

SSB 5437 - H COMM AMD
By Committee on Public Safety

NOT CONSIDERED 04/17/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 79A.60.040 and 1998 c 213 s 7 are each amended to
4 read as follows:

5 (1) It (~~shall be~~) is unlawful for any person to operate a vessel
6 in a reckless manner.

7 (2) It (~~shall be a violation~~) is unlawful for a person to operate
8 a vessel while under the influence of intoxicating liquor, marijuana,
9 or any drug. A person is considered to be under the influence of
10 intoxicating liquor, marijuana, or any drug if, within two hours of
11 operating a vessel:

12 (a) The person has an alcohol concentration of 0.08 (~~grams~~) or
13 (~~more of alcohol per two hundred ten liters of breath,~~) higher as
14 shown by analysis of the person's breath or blood made under RCW
15 46.61.506; or

16 (b) The person has (~~0.08 percent or more by weight of alcohol in~~
17 ~~the person's blood, as shown by analysis of the person's blood made~~
18 ~~under RCW 46.61.506~~) a THC concentration of 5.00 or higher as shown by
19 analysis of the person's blood made under RCW 46.61.506; or

20 (c) The person is under the influence of or affected by
21 intoxicating liquor, marijuana, or any drug; or

22 (d) The person is under the combined influence of or affected by
23 intoxicating liquor, marijuana, and any drug.

24 (3) The fact that any person charged with a violation of this
25 section is or has been entitled to use such drug under the laws of this
26 state shall not constitute a defense against any charge of violating
27 this section. (~~A person cited under this subsection may upon request~~
28 ~~be given a breath test for breath alcohol or may request to have a~~
29 ~~blood sample taken for blood alcohol analysis. An arresting officer~~
30 ~~shall administer field sobriety tests when circumstances permit.~~

1 ~~(3))~~ (4) Any person who operates a vessel within this state is
2 deemed to have given consent, subject to the provisions of RCW
3 46.61.506, to a test or tests of the person's breath or blood for the
4 purpose of determining the alcohol concentration, THC concentration, or
5 presence of any drug in the person's breath or blood if arrested for
6 any offense where, at the time of the arrest, the arresting officer has
7 reasonable grounds to believe the person was operating a vessel while
8 under the influence of intoxicating liquor, marijuana, or any drug.
9 Neither consent nor this section precludes a police officer from
10 obtaining a search warrant for a person's breath or blood. An
11 arresting officer may administer field sobriety tests when
12 circumstances permit.

13 (5) The test or tests of breath must be administered pursuant to
14 RCW 46.20.308. Where the officer has reasonable grounds to believe
15 that the person is under the influence of a drug, or where the person
16 is incapable due to physical injury, physical incapacity, or other
17 physical limitation, of providing a breath sample, or where the person
18 is being treated in a hospital, clinic, doctor's office, emergency
19 medical vehicle, ambulance, or other similar facility, a blood test
20 must be administered by a qualified person as provided in RCW
21 46.61.506(5). The officer shall warn the person that if the person
22 refuses to take the test, the person will be issued a class 1 civil
23 infraction under RCW 7.80.120.

24 (6) A violation of subsection (1) of this section is a
25 misdemeanor(~~(, punishable as provided under RCW 9.92.030)~~). A
26 violation of subsection (2) of this section is a gross misdemeanor. In
27 addition to the statutory penalties imposed, the court may order the
28 defendant to pay restitution for any damages or injuries resulting from
29 the offense.

30 NEW SECTION. Sec. 2. A new section is added to chapter 79A.60 RCW
31 to read as follows:

32 (1) The refusal of a person to submit to a test of the alcohol
33 concentration, THC concentration, or presence of any drug in the
34 person's blood or breath is not admissible into evidence at a
35 subsequent criminal trial.

36 (2) A person's refusal to submit to a test or tests pursuant to RCW
37 79A.60.040 constitutes a class 1 civil infraction under RCW 7.80.120.

1 **Sec. 3.** RCW 7.80.120 and 2003 c 365 s 3 and 2003 c 337 s 4 are
2 each reenacted and amended to read as follows:

3 (1) A person found to have committed a civil infraction shall be
4 assessed a monetary penalty.

