
ENGROSSED SUBSTITUTE SENATE BILL 5670

State of Washington 57th Legislature

2002 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Costa, Kline, Long, Hargrove, Prentice, Thibaudeau, Eide, Regala, Shin, Franklin, Patterson and Jacobsen)

READ FIRST TIME 03/05/2001.

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 79A.60.040 and 10.31.100; adding new sections to chapter
4 79A.60 RCW; and prescribing penalties.

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

6 **Sec. 1.** RCW 79A.60.040 and 1998 c 213 s 7 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 0.08 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 0.08 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 7 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 punishable
13 under section 5 of this act if the person was operating, at the time of
14 the violation, a vessel equipped with a motor or other propulsion
15 machinery of more than two horsepower, or any sailboat; and a
16 misdemeanor punishable under RCW 9.92.030 if the person was operating,
17 at the time of the violation, any other vessel. In addition, the court
18 may order the defendant to pay restitution for any damages or injuries
19 resulting from the offense.

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

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

25 (b) Has, within two hours after operating the vessel, an alcohol
26 concentration of at least 0.02 but less than the concentration
27 specified in RCW 46.61.502, as shown by analysis of the person's breath
28 or blood made under section 7 of this act.

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

1 to trial; or (b) the omnibus or pretrial hearing in the case of the
2 defendant's intent to assert the affirmative defense.

3 (3) 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 in violation of subsection (1) of this section.

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

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

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

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

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

29 (a) Ninety percent shall be subject to distribution under RCW
30 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

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

35 NEW SECTION. Sec. 5. (1) A person who is convicted of a gross
36 misdemeanor violation of section 2 of this act and who has no prior
37 offense within seven years shall be punished as follows:

1 (a) In the case of a person whose alcohol concentration was less
2 than 0.15, or for whom for reasons other than the person's refusal to
3 take a test offered pursuant to section 10 of this act there is no test
4 result indicating the person's alcohol concentration:

5 (i) By imprisonment for not less than one day nor more than one
6 year. Twenty-four consecutive hours of the imprisonment may not be
7 suspended or deferred unless the court finds that the imposition of
8 this mandatory minimum sentence would impose a substantial risk to the
9 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. In lieu of the
13 mandatory minimum term of imprisonment required under this subsection
14 (1)(a)(i), the court may order not less than fifteen days of electronic
15 home monitoring. The offender shall pay the cost of electronic home
16 monitoring. The county or municipality in which the penalty is being
17 imposed shall determine the cost. The court may also require the
18 offender's electronic home monitoring device to include an alcohol
19 detection breathalyzer, and the court may restrict the amount of
20 alcohol the offender may consume during the time the offender is on
21 electronic home monitoring; and

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

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

30 (i) By imprisonment for not less than two days nor more than one
31 year. Two consecutive days of the imprisonment may not be suspended or
32 deferred unless the court finds that the imposition of this mandatory
33 minimum sentence would impose a substantial risk to the offender's
34 physical or mental well-being. Whenever the mandatory minimum sentence
35 is suspended or deferred, the court shall state in writing the reason
36 for granting the suspension or deferral and the facts upon which the
37 suspension or deferral is based. In lieu of the mandatory minimum term
38 of imprisonment required under this subsection (1)(b)(i), the court may
39 order not less than thirty days of electronic home monitoring. The

1 offender shall pay the cost of electronic home monitoring. The county
2 or municipality in which the penalty is being imposed shall determine
3 the cost. The court may also require the offender's electronic home
4 monitoring device to include an alcohol detection breathalyzer, and the
5 court may restrict the amount of alcohol the offender may consume
6 during the time the offender is on electronic home monitoring; 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 (2) A person who is convicted of a gross misdemeanor violation of
12 section 2 of this act and who has one prior offense within seven years
13 shall be punished as follows:

14 (a) In the case of a person whose alcohol concentration was less
15 than 0.15, or for whom for reasons other than the person's refusal to
16 take a test offered pursuant to section 10 of this act there is no test
17 result indicating the person's alcohol concentration:

18 (i) By imprisonment for not less than thirty days nor more than one
19 year and sixty days of electronic home monitoring. The offender shall
20 pay for the cost of the electronic monitoring. The county or
21 municipality where the penalty is being imposed shall determine the
22 cost. The court may also require the offender's electronic home
23 monitoring device include an alcohol detection breathalyzer, and may
24 restrict the amount of alcohol the offender may consume during the time
25 the offender is on electronic home monitoring. Thirty days of
26 imprisonment and sixty days of electronic home monitoring may not be
27 suspended or deferred unless the court finds that the imposition of
28 this mandatory minimum sentence would impose a substantial risk to the
29 offender's physical or mental well-being. Whenever the mandatory
30 minimum sentence is suspended or deferred, the court shall state in
31 writing the reason for granting the suspension or deferral and the
32 facts upon which the suspension or deferral is based; and

