
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.

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

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

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

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

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

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

1 NEW SECTION. **Sec. 4.** (1)(a) In addition to penalties set forth in
2 section 5 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 of this act. This fee is for the purpose of
6 funding the Washington state toxicology laboratory and local government
7 for grants and activities to increase the conviction rate and decrease
8 the incidence of persons operating vessels under the influence of
9 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 of this act, the court shall assess the one hundred
16 twenty-five dollar fee under (a) of this subsection. Upon a verified
17 petition by a minor assessed the fee, the court may suspend payment of
18 all or part of the fee if it finds that the minor does not have the
19 ability to pay the fee.

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

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

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

28 NEW SECTION. **Sec. 5.** (1) A person who is convicted of a violation
29 of section 2 of this act and who has no prior offense within seven
30 years shall be punished as follows:

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

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

1 offender's physical or mental well-being. Whenever the mandatory
2 minimum sentence is suspended or deferred, the court shall state in
3 writing the reason for granting the suspension or deferral and the
4 facts upon which the suspension or deferral is based. In lieu of the
5 mandatory minimum term of imprisonment required under this subsection
6 (1)(a)(i), the court may order not less than fifteen days of electronic
7 home monitoring. The offender shall pay the cost of electronic home
8 monitoring. The county or municipality in which the penalty is being
9 imposed shall determine the cost. The court may also require the
10 offender's electronic home monitoring device to include an alcohol
11 detection breathalyzer, and the court may restrict the amount of
12 alcohol the offender may consume during the time the offender is on
13 electronic home monitoring; and

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

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

22 (i) By imprisonment for not less than two days nor more than one
23 year. Two consecutive days of the imprisonment 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. In lieu of the mandatory minimum term
30 of imprisonment required under this subsection (1)(b)(i), the court may
31 order not less than thirty days of electronic home monitoring. The
32 offender shall pay the cost of electronic home monitoring. The county
33 or municipality in which the penalty is being imposed shall determine
34 the cost. The court may also require the offender's electronic home
35 monitoring device to include an alcohol detection breathalyzer, and the
36 court may restrict the amount of alcohol the offender may consume
37 during the time the offender is on electronic home monitoring; and

38 (ii) By a fine of not less than five hundred dollars nor more than
39 five thousand dollars. Five hundred dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be
2 indigent.

3 (2) A person who is convicted of a violation of section 2 of this
4 act and who has one prior offense within seven years shall be punished
5 as follows:

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

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

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

33 (i) By imprisonment for not less than forty-five days nor more than
34 one year and ninety days of electronic home monitoring. The offender
35 shall pay for the cost of the electronic monitoring. The county or
36 municipality where the penalty is being imposed shall determine the
37 cost. The court may also require the offender's electronic home
38 monitoring device include an alcohol detection breathalyzer, and may
39 restrict the amount of alcohol the offender may consume during the time

1 the offender is on electronic home monitoring. Forty-five days of
2 imprisonment and ninety days of electronic home monitoring 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 seven hundred fifty dollars nor
10 more than five thousand dollars. Seven hundred fifty dollars of the
11 fine may not be suspended or deferred unless the court finds the
12 offender to be indigent.

13 (3) A person who is convicted of a violation of section 2 of this
14 act and who has two or more prior offenses within seven years shall be
15 punished as follows:

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

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

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

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

5 (i) By imprisonment for not less than one hundred twenty days nor
6 more than one year and one hundred fifty days of electronic home
7 monitoring. The offender shall pay for the cost of the electronic
8 monitoring. The county or municipality where the penalty is being
9 imposed shall determine the cost. The court may also require the
10 offender's electronic home monitoring device include an alcohol
11 detection breathalyzer, and may restrict the amount of alcohol the
12 offender may consume during the time the offender is on electronic home
13 monitoring. One hundred twenty days of imprisonment and one hundred
14 fifty days of electronic home monitoring 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 one thousand five hundred dollars
22 nor more than five thousand dollars. One thousand five hundred dollars
23 of the fine may not be suspended or deferred unless the court finds the
24 offender to be indigent.

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

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

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

34 (7)(a) In addition to any nonsuspendable and nondeferrable jail
35 sentence required by this section, whenever the court imposes less than
36 one year in jail, the court shall also suspend but shall not defer a
37 period of confinement for a period not exceeding five years. The court
38 shall impose conditions of probation that include: (i) Not operating
39 a vessel within this state while having an alcohol concentration of

1 0.08 or more within two hours after operating a vessel; and (ii) not
2 refusing to submit to a test of his or her breath or blood to determine
3 alcohol concentration upon request of a law enforcement officer who has
4 reasonable grounds to believe the person was operating a vessel within
5 this state while under the influence of intoxicating liquor. The court
6 may impose conditions of probation that include nonrepetition, alcohol
7 or drug treatment, supervised probation, or other conditions that may
8 be appropriate. The sentence may be imposed in whole or in part upon
9 violation of a condition of probation during the suspension period.