5 (a) The maximum penalty and the default amount for a class 1 civil
6 infraction shall be two hundred fifty dollars, not including statutory
7 assessments, except for an infraction of state law involving (i)
8 potentially dangerous litter as specified in RCW 70.93.060(4) (~~and an~~
9 ~~infraction of state law involving~~) or violent video or computer games
10 under RCW 9.91.180, in which case the maximum penalty and default
11 amount is five hundred dollars; or (ii) a person's refusal to submit to
12 a test or tests pursuant to RCW 79A.60.040 and section 2 of this act,
13 in which case the maximum penalty and default amount is one thousand
14 dollars;

15 (b) The maximum penalty and the default amount for a class 2 civil
16 infraction shall be one hundred twenty-five dollars, not including
17 statutory assessments;

18 (c) The maximum penalty and the default amount for a class 3 civil
19 infraction shall be fifty dollars, not including statutory assessments;
20 and

21 (d) The maximum penalty and the default amount for a class 4 civil
22 infraction shall be twenty-five dollars, not including statutory
23 assessments.

24 (2) The supreme court shall prescribe by rule the conditions under
25 which local courts may exercise discretion in assessing fines for civil
26 infractions.

27 (3) Whenever a monetary penalty is imposed by a court under this
28 chapter it is immediately payable. If the person is unable to pay at
29 that time the court may grant an extension of the period in which the
30 penalty may be paid. If the penalty is not paid on or before the time
31 established for payment, the court may proceed to collect the penalty
32 in the same manner as other civil judgments and may notify the
33 prosecuting authority of the failure to pay.

34 (4) The court may also order a person found to have committed a
35 civil infraction to make restitution.

36 **Sec. 4.** RCW 10.31.100 and 2010 c 274 s 201 are each amended to
37 read as follows:

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

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

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

19 (a) An order has been issued of which the person has knowledge
20 under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26,
21 26.50, or 74.34 RCW restraining the person and the person has violated
22 the terms of the order restraining the person from acts or threats of
23 violence, or restraining the person from going onto the grounds of or
24 entering a residence, workplace, school, or day care, or prohibiting
25 the person from knowingly coming within, or knowingly remaining within,
26 a specified distance of a location or, in the case of an order issued
27 under RCW 26.44.063, imposing any other restrictions or conditions upon
28 the person; or

29 (b) A foreign protection order, as defined in RCW 26.52.010, has
30 been issued of which the person under restraint has knowledge and the
31 person under restraint has violated a provision of the foreign
32 protection order prohibiting the person under restraint from contacting
33 or communicating with another person, or excluding the person under
34 restraint from a residence, workplace, school, or day care, or
35 prohibiting the person from knowingly coming within, or knowingly
36 remaining within, a specified distance of a location, or a violation of
37 any provision for which the foreign protection order specifically
38 indicates that a violation will be a crime; or

1 (c) The person is sixteen years or older and within the preceding
2 four hours has assaulted a family or household member as defined in RCW
3 10.99.020 and the officer believes: (i) A felonious assault has
4 occurred; (ii) an assault has occurred which has resulted in bodily
5 injury to the victim, whether the injury is observable by the
6 responding officer or not; or (iii) that any physical action has
7 occurred which was intended to cause another person reasonably to fear
8 imminent serious bodily injury or death. Bodily injury means physical
9 pain, illness, or an impairment of physical condition. When the
10 officer has probable cause to believe that family or household members
11 have assaulted each other, the officer is not required to arrest both
12 persons. The officer shall arrest the person whom the officer believes
13 to be the primary physical aggressor. In making this determination,
14 the officer shall make every reasonable effort to consider: (i) The
15 intent to protect victims of domestic violence under RCW 10.99.010;
16 (ii) the comparative extent of injuries inflicted or serious threats
17 creating fear of physical injury; and (iii) the history of domestic
18 violence of each person involved, including whether the conduct was
19 part of an ongoing pattern of abuse.

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

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

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

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

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

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

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

35 (4) A law enforcement officer investigating at the scene of a motor
36 vehicle accident may arrest the driver of a motor vehicle involved in
37 the accident if the officer has probable cause to believe that the

1 driver has committed in connection with the accident a violation of any
2 traffic law or regulation.

