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**SUBSTITUTE SENATE BILL 5618**

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**State of Washington                      65th Legislature                      2017 Regular Session**

**By Senate Human Services, Mental Health & Housing (originally sponsored by Senators Darneille and Keiser)**

READ FIRST TIME 02/17/17.

1            AN ACT Relating to arrest of sixteen and seventeen year olds for  
2 domestic violence assault; and reenacting and amending RCW 10.31.100.

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

4            **Sec. 1.** RCW 10.31.100 and 2016 c 203 s 9 and 2016 c 113 s 1 are  
5 each reenacted and amended to read as follows:

6            A police officer having probable cause to believe that a person  
7 has committed or is committing a felony shall have the authority to  
8 arrest the person without a warrant. A police officer may arrest a  
9 person without a warrant for committing a misdemeanor or gross  
10 misdemeanor only when the offense is committed in the presence of an  
11 officer, except as provided in subsections (1) through (12) of this  
12 section.

13            (1) Any police officer having probable cause to believe that a  
14 person has committed or is committing a misdemeanor or gross  
15 misdemeanor, involving physical harm or threats of harm to any person  
16 or property or the unlawful taking of property or involving the use  
17 or possession of cannabis, or involving the acquisition, possession,  
18 or consumption of alcohol by a person under the age of twenty-one  
19 years under RCW 66.44.270, or involving criminal trespass under RCW  
20 9A.52.070 or 9A.52.080, shall have the authority to arrest the  
21 person.

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

5 (a) An order has been issued of which the person has knowledge  
6 under RCW 26.44.063, or chapter 7.92, 7.90, 9A.46, 10.99, 26.09,  
7 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the  
8 person has violated the terms of the order restraining the person  
9 from acts or threats of violence, or restraining the person from  
10 going onto the grounds of or entering a residence, workplace, school,  
11 or day care, or prohibiting the person from knowingly coming within,  
12 or knowingly remaining within, a specified distance of a location or,  
13 in the case of an order issued under RCW 26.44.063, imposing any  
14 other restrictions or conditions upon the person; or

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

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

1 or serious threats creating fear of physical injury; and (C) the  
2 history of domestic violence of each person involved, including  
3 whether the conduct was part of an ongoing pattern of abuse.

4 (3) ((A)) Any police officer ((shall, at the request of a parent  
5 or guardian,)) may arrest ((the)) a person who is sixteen or  
6 seventeen years old ((child of that parent or guardian)) if the  
7 officer has probable cause to believe that the ((child)) person has  
8 assaulted a family or household member as defined in RCW 10.99.020 in  
9 the preceding four hours and the officer believes: (a) A felonious  
10 assault has occurred; (b) an assault has occurred which has resulted  
11 in bodily injury to the victim, whether the injury is observable by  
12 the responding officer or not; or (c) that any physical action has  
13 occurred which was intended to cause another person reasonably to  
14 fear imminent serious bodily injury or death. In making the  
15 determination to arrest, the officer shall consider: (i) The intent  
16 to protect victims of domestic violence under RCW 10.99.010; (ii) the  
17 extent of injuries inflicted or serious threats creating fear of  
18 physical injury; and (iii) the history of domestic violence or  
19 stalking of each person involved, including whether the conduct was  
20 part of an ongoing pattern of abuse. Nothing in this subsection  
21 removes, or otherwise limits, a police officer's existing authority  
22 provided in this section to make an arrest.

23 (4) 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 46.61.503 or 46.25.110, relating to persons having  
35 alcohol or THC in their system;

36 (f) RCW 46.20.342, relating to driving a motor vehicle while  
37 operator's license is suspended or revoked;

38 (g) RCW 46.61.5249, relating to operating a motor vehicle in a  
39 negligent manner.

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

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

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

17 (7) Any police officer having probable cause to believe that a  
18 person has committed or is committing a violation of RCW 79A.60.040  
19 shall have the authority to arrest the person.

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

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

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

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

38 (12) A police officer having probable cause to believe that a  
39 person illegally possesses or illegally has possessed a firearm or

1 other dangerous weapon on private or public elementary or secondary  
2 school premises shall have the authority to arrest the person.

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

6 (13) A law enforcement officer having probable cause to believe  
7 that a person has committed a violation under RCW 77.15.160(4) may  
8 issue a citation for an infraction to the person in connection with  
9 the violation.

10 (14) A law enforcement officer having probable cause to believe  
11 that a person has committed a criminal violation under RCW 77.15.809  
12 or 77.15.811 may arrest the person in connection with the violation.

13 (15) Except as specifically provided in subsections (2), (4),  
14 (5), and (8) of this section, nothing in this section extends or  
15 otherwise affects the powers of arrest prescribed in Title 46 RCW.

16 (16) No police officer may be held criminally or civilly liable  
17 for making an arrest pursuant to subsection (2) or (10) of this  
18 section if the police officer acts in good faith and without malice.

19 (17)(a) Except as provided in (b) of this subsection, a police  
20 officer shall arrest and keep in custody, until release by a judicial  
21 officer on bail, personal recognizance, or court order, a person  
22 without a warrant when the officer has probable cause to believe that  
23 the person has violated RCW 46.61.502 or 46.61.504 or an equivalent  
24 local ordinance and the police officer has knowledge that the person  
25 has a prior offense as defined in RCW 46.61.5055 within ten years.

26 (b) A police officer is not required to keep in custody a person  
27 under (a) of this subsection if the person requires immediate medical  
28 attention and is admitted to a hospital.

29 (18) A juvenile detention facility shall book into detention any  
30 person under age eighteen brought to that detention facility pursuant  
31 to an arrest for assaulting a family or household member as defined  
32 in RCW 10.99.020.

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