33 (ii) By a fine of not less than five hundred dollars nor more than
34 five thousand dollars. Five hundred dollars of the fine may not be
35 suspended or deferred unless the court finds the offender to be
36 indigent; or

37 (b) In the case of a person whose alcohol concentration was at
38 least 0.15, or for whom by reason of the person's refusal to take a

1 test offered pursuant to section 10 of this act there is no test result
2 indicating the person's alcohol concentration:

3 (i) By imprisonment for not less than forty-five days nor more than
4 one year and ninety days of electronic home monitoring. The offender
5 shall pay for the cost of the electronic monitoring. The county or
6 municipality where the penalty is being imposed shall determine the
7 cost. The court may also require the offender's electronic home
8 monitoring device include an alcohol detection breathalyzer, and may
9 restrict the amount of alcohol the offender may consume during the time
10 the offender is on electronic home monitoring. Forty-five days of
11 imprisonment and ninety days of electronic home monitoring may not be
12 suspended or deferred unless the court finds that the imposition of
13 this mandatory minimum sentence would impose a substantial risk to the
14 offender's physical or mental well-being. Whenever the mandatory
15 minimum sentence is suspended or deferred, the court shall state in
16 writing the reason for granting the suspension or deferral and the
17 facts upon which the suspension or deferral is based; and

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

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

25 (a) In the case of a person whose alcohol concentration was less
26 than 0.15, or for whom for reasons other than the person's refusal to
27 take a test offered pursuant to section 10 of this act there is no test
28 result indicating the person's alcohol concentration:

29 (i) By imprisonment for not less than ninety days nor more than one
30 year and one hundred twenty days of electronic home monitoring. The
31 offender shall pay for the cost of the electronic monitoring. The
32 county or municipality where the penalty is being imposed shall
33 determine the cost. The court may also require the offender's
34 electronic home monitoring device include an alcohol detection
35 breathalyzer, and may restrict the amount of alcohol the offender may
36 consume during the time the offender is on electronic home monitoring.
37 Ninety days of imprisonment and one hundred twenty days of electronic
38 home monitoring may not be suspended or deferred unless the court finds
39 that the imposition of this mandatory minimum sentence would impose a

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

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

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

14 (i) By imprisonment for not less than one hundred twenty days nor
15 more than one year and one hundred fifty days of electronic home
16 monitoring. The offender shall pay for the cost of the electronic
17 monitoring. The county or municipality where the penalty is being
18 imposed shall determine the cost. The court may also require the
19 offender's electronic home monitoring device include an alcohol
20 detection breathalyzer, and may restrict the amount of alcohol the
21 offender may consume during the time the offender is on electronic home
22 monitoring. One hundred twenty days of imprisonment and one hundred
23 fifty days of electronic home monitoring may not be suspended or
24 deferred unless the court finds that the imposition of this mandatory
25 minimum sentence would impose a substantial risk to the offender's
26 physical or mental well-being. Whenever the mandatory minimum sentence
27 is suspended or deferred, the court shall state in writing the reason
28 for granting the suspension or deferral and the facts upon which the
29 suspension or deferral is based; and

30 (ii) By a fine of not less than one thousand five hundred dollars
31 nor more than five thousand dollars. One thousand five hundred dollars
32 of the fine may not be suspended or deferred unless the court finds the
33 offender to be indigent.

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

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

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

4 (7)(a) In addition to any nonsuspendable and nondeferrable jail
5 sentence required by this section, whenever the court imposes less than
6 one year in jail, the court shall also suspend but shall not defer a
7 period of confinement for a period not exceeding five years. The court
8 shall impose conditions of probation that include: (i) Not operating
9 a vessel within this state while having an alcohol concentration of
10 0.08 or more within two hours after operating a vessel; and (ii) not
11 refusing to submit to a test of his or her breath or blood to determine
12 alcohol concentration upon request of a law enforcement officer who has
13 reasonable grounds to believe the person was operating a vessel within
14 this state while under the influence of intoxicating liquor. The court
15 may impose conditions of probation that include nonrepetition, alcohol
16 or drug treatment, supervised probation, or other conditions that may
17 be appropriate. The sentence may be imposed in whole or in part upon
18 violation of a condition of probation during the suspension period.