3 (5)(a) A law enforcement officer investigating at the scene of a
4 motor vessel accident may arrest the operator of a motor vessel
5 involved in the accident if the officer has probable cause to believe
6 that the operator has committed, in connection with the accident, a
7 criminal violation of chapter 79A.60 RCW.

8 (b) A law enforcement officer investigating at the scene of a motor
9 vessel accident may issue a citation for an infraction to the operator
10 of a motor vessel involved in the accident if the officer has probable
11 cause to believe that the operator has committed, in connection with
12 the accident, a violation of any boating safety law of chapter 79A.60
13 RCW.

14 (6) Any police officer having probable cause to believe that a
15 person has committed or is committing a violation of RCW 79A.60.040
16 shall have the authority to arrest the person.

17 ~~((+6))~~ (7) An officer may act upon the request of a law
18 enforcement officer in whose presence a traffic infraction was
19 committed, to stop, detain, arrest, or issue a notice of traffic
20 infraction to the driver who is believed to have committed the
21 infraction. The request by the witnessing officer shall give an
22 officer the authority to take appropriate action under the laws of the
23 state of Washington.

24 ~~((+7))~~ (8) Any police officer having probable cause to believe
25 that a person has committed or is committing any act of indecent
26 exposure, as defined in RCW 9A.88.010, may arrest the person.

27 ~~((+8))~~ (9) A police officer may arrest and take into custody,
28 pending release on bail, personal recognizance, or court order, a
29 person without a warrant when the officer has probable cause to believe
30 that an order has been issued of which the person has knowledge under
31 chapter 10.14 RCW and the person has violated the terms of that order.

32 ~~((+9))~~ (10) Any police officer having probable cause to believe
33 that a person has, within twenty-four hours of the alleged violation,
34 committed a violation of RCW 9A.50.020 may arrest such person.

35 ~~((+10))~~ (11) A police officer having probable cause to believe
36 that a person illegally possesses or illegally has possessed a firearm
37 or other dangerous weapon on private or public elementary or secondary
38 school premises shall have the authority to arrest the person.

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

4 ~~((+11+))~~ (12) Except as specifically provided in subsections (2),
5 (3), (4), and ~~((+6+))~~ (7) of this section, nothing in this section
6 extends or otherwise affects the powers of arrest prescribed in Title
7 46 RCW.

8 ~~((+12+))~~ (13) No police officer may be held criminally or civilly
9 liable for making an arrest pursuant to subsection (2) or ~~((+8+))~~ (9)
10 of this section if the police officer acts in good faith and without
11 malice.

12 NEW SECTION. Sec. 5. A new section is added to chapter 79A.60 RCW
13 to read as follows:

14 (1) No person who has vessels for hire, or the agent or employee
15 thereof, shall rent, lease, charter, or otherwise permit the use of a
16 vessel, unless the person:

17 (a) Displays the vessel registration numbers and a valid decal on
18 the vessel hull as required by RCW 88.02.550(1);

19 (b) Keeps a copy of the vessel registration certificate aboard the
20 vessel, in compliance with RCW 88.02.340;

21 (c) Displays a carbon monoxide decal on the vessel as required by
22 RCW 88.02.390(2) if the vessel is motor-driven and is not a personal
23 watercraft;

24 (d) Provides a copy of the rental agreement to be kept aboard
25 during the rental, lease, charter, or use period for vessels required
26 under chapter 88.02 RCW to be registered;

27 (e) Ensures that the vessel, if motor-propelled, meets the muffler
28 or underwater exhaust system requirement in RCW 79A.60.130;

29 (f) Outfits the vessel with the quantity and type of personal
30 floatation devices required by RCW 79A.60.140 and 79A.60.160 for the
31 number and ages of the people who will use the vessel;

32 (g) Explains the personal floatation device requirements to the
33 person renting, leasing, chartering, or otherwise using the vessel;

34 (h) Equips the vessel with a skier-down flag, and explains observer
35 and personal floatation requirements of RCW 79A.60.170, if the persons
36 renting, leasing, chartering, or otherwise using the vessel will be
37 waterskiing;

1 (i) If the vessel is a personal watercraft, provides a personal
2 floatation device and a lanyard attached to an engine cutoff switch for
3 the operator to wear at all times when operating the personal
4 watercraft, as required by RCW 79A.60.190;

5 (j) Reviews with the person operating the vessel, and all other
6 persons who the operator may permit to operate the vessel, all the
7 information contained in the motor vessel safety operating and
8 equipment checklist prescribed by the Washington state parks and
9 recreation commission and required under RCW 79A.60.640(6); and

10 (k) Provides all other safety equipment required by RCW 79A.60.110
11 and referenced in the motor vessel safety operating and equipment
12 checklist prescribed by the Washington state parks and recreation
13 commission and required under RCW 79A.60.640(6).

