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SENATE BILL 5670

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State of Washington

57th Legislature

2001 Regular Session

By Senators Costa, Kline, Long, Hargrove, Prentice, Thibaudeau, Eide, Regala, Shin, Franklin, Patterson and Jacobsen

Read first time 01/30/2001. 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 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 **Sec. 11.** RCW 10.31.100 and 2000 c 119 s 4 are each amended to read  
5 as follows:

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

12 (1) Any police officer having probable cause to believe that a  
13 person has committed or is committing a misdemeanor or gross  
14 misdemeanor, involving physical harm or threats of harm to any person  
15 or property or the unlawful taking of property or involving the use or  
16 possession of cannabis, or involving the acquisition, possession, or  
17 consumption of alcohol by a person under the age of twenty-one years  
18 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070  
19 or 9A.52.080, shall have the authority to arrest the person.

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

23 (a) An order has been issued of which the person has knowledge  
24 under RCW 26.44.063, or chapter 10.99, 26.09, 26.10, 26.26, 26.50, or  
25 74.34 RCW restraining the person and the person has violated the terms  
26 of the order restraining the person from acts or threats of violence,  
27 or restraining the person from going onto the grounds of or entering a  
28 residence, workplace, school, or day care, or prohibiting the person  
29 from knowingly coming within, or knowingly remaining within, a  
30 specified distance of a location or, in the case of an order issued  
31 under RCW 26.44.063, imposing any other restrictions or conditions upon  
32 the person; or

33 (b) A foreign protection order, as defined in RCW 26.52.010, has  
34 been issued of which the person under restraint has knowledge and the  
35 person under restraint has violated a provision of the foreign  
36 protection order prohibiting the person under restraint from contacting  
37 or communicating with another person, or excluding the person under  
38 restraint from a residence, workplace, school, or day care, or

1 prohibiting the person from knowingly coming within, or knowingly  
2 remaining within, a specified distance of a location, or a violation of  
3 any provision for which the foreign protection order specifically  
4 indicates that a violation will be a crime; or

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

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

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

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

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

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

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

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

38 (4) A law enforcement officer investigating at the scene of a motor  
39 vehicle accident may arrest the driver of a motor vehicle involved in

1 the accident if the officer has probable cause to believe that the  
2 driver has committed in connection with the accident a violation of any  
3 traffic law or regulation.

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

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

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

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

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

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

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

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

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

1        NEW SECTION.   **Sec. 12.**   Sections 2 through 10 of this act are each  
2   added to chapter 79A.60 RCW.

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