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

23 (8) A court may waive the electronic home monitoring requirements
24 of this chapter when:

25 (a) The offender does not have a dwelling, telephone service, or
26 any other necessity to operate an electronic home monitoring system;

27 (b) The offender does not reside in the state of Washington; or

28 (c) The court determines that there is reason to believe that the
29 offender would violate the conditions of the electronic home monitoring
30 penalty.

31 Whenever the mandatory minimum term of electronic home monitoring
32 is waived, the court shall state in writing the reason for granting the
33 waiver and the facts upon which the waiver is based, and shall impose
34 an alternative sentence with similar punitive consequences. The
35 alternative sentence may include, but is not limited to, additional
36 jail time, work crew, or work camp.

37 Whenever the combination of jail time and electronic home
38 monitoring or alternative sentence would exceed three hundred sixty-
39 five days, the offender shall serve the jail portion of the sentence

1 first, and the electronic home monitoring or alternative portion of the
2 sentence shall be reduced so that the combination does not exceed three
3 hundred sixty-five days.

4 (9) An offender serving a sentence under this section, whether or
5 not a mandatory minimum term has expired, may be granted an
6 extraordinary medical placement by the jail administrator subject to
7 the standards and limitations set forth in RCW 9.94A.150(4).

8 (10) For purposes of this section:

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

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

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

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

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

20 NEW SECTION. **Sec. 6.** The commission shall prescribe standards for
21 approval of boating safety courses qualifying for referral of offenders
22 pursuant to section 5 of this act. The commission shall adopt such
23 rules as are necessary to carry out this section.

24 NEW SECTION. **Sec. 7.** (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 a vessel while under the influence of
27 intoxicating liquor or any drug, if the person's alcohol concentration
28 is less than the amount specified in RCW 46.61.502, it is evidence that
29 may be considered with other competent evidence in determining whether
30 the person was under the influence of intoxicating liquor or any drug.

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

36 (3) Analysis of the person's blood or breath to be considered valid
37 under the provisions of this section or section 2 of this act shall

1 have been performed according to methods approved by the state
2 toxicologist and by an individual possessing a valid permit issued by
3 the state toxicologist for this purpose pursuant to RCW 46.61.506.

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

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

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

20 NEW SECTION. **Sec. 8.** A sentencing court may allow persons
21 convicted of violating section 2 of this act to fulfill the terms of
22 the sentence provided in section 5 of this act in nonconsecutive or
23 intermittent time periods. However, any mandatory minimum sentence
24 under section 5 of this act shall be served consecutively unless
25 suspended or deferred as otherwise provided by law.

26 NEW SECTION. **Sec. 9.** The refusal of a person to submit to a test
27 of the alcoholic content of the person's blood or breath under section
28 10 of this act is admissible into evidence at a subsequent criminal
29 trial.

30 NEW SECTION. **Sec. 10.** (1) Any person who operates a vessel within
31 this state is deemed to have given consent, subject to the provisions
32 of section 7 of this act, to a test or tests of his or her breath or
33 blood for the purpose of determining the alcohol concentration or
34 presence of any drug in his or her breath or blood if arrested for any
35 offense where, at the time of the arrest, the arresting officer has
36 reasonable grounds to believe the person had been operating a vessel

1 while under the influence of intoxicating liquor or any drug or was in
2 violation of section 3 of this act.

3 (2) The test or tests of breath shall be administered at the
4 direction of a law enforcement officer having reasonable grounds to
5 believe the person to have been operating a vessel within this state
6 while under the influence of intoxicating liquor or any drug or the
7 person to have been operating a vessel while having alcohol in a
8 concentration in violation of section 3 of this act in his or her
9 system and being under the age of twenty-one. However, in those
10 instances where the person is incapable due to physical injury,
11 physical incapacity, or other physical limitation, of providing a
12 breath sample or where the person is being treated in a hospital,
13 clinic, doctor's office, emergency medical vehicle, ambulance, or other
14 similar facility in which a breath testing instrument is not present or
15 where the officer has reasonable grounds to believe that the person is
16 under the influence of a drug, a blood test shall be administered by a
17 qualified person as provided in section 7 of this act. The officer
18 shall inform the person of his or her right to refuse the breath or
19 blood test, and of his or her right to have additional tests
20 administered by any qualified person of his or her choosing as provided
21 in section 7 of this act. The officer shall warn the operator that:

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

24 (b) The operator's refusal to take the test may be used in a
25 criminal trial.