14 (2) This section does not apply to fishing guides and charter boat
15 operators who have a United States coast guard operator's license and
16 are operating on navigable waters, and people who act in the capacity
17 of a paid whitewater river outfitter or guide, or who operate a vessel
18 carrying passengers for hire on whitewater rivers in this state.

19 (3) As provided in RCW 79A.60.020, a violation of this section is
20 a civil infraction punishable under chapter 7.84 RCW, unless:

21 (a) The violation is a violation of RCW 88.02.550, which is
22 punished as a class 2 civil infraction; or

23 (b) The current violation is the person's third violation of the
24 same provision of this chapter during the past three hundred sixty-five
25 days. If it is the person's third violation, then it must be punished
26 as a misdemeanor under RCW 9.92.030.

27 **Sec. 6.** RCW 79A.60.150 and 1993 c 244 s 13 are each amended to
28 read as follows:

29 ~~If ((an infraction is issued under this chapter because a vessel~~
30 ~~does not contain the required equipment and if the operator is not the~~
31 ~~owner of the vessel, but is operating the vessel with the express or~~
32 ~~implied permission of the owner, then either or both operator or owner~~
33 ~~may be cited for the infraction))~~ a vessel does not contain the safety
34 equipment required under this chapter and the rules of the commission,
35 and the operator is not the owner of the vessel but is operating the
36 vessel with the express or implied permission of the owner, then either

1 the owner or the operator, or both, may be cited for the applicable
2 infraction or charged with the applicable crime.

3 NEW SECTION. **Sec. 7.** (1) A study group is established to assess
4 the effectiveness of current legislation, including this act, in
5 reducing the incidence of boating under the influence.

6 (2) The study group shall consist of the following members:

7 (a) One member from each of the two largest caucuses of the senate,
8 appointed by the president of the senate;

9 (b) One member from each of the two largest caucuses of the house
10 of representatives, appointed by the speaker of the house of
11 representatives;

12 (c) The director of the department of fish and wildlife or the
13 director's designee;

14 (d) The director of the state parks and recreation commission or
15 the director's designee;

16 (e) One representative from the Washington association of sheriffs
17 and police chiefs;

18 (f) One representative from the Washington association of
19 prosecuting attorneys; and

20 (g) One representative from the Washington defenders' association
21 or the Washington association of criminal defense lawyers.

22 (3) The director of the department of fish and wildlife or the
23 director's designee shall convene the initial meeting of the study
24 group and serve as chair of the study group.

25 (4) At a minimum, the study group shall research, review, and make
26 recommendations on the following:

27 (a) Regional and national approaches to boating regulation and
28 implied consent to breath and blood testing;

29 (b) The potential benefits, costs, and complications of creating a
30 regulatory or licensing system governing boating in Washington,
31 including ways the current vessel registration system and boater
32 education card requirement can be utilized to improve boater awareness
33 of and compliance with laws prohibiting boating under the influence;
34 and

35 (c) Obstacles to successful prosecutions of boating under the
36 influence in Washington state.

1 (5) The study group shall compile its findings and recommendations
2 into a final report and provide its report to the legislature and
3 governor by December 1, 2013.

4 (6) The study group shall function within existing resources and no
5 specific budget may be provided to complete the study. The
6 participants of the study group are encouraged to donate their time to
7 offset any costs.

8 (7) Staff support for the study group must be provided by the
9 department of fish and wildlife.

10 (8) This section expires January 1, 2014."

11 Correct the title.

EFFECT: Provides that the boat operator's refusal to take a
breath or blood test is not admissible into evidence in a criminal
trial.

Creates a study group to review and make recommendations on
reducing boating under the influence in Washington.

Doubles the penalty for the infraction to \$1000.

--- END ---