

# HOUSE BILL REPORT

## HB 2503

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**As Reported by House Committee On:**  
Public Safety

**Title:** An act relating to operation of a vessel under the influence of an intoxicant.

**Brief Description:** Concerning the operation of a vessel under the influence of an intoxicant.

**Sponsors:** Representatives Klippert, Hayes and Haler.

**Brief History:**

**Committee Activity:**

Public Safety: 2/4/14, 2/5/14 [DPS].

**Brief Summary of Substitute Bill**

- Prohibits officers from drawing blood from a person suspected of operating a vessel under the influence of THC (tetrahydrocannabinol) or any other drug without consent, a warrant, or exigent circumstances.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

**Staff:** Jenna Zwang (786-7290) and Sarah Koster (786-7303).

**Background:**

Vessel is defined to include every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. However it does not include innertubes, sailboards, or small rafts or floatation devices.

It is unlawful for a person to operate a vessel while intoxicated. Any person who operates a vessel in Washington is deemed to have given consent to tests of the person's breath or blood for the purpose of determining the alcohol concentration, THC (tetrahydrocannabinol) concentration or presence of any drug, if under arrest and if an officer has reasonable grounds

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to believe that the person was operating a vessel while under the influence of alcohol, marijuana, or any drug.

Refusal to take a blood or breath test is grounds for a class 1 civil infraction. Operating a vessel while under the influence of an intoxicant is a gross misdemeanor.

A blood draw is a search under the federal and state Constitutions. As such, a blood draw is only constitutional when it is consensual, pursuant to a search warrant, or in exigent circumstances. The recent United States Supreme Court decision in *Missouri v. McNeely* states that the metabolization of alcohol in the body does not by itself create an exigent circumstance. As a result, routine blood draws from a person suspected of driving under the influence are unconstitutional without consent or a warrant, unless there is some special complicating factor to justify exigency. *McNeely* has created some questions about the constitutionality of blood draws based on implied consent, the practice of deeming drivers or vessel operators to have consented to blood draws, based on their operation of a vehicle or vessel within the state.

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#### **Summary of Substitute Bill:**

Any person who operates a vessel is deemed to have given consent to tests of the person's breath for the purposes of determining alcohol concentration.

Refusal to take a breath test is grounds for a class 1 civil infraction.

A blood test may be administered to a vessel operator in two situations: (1) when an arrest results from an accident in which there has been serious bodily injury to another person or death; or (2) when the arresting officer has reasonable grounds to believe the person was operating a vessel while under the influence of a drug. The blood test may only be administered in these situations when:

- the arrested person has given consent and waived the warrant requirement;
- the arrested person has not given consent but a search warrant has been procured; or
- when exigent circumstances exist.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill allows for a blood test to be administered when arrest results from an accident where there has been serious bodily injury to another person or death, provided that the arrested person has given consent, a search warrant has been issued, or exigent circumstances exist.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill is in response to the case *Missouri v. McNeely*. This bill allows for blood to be drawn in conjunction with an arrest when a person has given consent. This bill is a technical fix in regards to implied consent for blood. This bill applies a "McNeely fix" to cases involving driving or boating under the influence.

(Opposed) None.

**Persons Testifying:** Representative Klippert, prime sponsor; Wade Alonzo, Washington State Parks; Steve Crown, Department of Fish and Wildlife; and Amy Freedheim, King County Prosecuting Attorneys Office.

**Persons Signed In To Testify But Not Testifying:** None.