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

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

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

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

19 (c) The court determines that there is reason to believe that the
20 offender would violate the conditions of the electronic home monitoring
21 penalty.

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

28 Whenever the combination of jail time and electronic home
29 monitoring or alternative sentence would exceed three hundred sixty-
30 five days, the offender shall serve the jail portion of the sentence
31 first, and the electronic home monitoring or alternative portion of the
32 sentence shall be reduced so that the combination does not exceed three
33 hundred sixty-five days.

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

38 (10) For purposes of this section:

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

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

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

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

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

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

15 NEW SECTION. **Sec. 7.** (1) Upon the trial of any civil or criminal
16 action or proceeding arising out of acts alleged to have been committed
17 by any person while operating a vessel while under the influence of
18 intoxicating liquor or any drug, if the person's alcohol concentration
19 is less than the amount specified in RCW 46.61.502, it is evidence that
20 may be considered with other competent evidence in determining whether
21 the person was under the influence of intoxicating liquor or any drug.

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

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

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

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

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

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

18 NEW SECTION. **Sec. 9.** The refusal of a person to submit to a test
19 of the alcoholic content of the person's blood or breath under section
20 10 of this act is admissible into evidence at a subsequent criminal
21 trial.

22 NEW SECTION. **Sec. 10.** (1) Any person who operates a vessel within
23 this state is deemed to have given consent, subject to the provisions
24 of section 7 of this act, to a test or tests of his or her breath or
25 blood for the purpose of determining the alcohol concentration or
26 presence of any drug in his or her breath or blood if arrested for any
27 offense where, at the time of the arrest, the arresting officer has
28 reasonable grounds to believe the person had been operating a vessel
29 while under the influence of intoxicating liquor or any drug or was in
30 violation of section 3 of this act.

31 (2) The test or tests of breath shall be administered at the
32 direction of a law enforcement officer having reasonable grounds to
33 believe the person to have been operating a vessel within this state
34 while under the influence of intoxicating liquor or any drug or the
35 person to have been operating a vessel while having alcohol in a
36 concentration in violation of section 3 of this act in his or her

1 system and being under the age of twenty-one. However, in those
2 instances where the person is incapable due to physical injury,
3 physical incapacity, or other physical limitation, of providing a
4 breath sample or where the person is being treated in a hospital,
5 clinic, doctor's office, emergency medical vehicle, ambulance, or other
6 similar facility in which a breath testing instrument is not present or
7 where the officer has reasonable grounds to believe that the person is
8 under the influence of a drug, a blood test shall be administered by a
9 qualified person as provided in section 7 of this act. The officer
10 shall inform the person of his or her right to refuse the breath or
11 blood test, and of his or her right to have additional tests
12 administered by any qualified person of his or her choosing as provided
13 in section 7 of this act. The officer shall warn the operator that:

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

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

18 (3) Except as provided in this section, the test administered shall
19 be of the breath only. If an individual is unconscious or is under
20 arrest for the crime of homicide by watercraft as provided in RCW
21 79A.60.050, assault by watercraft as provided in RCW 79A.60.060, or
22 operating a vessel while under the influence of intoxicating liquor or
23 drugs as provided in section 2 of this act, which arrest results from
24 an accident in which there has been serious bodily injury to another
25 person, a breath or blood test may be administered without the consent
26 of the individual so arrested.

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

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

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

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

8 (2) For the purposes of this section, a place of safety may include
9 a private moorage facility as defined in RCW 88.26.010, a moorage
10 facility as defined in RCW 53.08.310, or a commission facility as
11 defined in RCW 79A.65.010.

12 (3) At the time the arresting officer removes a vessel to safety
13 pursuant to subsection (1) of this section, the officer shall notify
14 the operator or owner of the facility to which the vessel is removed of
15 the fact that the vessel has been secured at such facility, and shall
16 notify the facility owner or operator of the names and addresses of the
17 vessel operator and owner, if known.

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

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

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

34 (2) A police officer shall arrest and take into custody, pending
35 release on bail, personal recognizance, or court order, a person
36 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 26.44.063, or chapter 10.99, 26.09, 26.10, 26.26, 26.50, or
3 74.34 RCW restraining the person and the person has violated the terms
4 of the order restraining the person from acts or threats of violence,
5 or restraining the person from going onto the grounds of or entering a
6 residence, workplace, school, or day care, or prohibiting the person
7 from knowingly coming within, or knowingly remaining within, a
8 specified distance of a location or, in the case of an order issued
9 under RCW 26.44.063, imposing any other restrictions or conditions upon
10 the person; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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