physical control of a vessel
33 while under the influence of intoxicating liquor or any drug, if the
34 person's alcohol concentration is less than the amount specified in RCW
35 46.61.502, it is evidence that may be considered with other competent
36 evidence in determining whether the person was under the influence of
37 intoxicating liquor or any drug.

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

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

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

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

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

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

33 NEW SECTION. **Sec. 10.** The refusal of a person to submit to a test
34 of the alcoholic content of the person's blood or breath under section
35 11 of this act is admissible into evidence at a subsequent criminal
36 trial.

1 NEW SECTION. **Sec. 11.** (1) Any person who operates a vessel within
2 this state is deemed to have given consent, subject to the provisions
3 of section 8 of this act, to a test or tests of his or her breath or
4 blood for the purpose of determining the alcohol concentration or
5 presence of any drug in his or her breath or blood if arrested for any
6 offense where, at the time of the arrest, the arresting officer has
7 reasonable grounds to believe the person had been operating or was in
8 actual physical control of a vessel while under the influence of
9 intoxicating liquor or any drug or was in violation of section 3 of
10 this act.

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

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

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

35 (3) Except as provided in this section, the test administered shall
36 be of the breath only. If an individual is unconscious or is under
37 arrest for the crime of homicide by watercraft as provided in RCW
38 88.12.029, assault by watercraft as provided in RCW 88.12.032, or
39 operating a vessel while under the influence of intoxicating liquor or

1 drugs as provided in section 2 of this act, which arrest results from
2 an accident in which there has been serious bodily injury to another
3 person, a breath or blood test may be administered without the consent
4 of the individual so arrested.

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

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

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

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

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

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

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

1 (a) An order has been issued of which the person has knowledge
2 under RCW 10.99.040(2), 10.99.050, 26.09.050, 26.09.060, 26.10.040,
3 26.10.115, 26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW
4 restraining the person and the person has violated the terms of the
5 order restraining the person from acts or threats of violence or
6 restraining the person from going onto the grounds of or entering a
7 residence, workplace, school, or day care or, in the case of an order
8 issued under RCW 26.44.063, imposing any other restrictions or
9 conditions upon the person; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 NEW SECTION. **Sec. 14.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and takes effect
12 July 1, 1999.

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