26 (3) Except as provided in this section, the test administered shall
27 be of the breath only. If an individual is unconscious or is under
28 arrest for the crime of homicide by watercraft as provided in RCW
29 79A.60.050, assault by watercraft as provided in RCW 79A.60.060, or
30 operating a vessel while under the influence of intoxicating liquor or
31 drugs as provided in section 2 of this act, which arrest results from
32 an accident in which there has been serious bodily injury to another
33 person, a breath or blood test may be administered without the consent
34 of the individual so arrested.

35 (4) Any person who is dead, unconscious, or who is otherwise in a
36 condition rendering him or her incapable of refusal, shall be deemed
37 not to have withdrawn the consent provided by subsection (1) of this
38 section and the test or tests may be administered, subject to the
39 provisions of section 7 of this act, and the person shall be deemed to

1 have received the warnings required under subsection (2) of this
2 section.

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

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

11 NEW SECTION. **Sec. 11.** (1) Whenever the operator of a vessel is
12 arrested for violation of RCW 79A.60.040 or section 2 or 3 of this act,
13 the arresting officer may take custody of the vessel and provide for
14 its prompt removal to a place of safety.

15 (2) For the purposes of this section, a place of safety may include
16 a private moorage facility as defined in RCW 88.26.010, a moorage
17 facility as defined in RCW 53.08.310, or a commission facility as
18 defined in RCW 79A.65.010.

19 (3) At the time the arresting officer removes a vessel to safety
20 pursuant to subsection (1) of this section, the officer shall notify
21 the operator or owner of the facility to which the vessel is removed of
22 the fact that the vessel has been secured at such facility, and shall
23 notify the facility owner or operator of the names and addresses of the
24 vessel operator and owner, if known.

25 **Sec. 12.** RCW 10.31.100 and 2000 c 119 s 4 are each amended to read
26 as follows:

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

33 (1) Any police officer having probable cause to believe that a
34 person has committed or is committing a misdemeanor or gross
35 misdemeanor, involving physical harm or threats of harm to any person
36 or property or the unlawful taking of property or involving the use or
37 possession of cannabis, or involving the acquisition, possession, or

1 consumption of alcohol by a person under the age of twenty-one years
2 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070
3 or 9A.52.080, shall have the authority to arrest the person.

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

7 (a) An order has been issued of which the person has knowledge
8 under RCW 26.44.063, or chapter 10.99, 26.09, 26.10, 26.26, 26.50, or
9 74.34 RCW restraining the person and the person has violated the terms
10 of the order restraining the person from acts or threats of violence,
11 or restraining the person from going onto the grounds of or entering a
12 residence, workplace, school, or day care, or prohibiting the person
13 from knowingly coming within, or knowingly remaining within, a
14 specified distance of a location or, in the case of an order issued
15 under RCW 26.44.063, imposing any other restrictions or conditions upon
16 the person; or

17 (b) A foreign protection order, as defined in RCW 26.52.010, has
18 been issued of which the person under restraint has knowledge and the
19 person under restraint has violated a provision of the foreign
20 protection order prohibiting the person under restraint from contacting
21 or communicating with another person, or excluding the person under
22 restraint from a residence, workplace, school, or day care, or
23 prohibiting the person from knowingly coming within, or knowingly
24 remaining within, a specified distance of a location, or a violation of
25 any provision for which the foreign protection order specifically
26 indicates that a violation will be a crime; or

27 (c) The person is sixteen years or older and within the preceding
28 four hours has assaulted a family or household member as defined in RCW
29 10.99.020 and the officer believes: (i) A felonious assault has
30 occurred; (ii) an assault has occurred which has resulted in bodily
31 injury to the victim, whether the injury is observable by the
32 responding officer or not; or (iii) that any physical action has
33 occurred which was intended to cause another person reasonably to fear
34 imminent serious bodily injury or death. Bodily injury means physical
35 pain, illness, or an impairment of physical condition. When the
36 officer has probable cause to believe that family or household members
37 have assaulted each other, the officer is not required to arrest both
38 persons. The officer shall arrest the person whom the officer believes
39 to be the primary physical aggressor. In making this determination,

1 the officer shall make every reasonable effort to consider: (i) The
2 intent to protect victims of domestic violence under RCW 10.99.010;
3 (ii) the comparative extent of injuries inflicted or serious threats
4 creating fear of physical injury; and (iii) the history of domestic
5 violence between the persons involved.

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

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

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

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

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

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

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

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

26 (5) Any police officer having probable cause to believe that a
27 person has committed or is committing a violation of RCW 79A.60.040 or
28 section 2 or 3 of this act shall have the authority to arrest the
29 person.

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

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

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

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

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

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

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

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

22 NEW SECTION. **Sec. 13.** Sections 2 through 11 of this act are each
23 added to chapter 79A.60 RCW.

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